

Orig.

STATE OF ALABAMA)
SHELBY COUNTY)

DECLARATION OF EASEMENTS

THIS DECLARATION OF EASEMENTS (this "Declaration") is executed as of July 12, 1994, by and between SHELBY COUNTY HEALTH CARE AUTHORITY d/b/a SHELBY MEDICAL CENTER, a public corporation organized and existing pursuant to Section 22-21-310 Code of Alabama, 1975 as amended (hereinafter called "SMC") and the MEDICAL CLINIC BOARD OF ALABASTER, a public corporation (hereinafter called "MCBA"), COMMONWEALTH LIFE INSURANCE COMPANY, a Kentucky corporation ("Commonwealth"), ALABASTER MEDICAL BUILDING, LTD., an Alabama limited partnership ("AMB") and A. H. BEAN, an individual ("Bean").

Inst # 1994-26783

Recitals

A. SMC is the owner of property located in Shelby County, Alabama, and more particularly described on Exhibit A attached hereto (the "SMC Parcels").

B. MCBA is the owner of property located in Shelby County, Alabama, and more particularly described on Exhibit B attached hereto (the "MCBA Parcel"). The SMC Parcels and the MCBA Parcel are hereinafter sometimes together referred to as the "Parcels".

C. MCBA has granted a mortgage on the MCBA Parcel to Commonwealth pursuant to a certain Mortgage dated February 19, 1980 and recorded in Real Book 400, at page 882 in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office").

D. MCBA ground leased the MCBA Parcel to the Greater Shelby Office Plaza, Ltd. ("GSOP") pursuant to a certain ground lease dated February 19, 1980 and recorded in Misc. Book 34, at page 950 in the Probate Office (the "Ground Lease").

E. GSOP assigned all of its right, title and interest in the Ground Lease to AMB pursuant to a certain Assignment of Leasehold Estate dated May 31, 1985 and recorded in Real Book 32, at page 154 in the Probate Office.

F. In connection with the assignment of the Ground Lease by GSOP to AMB, AMB executed a certain Assignment of Leasehold Estate as Security dated June 21, 1985 in favor of A. H. Bean as security for a loan to AMB, which assignment is recorded in Real Book 33, at page 553 in the Probate Office.

G. MCBA has requested, and SMC wishes to provide, for a means of ingress and egress to the MCBA Parcel across the SMC Parcels. SMC has requested, and MCBA wishes

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to provide, for the right of SMC to construct, maintain and repair the road to be constructed and maintained as such means of ingress and egress.

H. SMC has requested, and MCBA wishes to provide, for a means of ingress and egress over a portion of the MCBA Parcel in order to provide access to the employee parking lot of SMC.

I. SMC desires to declare, establish, grant and provide for a non-exclusive ingress and egress easement appurtenant for the benefit of (i) MCBA (as long as MCBA is the owner of an interest in the MCBA Parcel) and any subsequent owner(s) or ground lessee(s) of all, or any portion of all, or any of the MCBA Parcel, and their respective heirs, successors and assigns (hereinafter collectively called the "Owners"), (ii) the Owners' agents, customers, invitees, licensees, employees, servants, contractors, and tenants (and tenants' customers, invitees, licensees, employees, servants, and contractors) (all of the foregoing herein collectively called the "Permittees"), and (iii) the holder or holders of any mortgage now or hereafter constituting a lien against all or any of the MCBA Parcel, and the heirs, successors and assigns of any such holder (herein collectively called the "Mortgagees").

J. MCBA desires to declare, establish, grant and provide for a non-exclusive ingress and egress easement appurtenant for the benefit of (i) SMC (as long as SMC is the owner of an interest in the SMC Parcels) and any subsequent owner(s) or ground lessee(s) of all, or any portion of all, or any of the SMC Parcels, and their respective heirs, successors and assigns (hereinafter collectively called the "SMC Owners"), (ii) the SMC Owners' agents, customers, invitees, licensees, employees, servants, contractors, and tenants (and tenants' customers, invitees, licensees, employees, servants, and contractors) (all of the foregoing herein collectively called the "SMC Permittees"), and (iii) the holder or holders of any mortgage now or hereafter constituting a lien against all or any of the SMC Parcels, and the heirs, successors and assigns of any such holder (herein collectively called the "SMC Mortgagees").

