


*This instrument prepared by:*  
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NO RECORDING TAX IS PAYABLE WITH  
RESPECT TO THIS AGREEMENT. NOTHING  
HEREIN IS INTENDED TO EVIDENCE OR  
SECURE ANY INDEBTEDNESS OR CREATE  
ANY LIEN.

  
20021213000624250 Pg 1/14 50.00  
Shelby Cnty Judge of Probate, AL  
12/13/2002 11:46:00 FILED/CERTIFIED

STATE OF ALABAMA     )

COUNTY OF SHELBY     )

**SUBORDINATION, NON-DISTURBANCE,  
AND ATTORNMENT AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the 1st day of December, 2002, by and between **BENEFITS ADMINISTRATION SERVICES, LLC**, an Alabama limited liability company ("Tenant"), and **FIRST COMMERCIAL BANK**, an Alabama state banking corporation ("Lender").

**R E C I T A L S:**

Tenant is the present tenant under that certain Lease dated September 1, 1998, (as the same might have heretofore been amended or might hereafter be amended, extended, supplemented, or restated, the "Lease") between Tenant and Riverchase Office Road, L.L.C., an Alabama limited liability company ("Landlord"), with respect to a portion of an office building located at Shelby County, Alabama (the "Project"), on the parcel of real property more particularly described in **Exhibit "A"** attached hereto and made a part hereof. The premises demised to Tenant under the Lease, as more particularly described therein, are referred to herein as the "Premises".

Landlord is issuing notes in order to refinance the Project to be secured by Lender's issuance of a letter of credit. The reimbursement obligations of Landlord under the letter of credit are secured by a mortgage and security agreement covering the Project and an assignment of all leases relating thereto, including the Lease (said mortgage and security agreement and assignment of leases, as the same may hereafter be amended, increased, renewed, extended, spread, consolidated, severed, restated, or otherwise changed from time to time (the consent of Tenant to which shall not be required), are referred to herein as the "Security Documents"). As a condition to issuing the letter of credit, Lender has required that Tenant execute this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants hereinafter set forth, and as an inducement to Lender to extend financing to Landlord, the parties hereto do mutually covenant and agree as follows:

1.     **Subordination.** Tenant agrees that the Lease is and shall be, at the option of Lender upon notice to Tenant, at any time and from time to time, either subject and subordinate, or superior, to the Security Documents and to all present or future advances under the obligations secured thereby, and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Security Documents, to the full extent of all amounts secured by

the Security Documents from time to time. Such option of the Lender may be exercised an unlimited number of times. If subordinated, said subordination is to have the same force and effect as if the Security Documents and such renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any memorandum or short form thereof. This Agreement shall constitute notice to Tenant that for the time being, until further written notice to the contrary, Lender elects that the Lease is and shall be subject and subordinate to the Security Documents as aforesaid.

2. **Lender's Right to Cure.** Notwithstanding anything to the contrary in the Lease or this Agreement, Tenant shall give prompt written notice to Lender of any default or breach by Landlord under the Lease that are of such a nature as to give Tenant a right to terminate the Lease, to reduce rent, or to credit or offset any amounts against future rents. After Lender receives such notice, Lender shall have a period of thirty (30) days beyond the time available to Landlord under the Lease in which to cure the breach or default by Landlord, provided that if the default or breach does not arise solely from the nonpayment of money and cannot reasonably be cured within the time period set forth above, then Lender will have such additional time as is necessary to cure the default (including such additional time to acquire possession of the Premises, if possession of the Premises is necessary to cure the default) so long as Lender commences the cure thereof within original time period set forth above and diligently and in good faith pursues same to completion. Lender shall have no obligation to cure (and shall have no liability or obligation for not curing) any breach or default by Landlord. If, in curing any such default, Lender requires access to the Premises to effect such cure, Tenant shall furnish access to the Premises to Lender as required by Lender to effect such cure at all reasonable times; provided that Tenant's occupancy, use and enjoyment of the Premises is not unreasonably disrupted thereby.

3. **Non-Disturbance.** So long as Tenant is not in default in the payment of rent, additional rent, or other charges or conditions of the Lease, Tenant shall not be disturbed by Lender in Tenant's possession, enjoyment, use, and occupancy of the Premises during the original or any renewal term of the Lease or any extension or modification thereof. Nothing contained herein shall prevent Lender from naming or joining Tenant in any foreclosure or other action or proceeding initiated by Lender pursuant to the Security Documents to the extent necessary under applicable law in order for Lender to avail itself of and complete the foreclosure or other remedy, but such naming or joinder shall not be in derogation of the rights of Tenant as set forth in this Agreement.

