

MEDICAL OFFICE SPACE: A LEGAL PERSPECTIVE

Hospitals and MOB owners form a symbiotic partnership.

By Mark Biskamp

Acquiring a medical office building on a hospital campus is unique compared to buying a traditional office building. The MOB is often owned by a hospital and intertwined with the property through above-ground walkways, shared parking, utilities, equipment and other systems. These systems create challenges when the ownership is separated. The purchaser usually acquires the medical office building by way of a ground lease from the hospital of the land around and below the building and a deed from the hospital of the improvements in fee.



Top: Westover Hills in San Antonio.
Bottom: A Hillcrest MOB in Waco.



Buyers must negotiate the traditional aspects of a purchase and sale agreement, while also negotiating a ground lease and other ancillary documents addressing the separation of unified medical facilities. The hospital also will likely house a few operations in the building, so negotiations will be with the hospital as the seller, ground lessor and tenant.

THE GROUND LEASE

The hospital typically ground leases the property, so that the hospital can maintain a level of control over the building. They also typically require office tenants to be either members of the medical profession or tenants that provide auxiliary or incidental services. The ground lease also will typi-

cally prohibit uses that are competitive with the hospital, such as magnetic resonance imaging, computed tomography, nuclear medicine or any procedure requiring anesthesia that must

be administered by an anesthesiologist. If the hospital has a particular religious affiliation, the hospital may additionally prohibit uses that violate certain ethical and religious directives.

The MOB owner will want a requirement that any leasing restrictions must also be uniformly applied by the hospital to all buildings on the hospital campus. The MOB owner will want the restrictions to apply only while the hospital is operating as a full-service hospital, as opposed to a hospital primarily providing specialty services. Medical practices also change over time, and the MOB owner may want a provision that will require modification of the competitive use restriction if the hospital ceases providing such

services.

The hospital may want a right of first offer to lease additional space in the MOB as it becomes available. If that is the case, the parameters of the right of first offer need to be negotiated, so that such a right will not hamper the leasing efforts of the MOB owner. Agree on the form of tenant lease that the hospital will execute upon exercise of the right of first offer in advance to limit negotiations to the financial terms of the lease. The ground lessor will want restrictions on the ability of the MOB owner to assign the ground lease and will often require permitted assignees to meet certain qualifica-

tions. The MOB owner will want exceptions to allow for financing without the hospital's consent and may also want exceptions for transfers to affiliates.

RECIPROCAL EASEMENT

The MOB owner and hospital will enter into a reciprocal easement agreement in order to grant the owner insurable easements in other land on the hospital campus to be used in connection with the operation of the building. The agreement will need to allow for parking, vehicular and pedestrian access, construction and support, and utilities. The easements granted will need to be superior to any financing liens on both the hospital campus and

the office land, so that a foreclosure of any lien will not terminate the easements.

The MOB will need sufficient parking in order to meet zoning requirements and in order to allow the MOB owner and its lender to obtain zoning endorsements, where available under title insurance policies. The easement agreement can designate particular parking spaces as exclusive "zoning spaces." The MOB owner may additionally want certain parking spaces designated for the exclusive use of its tenants. Pedestrian access on a hospital campus often involves walkways that connect various buildings within the campus. When ownership of buildings is separated in a sale transaction, rights to use the walkways must be granted in the agreement or a separate easement. The allocation of responsibility for operation of the walkway will need to be addressed.

The owner will need access to utility lines to provide water, sanitary and storm sewer, gas, electricity, telephone, cable television and fiber optic communications to the building. The parties can allow for the installation of parking facilities and perhaps other future improvements on the above-ground portion of the utility areas, provided that any such improvements do not unreasonably interfere with access to the below-grade portion of the utility areas. The parties may also wish to consider an easement for future utilities necessary for the practice of medicine.

RECENT TEXAS MOB PROJECTS				
Name	Location	Size	Developer	Delivery
10740 MOB	North Central Expressway, Dallas	92,000 sq. ft.	Cadence McShane	Finished
Westover Hills Medical Plaza II	San Antonio	72,000 sq. ft.	Trammell Crow	December
Oakbend Doctors Center	Southwest Freeway, Richmond	60,000 sq. ft.	Cadence McShane	Spring
Hillcrest MOB	Hillcrest Baptist Medical Center, Waco	59,000 sq. ft.	Lillibridge, Seavest	Finished

SERVICES AGREEMENTS

Equipment owned by the hospital may be needed for services, so the parties may desire to enter into an agreement that provides that the hospital will continue to provide such services to the MOB for a fee. The owner may want to build in a right to terminate the services. The hospital typically has security services for the campus, and the MOB owner may wish to see if the hospital will continue to provide security services to the MOB. If so, the parties will need to enter into a security services agreement outlining the scope of the services and the fees for the same.

NAMING LICENSE

The MOB owner may want to use the hospital name or trademarks in connection with advertising the MOB; if so, he will need to enter into a licens-

ing arrangement with the hospital. The license granted is typically limited and makes clear that the owner is not an agent or representative of the hospital and cannot bind the hospital in any manner. The ability of the MOB owner to assign such rights to a future purchaser or leasehold mortgagee should also be addressed.

After the acquisition is closed, the owner will be working with the hospital for years to come. It is therefore important for the parties to establish good relations. The owner will need the hospital's cooperation on financing and other issues and will want the hospital to remain a valued tenant in the MOB. A good relationship between the MOB owner and the hospital will pay dividends to all parties.

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