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RETURNED

APR 12 1999

When Recorded Return To:  
Lakeview Hospital  
630 East Medical Drive  
Bountiful, Utah 84010  
Attn: Chief Executive Officer

E 1503732 8 2480 P 7  
SHERYL L. WHITE, DAVIS CNTY RECORDER  
1999 APR 12 11:59 AM FEE 34.00 DEP NT  
REC'D FOR BURNINGHAM, THOMAS R.

Pt 1, Lake View Life Center

SW 20 2N-1E

04-144-0001

04-003-0148

04-003-0072

RIGHT OF FIRST REFUSAL  
AND  
RESTRICTIVE COVENANTS AGREEMENT

THIS RIGHT OF FIRST REFUSAL AND RESTRICTIVE COVENANTS AGREEMENT is made and executed as of the \_\_\_ day of March, 1999 by and between Thomas R. and Linda E. Burningham (the "Buyer") and Hospital Corporation of Utah, a Utah corporation doing business as Lakeview Hospital (the "Seller").

WITNESSETH:

WHEREAS, the Seller owns certain improved real property located in Bountiful, Utah, more particularly described in Exhibit B attached hereto (the "Hospital Property");

WHEREAS, the Seller recently acquired certain unimproved real property located in the vicinity of the Hospital Property more particularly described in Exhibit A attached hereto (the "Subject Property");

WHEREAS, the Buyer owns certain improved and unimproved property adjoining the Subject Property, more particularly described in Exhibit C attached hereto (together with the Subject Property, the "Buyer's Property");

WHEREAS, the Buyer wished to own and use the Subject Property;

WHEREAS, the Seller agreed to convey the Subject Property to the Buyer in consideration of the Buyer entering into an agreement in the form hereof;

NOW, THEREFORE, in consideration of the above premises and of the Seller conveying the Subject Property to the Buyer and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

NOW, THEREFORE, the parties hereto agree as follows:

1. Right of First Refusal.

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(a) If the Buyer desires to sell or transfer the Buyer's Property, the Buyer must first enter into an enforceable written bona fide agreement (the "Written Agreement") with the proposed purchaser, clearly and accurately setting forth all of the basic terms and conditions of such sale or transfer, including, without limitation, the identities of the persons involved, the amount and type of, and terms for payment of the, consideration involved, a legal description of the Buyer's Property, the intended closing date and all other terms or conditions. The Written Agreement shall be expressly subject to this Agreement and the rights of the Buyer hereunder. Within three (3) days after full execution of the Written Agreement, the Buyer shall deliver to the Seller a legible photocopy of the Written Agreement, with written notice (the "Transfer Notice") of the Buyer's intention to sell the Buyer's Property in accordance with the Written Agreement unless the Seller exercises the Seller's rights hereunder, together with the following: (i) any information reasonably required by the Seller with respect to the nature and character of the proposed purchaser and its business, activities and intended use of the Buyer's Property; and (ii) any references and current financial information reasonably required by the Seller with respect to the net worth, credit and financial responsibility of the proposed purchaser or its principals. The Seller shall have an irrevocable option for a period of thirty (30) days after the receipt of the Written Agreement, the Transfer Notice and the other information described above to elect to purchase the Buyer's Property, free and clear of all liens and encumbrances and subject only to such exceptions to title that exist on the date hereof for the purchase price set forth in the Written Agreement (the "Purchase Price"). During such period, the Seller and its agents shall have access to the Buyer's Property.

(b) If within such thirty (30) business day period the Seller delivers to the Buyer written notice that the Seller elects to purchase the Buyer's Property, the Seller and the Buyer shall proceed to consummate such purchase transaction in accordance with the terms and conditions specified in the Written Agreement, except that the closing may be ninety (90) days after such election. Failure of the Seller to so elect to purchase the Buyer's Property by giving such notice to the Buyer shall be deemed to be an election not to purchase the Buyer's Property. In the event that any of the terms and conditions (other than payment of the Purchase Price) are not within the power of the Seller to perform, or involve any leaseback of the Buyer's Property, such term(s) or condition(s) shall be waived by the Buyer or made not applicable to the Seller, as the case may be.