Declaration

NOW, THEREFORE, for the purposes set forth in the foregoing recitals, SMC, MCBA, Commonwealth, AMB and Bean do hereby declare and provide as follows:

1. Ingress/Egress Easement. SMC hereby establishes and creates for the benefit of the MCBA Parcel and for the benefit of the Owners, Permittees, and Mortgagees, having from time to time an interest in the MCBA Parcel; and does hereby give, grant, bargain, sell and convey to each such Owner, Permittee, and Mortgagee a non-exclusive easement, right, license and privilege appurtenant to the MCBA Parcel for the benefit of the MCBA Parcel for the right of passage and use, both pedestrian and automotive, over, across and upon that portion of the SMC Parcels described below ("Easement A") for the purpose of ingress to and egress from the MCBA Parcel:

Commence at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, said corner being marked by a one and one-half inch crimped pipe, and run in an Easterly direction along the accepted North line of said quarter-quarter section a distance of 316.16 feet to a one inch crimped pipe, thence deflect $88^{\circ}34'47''$ and run to the right in a Southerly direction a distance of 262.86 feet to the point-of-beginning of the herein described easement; thence continue in a Southerly direction along the last described course a distance of 55.83' to a point; thence turn an interior angle of $87^{\circ}31'22''$ and run to the right in a Westerly direction a distance of 56.09 feet to a point; thence turn an interior angle of $156^{\circ}56'15''$ and run to the right in a Northeasterly direction a distance of 61.02 feet to a point; thence turn an interior angle of $202^{\circ}25'18''$ and run the left in a Westerly direction a distance of 239.28 feet to a point; thence turn an interior angle of $266^{\circ}24'32''$ and run to the left in a Southerly direction a distance of 210.49 feet to a point; thence turn an interior angle of $95^{\circ}11'56''$ and run to the right in a Westerly direction a distance of 32.05 feet to a point, said point being on the Easterly Right-Of-Way line of U.S. Highway 31; thence turn an interior angle of $84^{\circ}17'50''$ and run to the right in a Northerly direction a distance of 121.13 feet to the P.C. of a curve on said R.O.W., said curve being to the right and having a central angle of $156^{\circ}56'15''$ and a radius of 5629.58 feet; thence continue along the arc of said curve and said R.O.W. a distance of 125.49 feet to a point; thence turn an interior angle of $94^{\circ}51'04''$ from the tangent of the last described curve and departing from said R.O.W. run to the right in an Easterly direction a distance of 374.70 feet to the point of beginning of the herein described easement.

2. **Ingress/Egress Easement.** MCBA hereby establishes and creates for the benefit of the SMC Parcels and for the benefit of the SMC Owners, SMC Permittees, and SMC Mortgagees, having from time to time an interest in the SMC Parcels; and does hereby give, grant, bargain, sell and convey to each such SMC Owner, SMC Permittee, and SMC Mortgagee a non-exclusive easement, right, license and privilege appurtenant to the SMC Parcels for the benefit of the SMC Parcels for the right of passage and use, both pedestrian and automotive, over, across and upon the portion of the MCBA Parcel described below ("Easement B") for the purpose of ingress to and egress from the SMC Parcels:

Commence at the Northwest corner of the Southwest quarter of the Northwest quarter of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, said corner being marked by a one and one-half inch crimped pipe, and run in an Easterly

direction along the accepted North line of said quarter-quarter section a distance of 316.16 feet to a one inch crimped pipe, thence deflect $88^{\circ}34'47''$ and run to the right in a Southerly direction a distance of 262.86 feet to the point-of-beginning of the herein described easement; thence deflect $89^{\circ}04'26''$ and run to the left in an Easterly direction a distance of 68.11 feet to a point; thence turn an interior angle of $89^{\circ}15'47''$ and run to the right in a Southerly direction a distance of 57.64 feet to a point; thence turn an interior angle of $89^{\circ}11'08''$ and run to the right in a Westerly direction a distance of 66.96 feet to a point; thence turn an interior angle of $92^{\circ}28'38''$ and run to the right in a Northerly direction a distance of 55.83 feet to the point of beginning of the herein described easement.

