

This Mortgage is being recorded to correct that certain mortgage recorded on 7/18/2006 in Instrument 20060718000347150 to show that it is an Accommodation Mortgage. Taxes paid at the time of the original recording.

64205

INSTRUMENT WAS PREPARED BY: Mary Jane Barnette for CapitalSouth Bank  
2340 Woodcrest Place, Birmingham, AL 35209

20081104000426220 1/3 \$18.00  
Shelby Cnty Judge of Probate, AL  
11/04/2008 09:50:19AM FILED/CERT

### REAL ESTATE ACCOMODATION MORTGAGE

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

KNOWN BY ALL MEN THESE PRESENTS: That  
WHEREAS, Diequez-Marino Orthodontics, P.C. (hereinafter "Borrowers", whether one or more) are, contemporaneously with the execution hereof, becoming indebted to CapitalSouth Bank (hereinafter "Bank"), on a loan in the sum of Two Hundred Sixty Five Thousand and no/100 Dollars (\$265,000.00) principle, as evidenced by a promissory note dated July 14, 2006, payable to Bank with interest thereon, on demand or as otherwise provided therein (hereinafter "Note"); and

WHEREAS, said borrowers or the Mortgagors (as hereinafter defined) may hereafter become indebted to Bank or a subsequent holder of this Accommodation Mortgage on loans or otherwise (said Bank and any subsequent holder of this Accommodation Mortgage being referred to herein as "Mortgagee"); and

WHEREAS, in order to induce Mortgagee to make the above loan or loans to Borrowers, and for other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the undersigned Diequez-Marino Holdings, Limited Liability Company/L.L.C./LLC, an Alabama Limited Liability Corporation (hereinafter "Mortgagors", whether one or more) agree to make this Accommodation Mortgage to secure said principle amount with interest, and all renewals, extensions or modifications thereof, and any and all other additional indebtedness of said Borrowers or Mortgagors to said Mortgagee, now existing or hereafter arising, whether joint or several, due or to become due, absolute or contingent, direct or indirect, liquidated or unliquidated, and whether incurred or given as make, endorser, guarantor or otherwise, all of which are hereinafter referred to as "Other Indebtedness".

NOW THEREFORE, the undersigned Mortgagors and all other executing this Accommodation Mortgage, in consideration of the premises, and to secure the prompt payment of the loan or loans above mentioned with the interest thereon, and any extension, renewals or modifications of same, any and all Other Indebtedness of Borrowers or Mortgagors to Mortgagee as set forth above and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, and as may be set forth in instruments evidencing or securing Other Indebtedness of Borrowers to Mortgagee, and further to secure any and all charges incurred by Mortgagee on account of Mortgagors, including but not limited to attorney's fees, have bargained and sold and do hereby grant, bargain, sell and convey unto said Mortgagee, its successors and assigns, that certain real property situated in the County of Shelby, State of Alabama (hereinafter "Property"), described as follows, to wit:

Lot 1-B2 and Lot 1-B3, along with a 60-foot by 100-foot access easement for the benefit of Lot 1-B2, which lies on Lot 1-B1 and access and egress thereupon, according to map of Diequez Resurvey of Lot 1-B, the Narrows Commercial Subdivision, Sector 1, as recorded in Map Book 37, page 5, in the Office of the Judge of Probate of Shelby County, Alabama.

Together with all and singular the rights, privileges, tenements, hereditaments, improvements, fixtures and appurtenances thereunto belonging or otherwise appertaining, to have and to hold the above granted Property unto said Mortgagee, its successors and assigns, forever.

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Borrowers or Mortgagors shall pay or cause to be paid to the Mortgagee the principle and interest payable in respect to the Note, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by the Borrowers or Mortgagors, and shall pay all charges incurred by Mortgagee on account of Borrowers or Mortgagors, including but not limited to attorney's fees and shall pay any and all Other Indebtedness of Borrowers or Mortgagors to Mortgagee, and shall keep, perform and observe all and singular the covenant, conditions and agreements in the Note and in this Accommodation Mortgage, and in any other instruments evidencing or securing Other Indebtedness of Borrowers or Mortgagors to Mortgagee, expressed to be kept, performed, and observed by or on the part of the Borrowers or Mortgagors, all without fraud or delay, then this Accommodation Mortgage, and all the properties, interest and rights hereby granted, bargained, sold and conveyed shall cease, determine and be void, but shall otherwise remain in full force and effect.