(c) If the Seller elects or is deemed to have elected not to exercise the right of first refusal set forth in subsection (a) above (the "Right of First Refusal"), the Buyer may sell the Buyer's Property to the proposed purchaser in accordance with all of the terms and conditions set forth in the Written Agreement. If, however, such sale to the proposed purchaser is not so consummated, the Right of First Refusal shall once again become effective. If the Seller elects

or is deemed to have elected not to exercise the Right of First Refusal and after such actual or deemed election the sale is not consummated within ninety (90) days after the receipt by the Buyer of the Transfer Notice, then the Right of First Refusal shall again apply to the Buyer's Property, and the Buyer shall comply with the procedure, and the Seller shall have the rights, set forth in subsection (a) above. Concurrently with or following the consummation of any such sale to a proposed purchaser, at the Buyer's request, the Seller shall execute and deliver to the Buyer an instrument in recordable form, and otherwise in form and substance mutually and reasonably satisfactory to the Seller and the Buyer, releasing the Right of First Refusal with respect to the Buyer's Property.

(d) The Right of First Refusal must be exercised, if at all, so as to vest in the Seller (or Seller's successors or assigns) title to the Buyer's Property not later than twenty-five (25) years after the date this Agreement is recorded.

(e) The Buyer agrees that he will only sell, lease or transfer all (and not a portion) of the Buyer's Property.

(f) The Buyer agrees not to enter into any lease of the Buyer's Property for a term (including all options to renew) in excess of five (5) years. In the event that the Buyer leases the Buyer's Property pursuant to a lease (an "Impermissible Lease") with a term exceeding five (5) years, the Seller shall have the option, exercisable at any time after the first five (5) years of the Impermissible Lease, to purchase the Buyer's Property for an amount equal to the assessed value of the Buyer's Property (both land and improvements) as shown on the Davis County Assessor's records for the calendar year immediately preceding the year of the purchase minus the total of all encumbrances on the Buyer's Property. In the event that the Seller so purchases the Buyer's Property, the Seller shall have the right (but not the obligation) to terminate the Impermissible Lease and take possession of the Buyer's Property.

## 2. Restrictions on Use of the Buyer's Property.

(a) The Buyer agrees that no portion of the Buyer's Property shall be used for a Health Care Facility.

(b) For the purposes of this Section 2, "Health Care Facility" shall mean any medical office building, facility, structure or other arrangement that provides (i) diagnostic, therapeutic or rehabilitative services to either inpatients or outpatients by or under the supervision of physicians or other medical personnel, including without limitation surgical services, and (ii) laboratory, radiology and radiological imaging, respiratory therapy, physical therapy, pulmonary or cardiological testing, catheter laboratory, lithotripsy, alcohol or drug abuse treatment, birthing center or other medical or health related services.

3. **Notices.** Each notice shall be in writing and shall be deemed to have been properly given or served by the deposit of such with the United States Postal Service, or any official successor thereto, designated as registered or certified mail, return receipt requested, bearing adequate postage and addressed as hereinafter provided. Each notice shall be effective upon being deposited as aforesaid and shall be deemed to have been received five (5) business days from and after such deposit. Each notice may also be served by personal service addressed as hereinafter provided. By giving to each other party at least 10 days' notice thereof, each party shall have the right from time to time to change the address(es) thereof and to specify as the address(es) thereof any other address(es) within the United States of America.