3. **Upkeep and Maintenance.** SMC Owners shall at all times have a duty and right to construct, maintain and repair any access roads on Easement A in a manner that will enable the Owners, Permittees, and Mortgagees full use of the rights and easements created hereby, which duty shall include, without limitation, an obligation to (i) repair and maintain the roads and driveways, (ii) remove all debris, (iii) clean and maintain Easement A and (iv) perform all other acts necessary to enable the Owners, Permittees and Mortgagees to have a safe and unobstructed passage across the SMC Parcels at Easement A. If SMC Owners fail to perform their obligations to maintain and repair as aforesaid after reasonable notice from any of the Owners or Mortgagees of the condition requiring maintenance and repair, such Owners or Mortgagees may perform such maintenance and repair, and the Owners, Mortgagees and/or the Permittees are granted a temporary non-exclusive easement on, over and across the SMC Parcels from time to time as may be reasonably necessary to effectuate such maintenance and repair. Upon written demand, SMC Owners shall reimburse such Owners or Mortgagees all reasonable costs and expenses incurred by the Owners or Mortgagees in connection with such maintenance and repair.

Owners shall at all times have a duty and right to construct, maintain and repair any access roads on Easement B in a manner that will enable the SMC Owners, SMC Permittees, and SMC Mortgagees full use of the rights and easements created hereby, which duty shall include, without limitation, an obligation to (i) repair and maintain the roads and driveways, (ii) remove all debris, (iii) clean and maintain Easement B and (iv) perform all other acts necessary to enable the SMC Owners, SMC Mortgagees and SMC Permittees to have a safe and unobstructed passage across the MCBA Parcel at Easement B. If Owners fail to perform their obligations to maintain and repair as aforesaid after reasonable notice from any of the SMC Owners or SMC Mortgagees of the condition requiring maintenance and repair, such SMC Owners or SMC Mortgagees may perform such maintenance and repair, and the SMC Owners, SMC Mortgagees and/or the SMC Permittees are granted a temporary non-exclusive easement on, over and across the MCBA Parcel from time to time as may be reasonably necessary to effectuate such maintenance and repair. Upon written demand, Owners shall reimburse such SMC Owners or SMC Mortgagees all reasonable costs and expenses incurred by the SMC Owners or SMC Mortgagees in connection with such maintenance and repair.

4. **Consent of Lessee and Mortgagees.** Commonwealth, AMB and Bean hereby consent and agree to the grant of Easement B as set forth in Section 2 above; and hereby agree that their interests in the MCBA Parcel are hereby subordinated to SMC's, the SMC Owners', the SMC Permittees' and the SMC Mortgagees' interest in Easement B.

5. **Modification.** The terms, covenants, conditions and provisions of this Declaration may be extended, abrogated, modified, rescinded or amended in whole, or in part only, with the prior written consent of SMC, MCBA, the Mortgagees, the Owners, the SMC Mortgagees and the SMC Owners; but subject to such consent, the parties hereto expressly reserve the right to extend, abrogate, modify, rescind or amend the grants herein by an instrument in writing duly executed by the appropriate parties in interest and recorded in the Probate Office.

6. **Easements Appurtenant, Term, etc.** The easements, rights, privileges and benefits created or granted under this Declaration and each provision hereof shall be enforceable by SMC, MCBA, the Mortgagees, the Owners, the SMC Mortgagees and the SMC Owners by injunction, or by specific performance, and shall be deemed easements appurtenant, and covenants running with the title to the SMC Parcels and the MCBA Parcel. This Declaration shall be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of SMC, MCBA, the Mortgagees, the Owners, the SMC Mortgagees and the SMC Owners as herein provided.

7. **No Public Dedication.** This Declaration is not intended, and shall not be construed, to dedicate any easements to the general public or to grant to the general public any rights whatsoever.

8. **Severability.** If any term, covenant or restriction established by this Declaration shall be invalid or unenforceable, the remainder of this Declaration shall not be effected thereby, and each term, covenant and restriction shall be valid and enforceable to the fullest extent permitted by law.


9. **Counterparts.** This Declaration may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same agreement.

IN WITNESS WHEREOF, SMC, MCBA, Commonwealth, AMB and Bean each have executed this Declaration on the day and year first above written.