4. **Payment of Rents to Lender.** Upon Lender's written request and without regard to contrary instructions from Landlord, Tenant agrees that it will make the payments to be made by Tenant under the Lease directly to Lender. Prior to the time that a Successor Landlord succeeds to the interest of Landlord in the Premises as described in Section 5 below, receipt of such payments by Lender shall not relieve Landlord of its obligations under the Lease nor operate to make Lender responsible for the performance thereof, and Tenant shall continue to look solely to Landlord for performance of such obligations.



5. **Attornment.** If, at any time, Lender or any person or entity or any of their successors or assigns shall acquire the interest of Landlord in and to the Premises through foreclosure, deed-in-lieu of foreclosure, assignment-in-lieu of foreclosure, or any other method (each, a "Successor Landlord"), then so long as the Lease is then in full force and effect, Tenant complies with this Agreement, and no default or event that, with the passage of time or giving of notice, or both, would constitute a default (collectively, a "Default") on the part of Tenant exists under the Lease, the Lease shall continue in full force and effect and shall not be terminated or disturbed except in accordance with the terms thereof. Tenant shall thereupon be bound to Successor Landlord, and Successor Landlord shall be bound to Tenant, under all the terms, covenants, and conditions of the Lease for the balance of the term thereof remaining, and any extensions or renewals thereof, with the same force and effect as if Successor Landlord was the original landlord under the Lease. Tenant does hereby attorn to Successor Landlord as its landlord, said attornment to be effective and self-operative without the execution of any additional documents by the parties hereto immediately upon Successor Landlord's succeeding to the interest of Landlord under the Lease.

6. **Protection of Successor Landlord.** Notwithstanding anything to the contrary in the Lease or the Security Documents, Successor Landlord shall not be liable for or bound by any of the following matters:

(a) Except for any default or breach of which Lender has been notified pursuant to Section 2 hereof but has failed to cure, any default or breach in Landlord's obligations under the Lease occurring prior to the time Successor Landlord succeeds to the interest of Landlord in the Premises;

(b) Any payment of rent (including fixed rent, percentage rent, or additional rent) that Tenant might have made to Landlord more than thirty (30) days before the date such rent was first due and payable under the Lease with respect to any period after the time Successor Landlord succeeds to the interest of Landlord in the Premises;

(c) Any deposit or security which was delivered to Landlord but which was not subsequently delivered to Successor Landlord;

(d) Any modification or amendment to the Lease, or any waiver of any terms of the Lease, made without Lender's prior written consent;

(e) Any consensual or negotiated surrender, cancellation, or termination of the Lease, in whole or in part, agreed upon between Landlord and Tenant;

(f) Any warranty or indemnity of any nature whatsoever made by Landlord, including any warranties or indemnities regarding use, compliance with zoning, hazardous wastes or environmental laws, Landlord's title, Landlord's authority, habitability, fitness for purpose, or possession; or

(g) Any obligation of Landlord under the Lease to make, pay for, or reimburse Tenant for any construction, alterations, demolition, or other improvements or work at the Project, including the Premises (other than day-to-day maintenance and repairs).

7. **Estoppel.** Tenant hereby states, declares, represents, and warrants to Lender as follows:

(a) The Lease, a complete and accurate copy of which is attached hereto as **Exhibit "B"** and incorporated herein by this reference, is in full force and effect and has not been amended or modified in any respect except as indicated in such **Exhibit "B"**. There are no other promises, agreements, understandings, or commitments between Landlord and Tenant relating to the Premises, except as set forth in the Lease. Tenant has not given Landlord any notice of termination under the Lease.

(b) The initial term of the Lease commenced on September 1, 1998, and is now on a month-to-month lease term.

(c) There has not been and is now no subletting of the Premises, or any part thereof, or assignment by Tenant of the Lease, or any rights therein, to any party.

(d) A security deposit in the amount of \$0.00 has been given by Tenant under the terms of, or with respect to, the Lease.

(e) No uncured default, event of default, or breach by Landlord or Tenant exists under the Lease, and no facts or circumstances exist that, with the passage of time will or could constitute a default, event of default, or breach by Tenant or, to the best of Tenant's knowledge, Landlord, under the Lease. Tenant has made no claim against Landlord alleging Landlord's default under the Lease.