To the Buyer: Each notice to the Seller shall be addressed as follows:

Thomas R. and Linda E. Burningham  
295 SOUTH 400 EAST  
BOUNTIFUL UT. 84010

To Seller: Each notice to the Buyer shall be addressed as follows:

Lakeview Hospital  
 630 East Medical Drive  
 Bountiful, Utah 84010  
 Attn: Chief Executive Officer

4. **Run with the Land.** The Buyer intends, declares and covenants that the agreements and covenants set forth in this Agreement shall run with the land and shall bind, and the benefits and burdens shall inure to the benefit of, the Seller and the Buyer, and their respective successors and assigns; provided, however, the restrictions set forth in Section 2 above shall terminate in the event that the Hospital Property shall no longer be used for health care purposes.

5. **Attorneys' Fees.** In the event that any party shall institute any action or proceedings against any other party relating to the provisions of this Agreement, or any default thereunder, then and in that event, the unsuccessful party in such action or proceeding agrees to reimburse the prevailing party therein for the reasonable expense of attorneys' fees and disbursements incurred therein by the prevailing party.

6. **Recording.** The Seller may, at its expense, record this Agreement in the official records of the Davis County Recorder.

7. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. There are no promises, representations, warranties, covenants or undertakings other than those expressly set forth or referred to herein. This Agreement may be amended only in a writing signed by each of the parties hereto.

IN WITNESS WHEREOF, the parties have caused this Right of First Refusal and Restrictive Covenants Agreement to be duly executed as of the date first above written.

BUYER'S PROPERTY OWNER:

Thomas R. Burningham  
Thomas R. Burningham

Linda E. Burningham  
Linda E. Burningham

HOSPITAL PROPERTY OWNER:

Hospital Corporation of Utah  
dba Lakeview Hospital

By Howard K. Patterson  
Its VICE PRESIDENT

State of Utah )  
County of Davis ) ss.

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of March, 1999, by Thomas R. and Linda E. Burningham.

(Seal)



Carol L. Brown  
Notary Public

My Commission Expires:  
Aug 26, 2000

Residing at:  
Lakeview Hospital

State of Tennessee )  
County of Davidson ) ss.

The foregoing instrument was acknowledged before me this 8th day of March, 1999,  
by Houssalee Cook the Vice President of Hospital Corporation of Utah,  
a Utah corporation.



(Seal)

Houssalee Cook  
Notary Public

My Commission Expires:

July 27, 2002

Residing at:

Nashville, Tennessee

## Legal Description of Subject Property

That certain real property located in Davis County, Utah more particularly described as follows:

A parcel of land located in the Southwest quarter of Section 20, Township 2 North, Range 1 East, Salt Lake Base and Meridian, and being a portion of the Lakeview Life Center plat as recorded in Book 1771 at Page 318 in the Office of the Davis County Recorder, more particularly described as follows:

Beginning at a point on the Easterly boundary line of 400 East Street which is 100.96 feet North  $89^{\circ}43'12''$  East and 177.25 feet North  $00^{\circ}06'38''$  West from the Southwest corner of said Section 20, and running thence North  $00^{\circ}06'38''$  West 50.00 feet along said street and said boundary of the Lakeview Life Center plat; thence South  $88^{\circ}14'34''$  East 247.63 feet along said plat; thence South  $00^{\circ}06'38''$  East 78.30 feet to the Southerly boundary line of said plat; thence Northwestery 15.47 feet along the arc of a 98.00 foot radius curve to the left through a central angle of  $9^{\circ}02'45''$  along said line (chord bears North  $47^{\circ}22'19''$  West 15.46 feet); thence North  $52^{\circ}31'21''$  West 8.87 along said line feet to a point on a 75.00 foot radius non-tangent curve to the left; thence Northwestery 29.06 feet along the arc of said curve through a central angle of  $22^{\circ}12'05''$  along said line (chord bears North  $61^{\circ}31'27''$  West 28.88 feet); thence North  $88^{\circ}14'31''$  West 203.87 feet along said line to the point of beginning. Contains 12,883 square feet, or 0.2958 acres, more or less.