Upon the happening of a default in the payment of said Note, or of any installment thereof, principle or interest, when due, or upon the happening of a default in the payment of any Other Indebtedness, obligation or liability hereby secured, or any renewals, extensions or modifications thereof when due, or upon default in the performance of any of the covenants, conditions and agreements in the Note, or in the Accommodation Mortgage, or in any other instruments evidencing or securing the Note or Other Indebtedness of Borrowers or Mortgagors, or should the interest of said Mortgagee or assigns in said Property become endangered by reason of the enforcement of any prior lien or encumbrance thereon or otherwise, so as to endanger the security hereby given, or should the Borrowers or Mortgagors, or any endorser, surety or guarantor of the Note of Other Indebtedness of Borrowers to Mortgagee, file or have filed against any one of them, a petition under any provision of any federal or state law pertaining to bankruptcy, insolvency, or any other law for relief of debtors, including but not limited to, proceedings for liquidation, adjustment or debts, reorganization, or any filing of any plan, composition or arrangement under any such law, or seek or acquiesce in a general assignment or any other arrangement for the benefit of creditors, Mortgagee may, at its option, declare all debts obligations and liabilities secured hereby to be immediately due and payable, and the Mortgagors hereby vest the Mortgagee with full power and authority to sell said Property at public auction at the front door of the courthouse of said county. Such sale may be in lots or parcels or en masse as Mortgagee's agents, auctioneer or assigns deem best, for



cash, to the highest bidder, after first giving notice of the time, place and terms of such sale, together with a description of the Property to be sold, by publishing the same once a week for three (3) consecutive weeks in a newspaper published in said county and state. Mortgagee has full power and authority to make proper conveyance to the purchaser and to apply the proceeds of said sale: First, to the payment of the expenses of such sale, including advertising, selling and conveying, including reasonable attorney's and auctioneer's fees; second, to the payment of any and all debts, obligations and liabilities be then due or not, and any amount that may be due the Mortgagee by virtue of any of the special liens or agreements herein declared; and lastly, the surplus, if any, to be paid over to the party or parties appearing of record to the owner of the Property at the time of the sale after deducting any expense of ascertaining who is such owner, or to be paid as otherwise required by law. The said Mortgagee may, at any sale made under this Accommodation Mortgage, become the purchaser of said Property, or any part thereof or interest therein, like a stranger thereto, in which the event the auctioneer making the sale shall make the deed in the name of the Mortgagors, and all recitals made in any deed executed under this Accommodation Mortgage shall be evidence of the facts therein recited.

The Mortgagors, their heirs, successors, assigns, executors and administrators, hereby covenant with the Mortgagee, its successors and assigns, that they are seized of an indefeasible estate in fee simple in and to said Property, that said Property is free from all liens and encumbrances except as set forth herein, and that they will forever warrant and defend the title thereto and the quiet enjoyment thereof unto the said Mortgagee, its successors or assigns, and unto the purchaser at any such sale, against the lawful claims of all persons whomsoever.

The Mortgagors further expressly agree and covenant as follows:

1. Mortgagors shall keep any buildings now erected on said Property in good repair, and insured against fire and windstorm, and such other risks as Mortgagee may designate, by policies made payable to the Mortgagee by a New York Standard Loss Payee Endorsement, and deposited with the Mortgagee. Such policies shall be in the amount as may be required by the Mortgagee, but Mortgagee shall not require insurance exceeding the value of said buildings and other improvements.
2. Mortgagors shall keep the improvements situated on the Property in a reasonable state of repair and shall not commit or permit waste of the Property, or remove any fixtures.
3. Mortgagors shall pay promptly all taxes, assessments, liens and other charges which are now, or may become effective against said Property before the same become delinquent, together with all penalties, costs, and other expenses incurred, or which may accrue, in connection therewith.
4. If Mortgagee shall employ an attorney to collect the debt or any of the debts hereby secured, or any portion thereof, or to foreclose this Accommodation Mortgage by sale under the powers herein contained, or by an action at law or other judicial or administrative proceeding, then the said Mortgagors shall pay and allow a reasonable attorney's fee.
5. Mortgagors shall maintain possession of the Property above described, subordinate to the rights of the Mortgagee, and in the event of litigation arising over the title to, or possession of said Property, the Mortgagee may prosecute or defend said litigation.
6. If the said Mortgagors fail to perform any of the duties herein specified, the Mortgagee may perform the same.
7. The Mortgagee may advance to said Mortgagors such monies as may be necessary to discharge any liens of any character now or hereafter placed against said Property, or to pay for any work done upon said Property, or for materials furnished to said Property.
8. The Mortgagee shall have an additional lien upon said Property, secured by this Accommodation Mortgage, for any sums expended or advanced by the Mortgagee pursuant to the provision of paragraphs 4 through 7 above, together with interest thereon, and all such sums expended or advanced shall bear interest at the rate set forth in the Note, unless otherwise agreed by Mortgagee and Mortgagor, and shall be immediately due and payable.
9. Mortgagors shall not sell, otherwise transfer, or dispose of the Property without the prior written consent to the Mortgagee. Upon any such sale, transfer or disposition of the Property without the prior written consent of Mortgagee, Mortgagee may, at its option, declare all debts, obligations and liabilities secured hereby to be immediately due and payable.
10. Mortgagee is authorized, without notice or demand and without affecting the Accommodation Mortgage, from time to time to (a) renew, compromise, extend, accelerate or otherwise change the time for payment of, or otherwise change the terms of the Note or any Other Indebtedness of Borrowers or Mortgagors, or any part thereof, including increase or decrease of the rate of interest thereof; (b) take and hold security for the payment of the Note or any Other Indebtedness of Borrowers or Mortgagors, and exchange, enforce, waive and release any such security; and (c) apply such security and direct the order or manner of sale thereof as Mortgagee in its discretion may determine. Mortgagee may, without notice, assign this Accommodation Mortgage in whole or in part.
11. Mortgagors waive any right to require Mortgagee to (a) proceed against Borrowers; (b) proceed against or exhaust any security held from Borrowers; or (c) pursue any other remedy in Mortgagee's power whatsoever. Mortgagors waive any defense arising by reason of any disability or other defense of Borrowers or by reason of the cessation from any cause whatsoever of the liability of Borrowers. Until the Note and all Other Indebtedness of Borrowers to Mortgagee shall have been paid in full, Mortgagors have no right of subrogation, and waive any right to enforce any remedy which Mortgagee now has or hereafter may have against Borrowers, and waive any benefit of, and any right to participate in any security now or hereafter held by Mortgagee. Mortgagors waive all presentments, demands of performance, notices of nonperformance, protests, notices of protest, and notices of dishonor, and other the existence, creation, or incurring of new or additional indebtedness.
12. It is the intent hereof that this Accommodation Mortgage shall be and remain unaffected, (a) by the existence or nonexistence, validity or nonvalidity of any pledge, assignment or conveyance given as security for the Note or Other Indebtedness of Borrowers or Mortgagors; or (b) by any understanding or agreement that any other person, firm or corporation was or is to execute any other instrument, or the Note or notes evidencing any indebtedness of Borrowers, or any part thereof; or (c) by resort on the part of the Mortgagee to any other security or remedy for the collection of any indebtedness of Borrowers or Mortgagors; or (d) by the death or bankruptcy of any one or more of the Borrowers, if more than one, and in case of any such death or bankruptcy, by failure of the Mortgagee to file claim against the deceased Borrower's estate or against such bankrupt's estate, as the case may be, for the amount of such decedent's or such bankrupt's liability to Mortgagee.
13. This Accommodation Mortgage is independent of the obligations of Borrowers, and Mortgagee may exercise its right under this Accommodation Mortgage whether or not action is brought against Borrowers; and Mortgagors waive the benefit of any statute of limitations or other defenses affecting the Accommodation Mortgage or the enforcement thereof.

14. The provisions of this Accommodation Mortgage shall inure to and bind, not only the parties hereto, but also their respective heirs, executors, administrators, successors, and assigns.
15. No delay or omission of the Mortgagee or of any holder of the Note to exercise any right, power or remedy under this Accommodation Mortgage, the Note, or other instrument securing the Note or Other Indebtedness of Borrowers or Mortgagors, upon any default shall exhaust or impair any such right, power or remedy, or shall be construed to be a waiver of any such default, or acquiescence therein. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.
16. All rights, powers and remedies of Mortgagee herein shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. In the event that any one or more of the terms or provisions of this Accommodation Mortgage or of the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining terms or provisions shall in no way be affected, prejudiced or disturbed thereby.
17. This Accommodation Mortgage is given under the seal of all parties hereto, and it is intended that this Accommodation Mortgage is and shall constitute have the effect of a sealed instrument according to law.

IN WITNESS WHEREOF, said Mortgagors have hereunto set their hands and seals on this the 16 day of October, 2007. 2008 *JDH*

MORTGAGORS:

*Dieguez-Marino Holdings, Limited Liability Company/L.L.C./LLC*

*Bertha Dieguez-Marino* (seal)  
Bertha Dieguez-Marino, Manager

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, JANICE HOLT, a Notary Public in and for said County, in said State, hereby certify that Bertha Dieguez-Marino whose name as Manager of *Dieguez-Marino Holdings, Limited Liability Company/L.L.C./LLC* is signed to the forgoing conveyance, and who are known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, acknowledged before me on this day that, being informed of the contents of the instrument, she, as such Member and with full authority executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the 16<sup>th</sup> day of October, 2007. 2008 *JDH*

*Janice Holt*  
Notary Public  
My Commission Expires: 11-17-2008