(f) Tenant is in full and complete possession of the Premises and has accepted the Premises, and all common areas of the Premises (including, without limitation, parking areas, sidewalks, access ways, and landscaping), if any, are in compliance with the Lease and are satisfactory for Tenant's purposes. All items of an executory nature relating to the Premises to be performed by Landlord have been completed, including, but not limited to, completion of construction thereof (and all other improvements required under the Lease) in accordance with applicable plans and specifications and within the time periods set forth in the Lease. There are no unpaid or unreimbursed construction allowances or other offsets due Tenant under the Lease.

(e) The Lease is a "triple net" lease and, except as otherwise expressly provided in the Lease, all sums payable by Tenant thereunder shall be paid without notice, demand, set off, counterclaim, recoupment, abatement, reduction, or defense.

Tenant is obligated to pay the rent to Landlord at the rate set forth in the Lease. Tenant is current with respect to, and is paying, the full rent and other charges stipulated in the Lease (including, without limitation, any pass throughs or additional rent, whether or not so identified in the Lease), with no offsets, deductions, defenses, or claims. Tenant has not prepaid any rent or other amounts to Landlord other than rent and other charges due and payable in the calendar month of this Agreement.

(f) To the best of Tenant's knowledge and belief, there are no rental, lease, or similar commissions payable with respect to the Lease, except as may be expressly set forth therein.

(g) No hazardous substances are being (or have been or will be during the term of the Lease) generated, used, handled, stored or disposed of by Tenant on the Premises or on any other portion of the Project in violation of any applicable laws, rules, or regulations or the terms of the Lease.

(h) Tenant has no outstanding options (including expansion options), rights of first refusal, or rights of first offer to purchase the Premises, or any part thereof, or property of which the Premises are a part, or any part thereof.

(i) No voluntary actions or, to Tenant's best knowledge, involuntary actions, are pending against Tenant under the bankruptcy laws of the United States or any state thereof.

(j) Tenant is the owner and holder of all right, title, and interest in the leasehold estate created by the Lease, and has no knowledge of any prior assignment of Landlord's interest in the Lease.

Whenever requested by Lender, Tenant shall, without charge, execute and deliver to Lender a written confirmation that the representations contained in this Section remain correct and complete (or specifying any matter to the contrary).

7. **Exculpation of Successor Landlord.** Notwithstanding anything to the contrary in the Lease, upon any attornment pursuant to this Agreement the Lease shall be deemed to have been automatically amended to provide that Successor Landlord's obligations and liability under the Lease shall never extend beyond Successor Landlord's (or its successors' or assigns') interest, if any, in the Project from time to time, Successor Landlord's interest in the Lease, and the proceeds from any sale or other disposition of the Project by Successor Landlord (collectively, the "Successor Landlord's Interest"). Tenant shall look exclusively to Successor Landlord's Interest for payment or discharge of any obligations of Successor Landlord under the Lease as affected by this Agreement. Tenant shall not collect or attempt to collect any such obligations out of any other assets of Successor Landlord.

8. **Notices.** Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the



earlier to occur of (i) receipt or (ii) the date of delivery, refusal, or non-delivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a reputable overnight courier service providing for a receipt, addressed to Tenant or Lender, as the case may be, at the following addresses:

If to Tenant: Benefits Administration Services, LLC  
1121 Riverchase Office Road  
Birmingham, AL 35244

If to Lender: First Commercial Bank  
800 Shades Creek Parkway  
Birmingham, AL 35209  
Attention: Merrill Johnston

9. **Successors and Assigns.** This Agreement shall bind and benefit the parties, their successors and assigns. If Lender assigns the Security Documents, then upon delivery to Tenant of written notice thereof accompanied by the assignee's written assumption of all obligations under this Agreement, all liability of the assignor shall terminate.

10. **Entire Agreement.** This Agreement constitutes the entire agreement between Lender and Tenant regarding the subordination of the Lease to the Security Documents and the rights and obligations of Tenant and Lender as to the subject matter of this Agreement.

11. **Interaction with Lease with Security Documents.** If this Agreement conflicts with the Lease, then this Agreement shall govern as between Tenant and Lender, including upon any attornment pursuant to this Agreement. This Agreement supersedes, and constitutes full compliance with, any provisions in the Lease that provide for subordination of the Lease to, or for delivery of non-disturbance agreements by the holder of, the Security Documents. Lender confirms that Lender has consented to Landlord's entering into the Lease.