Oct. 25, 1998

EXHIBIT B

**Legal Description of Hospital Property**

That certain real property located in Davis County, Utah, more particularly described as follows:



Description of the Hospital Parcel

BEGINNING AT A POINT WHICH IS NORTH 89°43'12" EAST 106.96 FEET ALONG SECTION LINE AND SOUTH 0°06'38" EAST 483.70 FEET ALONG EAST LINE OF A STREET AND NORTH 89°48'56" EAST 596.32 FEET ALONG NORTH LINE OF A STREET AND NORTH 89°48'56" EAST 596.32 FEET ALONG NORTH STREET 30.6 FEET AND NORTH 0°06'38" WEST 150 FEET AND NORTH 89°48'56" EAST 453.81 FEET FROM THE NORTHWEST CORNER OF SECTION 29, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE MERIDIAN; AND NORTH 89°48'56" EAST 221.47 FEET; THENCE SOUTH 0°16'48" EAST 18 FEET; THENCE NORTH 89°48'56" EAST 63.60 FEET; THENCE NORTH 2°12'52" WEST 362.39 FEET; THENCE NORTH 1°10'12" EAST 40.7 FEET TO A POINT ON A 408 FOOT RADIUS CURVE TO THE LEFT (RADIUS POINT BEARS SOUTH 86°35'05" WEST) THENCE NORTHWESTERLY ALONG ARC OF SAID CURVE 277.89 FEET THRU A CENTRAL ANGLE OF 39°02'20", THENCE NORTH 51°28' EAST 79.27 FEET; THENCE NORTH 87°19' EAST 45.54 FEET; NORTH 3° EAST 206.91 FEET TO A POINT 1 FOOT SOUTH 3° WEST FROM THE SOUTH LINE OF A STREET; THENCE NORTH 87° WEST 137.41 FEET; NORTHWESTERLY 125.41 FEET ALONG ARC OF A 80 FOOT RADIUS CURVE TO THE RIGHT; THENCE NORTH 2°48' EAST 103.17 FEET TO SOUTH LINE OF CENTRAL HEIGHTS SUBDIVISION PLAT A; NORTH 87°11'05" WEST 129.18 FEET ALONG SAID LINE OF SAID SUBDIVISION; THENCE SOUTH 0°16'48" EAST 105.43 FEET; THENCE SOUTH 89°43'12" WEST 117.48 FEET TO THE EAST LINE OF 600 EAST STREET; SOUTH 1°15'41" WEST 6.68 FEET ALONG SAID EAST LINE; NORTH 75°04'41" WEST 51.46 FEET MORE OR LESS, TO EAST LINE OF PROPERTY CONVEYED IN BOOK 624 AT PAGE 110; THENCE SOUTH 1°15'41" WEST 75.39 FEET TO POINT OF TANGENCY WITH A 197.49 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHERLY ALONG SAID CURVE 69.33 FEET; THENCE NORTH 65°43'20" WEST 76.80 FEET TO A POINT OF TANGENCY WITH A 606 FOOT RADIUS CURVE TO LEFT; THENCE WESTERLY ALONG ARC OF SAID CURVE 102.80 FEET; THENCE NORTH 14°55'19" EAST 121.56 FEET; THENCE NORTH 75°04'41" WEST 336.22 FEET ALONG SAID LINE OF AMENDED BRIGGS SUBDIVISION; THENCE SOUTH 12°33'12" WEST 188.20 FEET TO NORTH LINE OF MEDICAL DRIVE; THENCE NORTH 88°21'58" WEST 333.53 FEET TO EAST LINE OF A STREET; THENCE SOUTH 0°06'38" EAST 144.88 FEET ALONG SAID STREET; THENCE NORTH 89°43'12" EAST 247.50 FEET; THENCE SOUTH 0°06'38" EAST 271.60 FEET; THENCE NORTH 88°14'34" WEST 247.64 FEET TO THE EAST LINE OF SAID STREET; THENCE SOUTH 0°06'38" EAST 50 FEET ALONG SAID STREET; THENCE SOUTH 88°14'34" EAST 203.91 FEET; THENCE SOUTH 0°06'38" EAST 170 FEET TO THE NORTH LINE OF SAID SECTION 29; THENCE NORTH 89°43'12" EAST 127.82 FEET ALONG THE SECTION LINE; THENCE NORTH 10°35' EAST 24.70 FEET; THENCE SOUTH 89°45' EAST 442.37 FEET TO A POINT 53.29 RODS EAST OF THE WEST LINE OF SAID SECTION 29; THENCE SOUTH 0°07'12" WEST 128.71 FEET; THENCE SOUTH 89°24'04" EAST 47.59 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 185.67 FOOT RADIUS CURVE TO THE RIGHT 76.62 FEET; THENCE SOUTH 65°45'21" EAST 266.98 FEET; THENCE SOUTH 32° WEST 116.78 FEET TO THE POINT OF BEGINNING.