**SHELBY COUNTY HEALTH CARE
AUTHORITY, d/b/a SHELBY MEDICAL
CENTER**

By: 
Its: Chairman


MEDICAL CLINIC BOARD OF ALABASTER

By: 
Its: Chairman

**COMMONWEALTH LIFE INSURANCE
COMPANY**

By: 
Its: Second Vice President

ALABASTER MEDICAL BUILDING, LTD.

By: 
Its: Gen. Partner


A. H. BEAN

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Charles C. Colbert, whose name as President of **SHELBY COUNTY HEALTH CARE AUTHORITY, d/b/a SHELBY MEDICAL CENTER**, a public 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.

Given under my hand and official seal, this 25th day of August, 1994.

[Signature]
Notary Public

[AFFIX SEAL]

My Commission Expires: May 31, 1996

STATE OF ALABAMA)
COUNTY OF SHELBY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Paul DiMaggio, whose name as Chairman of **MEDICAL CLINIC BOARD OF ALABASTER**, a public 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.

Given under my hand and official seal, this 5th day of August, 1994.

[Signature]
Notary Public

[AFFIX SEAL]

My Commission Expires: _____
MY COMMISSION EXPIRES OCTOBER 22, 1998

STATE OF KENTUCKY)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Douglas H. Owen Jr., whose name as Second Vice President of **COMMONWEALTH LIFE INSURANCE COMPANY**, a Kentucky 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.

Given under my hand and official seal, this 20th day of July, 1994.

John J. Woodruff
Notary Public

[AFFIX SEAL]

My Commission Expires: 6/2/97

STATE OF ~~ALABAMA~~ South Carolina
COUNTY OF ~~SHELBY~~ York)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that VC HAYDOCK, whose name as GEN. PARTNER of **ALABASTER MEDICAL BUILDING, LTD.**, an Alabama limited partnership, 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.

Given under my hand and official seal, this 12th day of July, 1994.

Cheryl S. Rakestraw
Notary Public

[AFFIX SEAL]

My Commission Expires: 5-21-02

STATE OF Alabama)
COUNTY OF Tucalee)

I, the undersigned Notary Public in and for said County in said State hereby certify that **A. H. BEAN**, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date that, being informed of the contents of the instrument, he executed the same voluntarily on the date the same bears date.

Given under my hand and official seal, this the 29th day of July, 1994.

R. H. H. H. H.
Notary Public

AFFIX SEAL

My Commission expires: 1/15/1995

EXHIBIT A

(Description of SMC Parcels)

Parcel 1:

Lot A, according to the Amended Map of Greater Shelby Office Plaza as recorded in Map Book 7, Page 141 in the Office of the Judge of Probate of Shelby County, Alabama.

Parcel 2:

A tract of land situated in the West $\frac{1}{2}$ of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 36, and the East $\frac{1}{2}$ of the SE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 36, Township 20 South, Range 3 West, being more particularly described as follows: Commence at the NW corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, and running an Easterly direction along the North line of said $\frac{1}{4}$ $\frac{1}{4}$ Section, a distance of 316.21 feet to a point; thence turn a deflection angle of 89 deg. 40 min. to the right and run in a Southerly direction a distance of 251.34 feet to the point of beginning; thence continue in a Southerly direction along the projection of the last described course a distance of 275.00 feet to a point; thence turn an interior angle of 88 deg. 40 min. 30 sec. and run to the right in a Westerly direction a distance of 410.83 feet to a point on the East right-of-way line of U.S. Highway No. 31; thence turn an interior angle of 84 deg. 02 min. 30 sec. and run to the right in a Northerly direction along the East right-of-way line of said U.S. Highway No. 31 a distance of 151.10 feet to the P.C. of a curve; thence continue in a Northerly direction along the East right-of-way line of said U.S. Highway 31 and along the arc of a curve to the right, having a central angle of 1 deg. 16 min. 30 sec. and a radius of 5,629.58 feet a distance of 125.37 feet to a point on the curve; thence turn an interior angle of 97 deg. 14 min. 00 sec. (angle measures from tangent) and run to the right in an Easterly direction a distance of 374.43 feet to the point of beginning.

EXHIBIT B

(Description of Medical Clinic Board of Alabaster Parcel)

Lot B, according to the Amended Map of Greater Shelby Office Plaza as recorded in Map Book 7, Page 141 in the Office of the Judge of Probate of Shelby County, Alabama.

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