12. **Interpretation; Governing Law.** The interpretation, validity, and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the state in which the Premises are located.

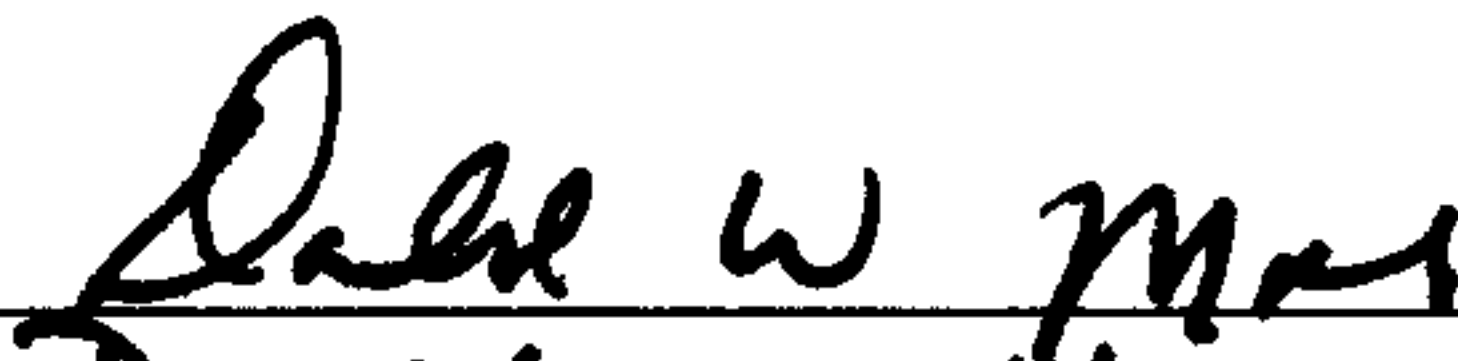
13. **Amendments.** This Agreement may be amended, discharged, or terminated, or any of its provisions waived, only by a written instrument executed by the party to be charged.

14. **Execution.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, or have caused this Agreement to be duly executed, as of the day and year first above written.

**TENANT:**

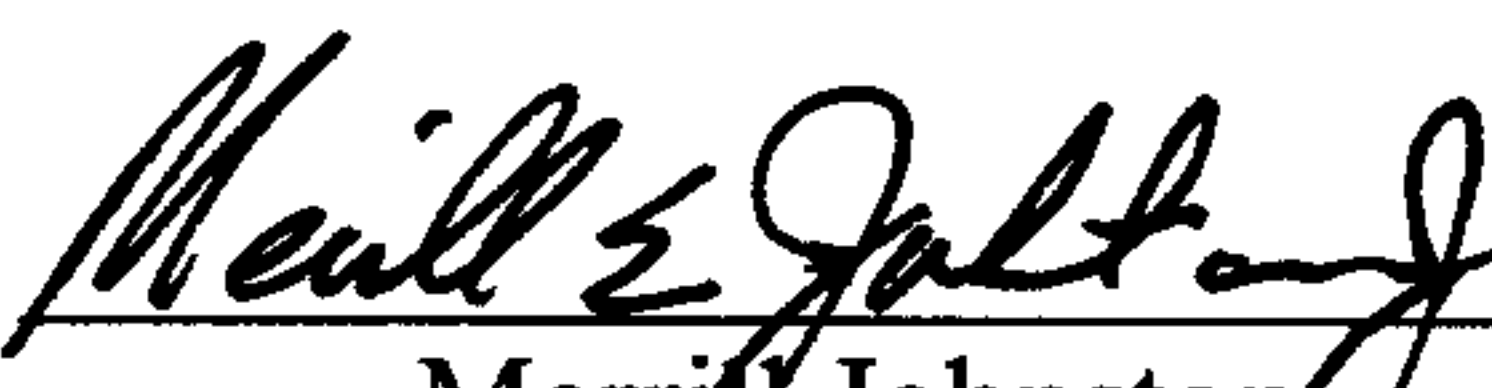
**BENEFITS ADMINISTRATION SERVICES, LLC,**  
an Alabama limited liability company

By:   
Name: Donald W. Murphy  
Title: Member

Date of execution: 12/11/02

**LENDER:**

**FIRST COMMERCIAL BANK,**  
an Alabama state banking corporation

By:   
Name: Merrill Johnston  
Title: Vice President

Date of execution: 12/11/02

STATE OF Alabama )  
COUNTY OF Jefferson )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Donald W. Murphy, whose name as member of **Benefits Administration Services, LLC**, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal, this 11<sup>th</sup> day of December, 2002.