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LESS AND EXCEPTING: BEGINNING AT A POINT ON THE SOUTH LINE OF MEDICAL DRIVE, NORTH 89°43'12" EAST, 100.96 FEET, ALONG THE SECTION LINE AND NORTH 0°06'38" WEST 560.71 FEET FROM THE SOUTHWEST CORNER OF SECTION 20, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE MERIDIAN, AND RUNNING THENCE SOUTH 0°06'38" EAST, 70.66 FEET; ALONG THE EAST LINE OF 400 EAST STREET; THENCE NORTH 89°43'12" EAST, 247.50 FEET; THENCE SOUTH 0°06'38" EAST, 203.38 FEET; THENCE NORTH 89°43'12" EAST, 166.0 FEET; THENCE NORTH 0°06'38" WEST, 260.23 FEET TO THE SOUTH LINE OF MEDICAL DRIVE, THENCE NORTH 88°21'58" WEST 413.69 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT THE FOLLOWING:

1. THOSE PORTIONS LYING IN MEDICAL DRIVE AND 600 EAST STREET.
2. THE PROPERTIES CONVEYED IN BOOK 905, PAGE 395; BOOK 1233, PAGE 338; BOOK 1264, PAGE 273; BOOK 1302, PAGE 991; BOOK 1336, PAGE 961; AND BOOK 1380, PAGE 570.
3. LOT 1 OF THE PLAT OF LAKEVIEW LIFE CENTER, A UTAH SUBDIVISION, AS RECORDED IN BOOK 1771, PAGE 318 OF THE PLAT RECORDS OF DAVIS COUNTY, UTAH.

EXHIBIT C

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Legal Description of Buyer's Property  
(other than the Subject Property)

That certain real property located in Davis County, Utah, more particularly described as follows:

SERIAL# 04-003-0072 ACRES .786 ACRES PAGE 1. INFO DATE 02/25/1999  
TAX NAME 2000: BURNINGHAM, THOMAS R & LINDA E  
PROP. ADDRESS: 295 SOUTH 400 EAST BOUNTIFUL

LEGAL DESCRIPTION:

BEG ON E LN OF 400 E STR AT A PT N  $89^{\circ}43'12''$  E 100.96 FT ALG SEC LN & N  $0^{\circ}06'38''$  W 227.25 FT ALG E LN SD STR FROM THE SW COR SEC 20; T2N-R1E; SLM: TH N  $0^{\circ}06'38''$  W 95.3 FT ALG SAID E LN; TH E 135 FT, TH N 85 FT TO A PT 24.7 RODS N OF THE S LINE SAID SEC 20; TH E 112.5 FT TO THE W LN OF PPTY CONV TO DAVIS CO BY 424-383; TH S  $0^{\circ}06'38''$  E 189.10 FT ALONG SAID LN; TH N  $88^{\circ}14'34''$  W 247.64 FT TO THE POB. CONT. 0.786 ACRES