Patsy H. Cannon  
Notary Public

[AFFIX SEAL]

My Commission Expires: MY COMMISSION EXPIRES MARCH 25, 2006

STATE OF Alabama )  
COUNTY OF Jefferson )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that **Merrill Johnston**, whose name as Vice President of **First Commercial Bank**, an Alabama state banking corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal, this 11<sup>th</sup> day of December, 2002.

Patsy H. Cannon  
Notary Public

[AFFIX SEAL]

My Commission Expires: MY COMMISSION EXPIRES MARCH 25, 2006



## Landlord's Consent

Landlord consents and agrees to the foregoing Agreement, which was entered into at Landlord's request. The foregoing Agreement shall not alter, waive, or diminish any of Landlord's obligations under the Security Documents or the Lease. The foregoing Agreement discharges the obligations of Lender under the Security Documents and related loan documents, if any, to enter into a nondisturbance agreement with Tenant. Landlord is not a party to the foregoing Agreement.

### BORROWER:

**RIVERCHASE OFFICE ROAD, L.L.C.,**  
an Alabama limited liability company

By: Donald W. Murphy  
Name: Donald W. Murphy  
Title: Member

STATE OF Alabama )  
COUNTY OF Jefferson )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Donald W. Murphy, whose name as member of **Riverchase Office Road, L.L.C.**, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal, this 11<sup>th</sup> day of December, 2002.

Gately H. Cannon  
Notary Public  
My Commission Expires: \_\_\_\_\_

[AFFIX SEAL]

MY COMMISSION EXPIRES MARCH 25, 2006

## **EXHIBIT "A"**

### **Description of Project**

The Real Estate consists of the following parcel of land located in the City of Hoover, Shelby County, Alabama:

Parcel A, according to the Survey of Riverchase Office Park, as recorded in Map Book 13, Page 123 in the Probate Office of Shelby County, Alabama.

**EXHIBIT "B"**

**Copy of Lease**

[See attached pages]

W0388028.WPD



## ***REAL ESTATE LEASE***

This Lease Agreement (this "Lease") is made effective as of September 01, 1998, by and between Riverchase Office Road, LLC, ("Landlord"), and Benefits Administration Services, LLC, ("Tenant"). The parties agree as follows:

**PREMISES.** Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant 718 sq. ft. of office space (the "Premises") located at 1121 Riverchase Office Road, Hoover, Alabama 35244.

**TERM.** The lease term will begin on September 01, 1998 and will terminate on August 31, 2000. At the end of such lease term, the lease will convert to a month-to-month lease if a new lease is not executed by the parties.

**LEASE PAYMENTS.** Tenant shall pay to Landlord monthly payments of \$807.75 per month, payable in advance on the first day of each month, for a total annual lease payment of \$9,693.00. During any month-to-month lease term, the monthly payments shall be as determined by the landlord, provided notice of any changes is given to the tenant in accordance with the notice provisions below. Lease payments shall be made to the Landlord at 1121 Riverchase Office Road, Hoover, Alabama 35244, as may be changed from time to time by Landlord.

**POSSESSION.** Tenant shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing.

**PROPERTY INSURANCE.** Landlord and Tenant shall each be responsible to maintain appropriate insurance for their respective interests in the Premises and property located on the Premises.

**DEFAULTS.** Tenant shall be in default of this Lease, if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 30 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent".

**NOTICE.** Notices under this Lease shall not be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed as follows:

**LANDLORD:**

Name: Riverchase Office Road, LLC  
Address: 1121 Riverchase Office Road  
Hoover, AL 35244

**TENANT:**

Name: Benefits Administration Services, LLC  
Address: 1121 Riverchase Office Road  
Hoover, AL 35244

Such addresses may be changed from time to time by either party by providing notice as set forth above.

**ENTIRE AGREEMENT/AMENDMENT.** This Lease Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

**SEVERABILITY.** If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

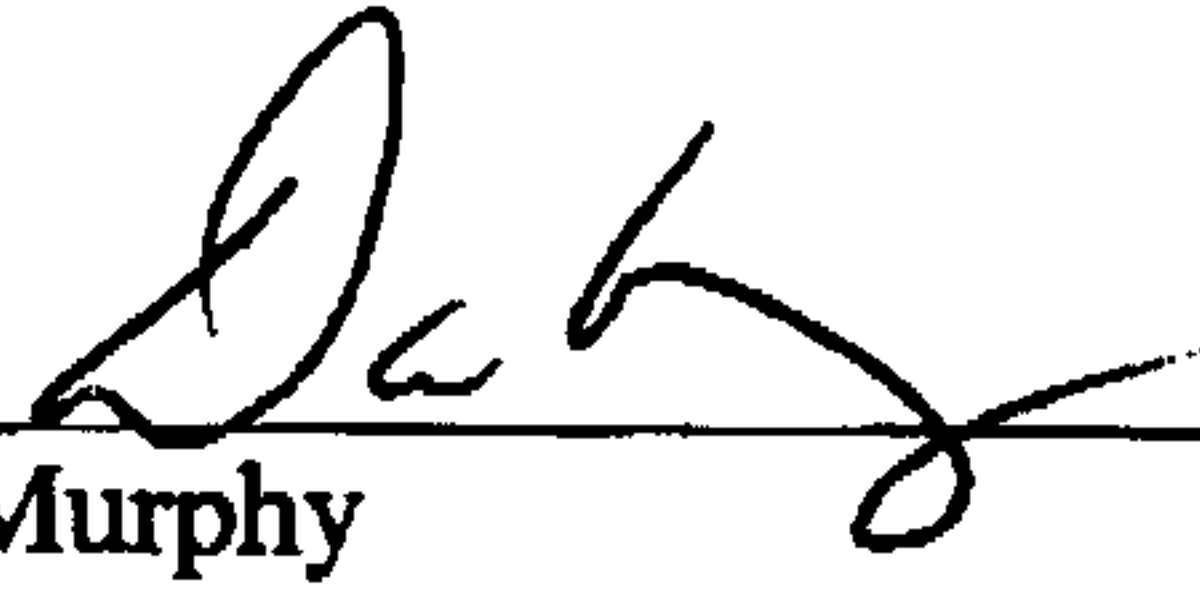
**WAIVER.** The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

**CUMULATIVE RIGHTS.** The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

**GOVERNING LAW.** This Lease shall be construed in accordance with the laws of the State of Alabama.

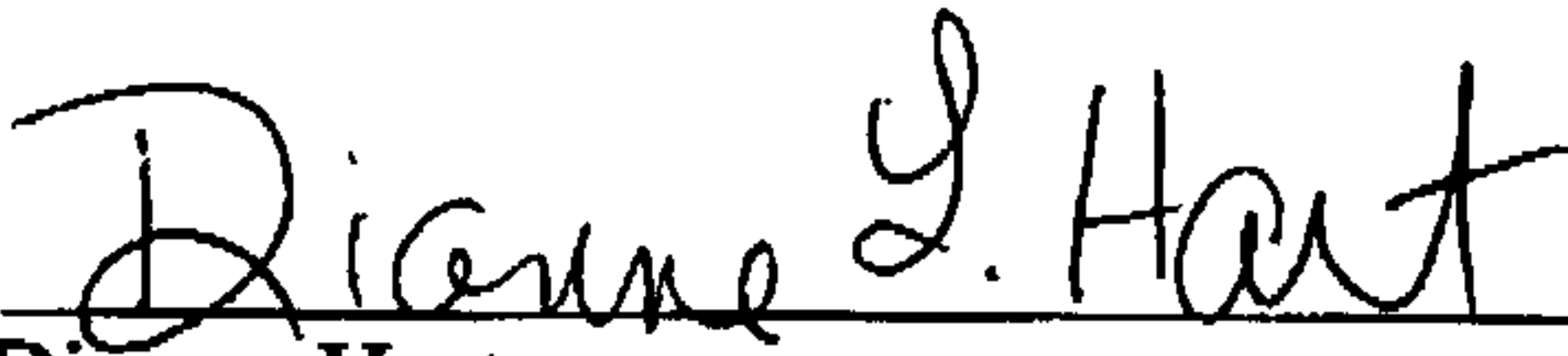
LANDLORD:

Riverchase Office Road, LLC

By:   
Don Murphy  
Its: Managing Member

TENANT:

Benefits Administration Services, LLC

By:   
Dianne Hart  
Its: Managing Member