

STATE OF ALABAMA )  
SHELBY COUNTY )

Orig

**DECLARATION OF TERMINATION AND CREATION OF EASEMENTS**

THIS DECLARATION OF TERMINATION AND CREATION OF EASEMENTS ("this Declaration") is executed as of July 12, 1994, by 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"), the MEDICAL CLINIC BOARD OF ALABASTER, a public corporation ("MCBA"), COMMONWEALTH LIFE INSURANCE COMPANY, a Kentucky corporation ("Commonwealth"), ALABASTER MEDICAL BUILDING, LTD., an Alabama limited partnership ("AMB") and A. H. BEAN, an individual.

Inst # 1994-26784

**Recitals**

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

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

C. Pursuant to that certain warranty deed dated May 11, 1979, recorded in the Shelby County Office of Probate at Book 319, page 480 and amended by that certain corrective warranty deed dated June 29, 1979 and recorded in the Shelby County Office of the Judge of Probate (the "Probate Office") at Book 320, page 680, the Greater Shelby Office Plaza, Ltd., an Alabama partnership (SMC's predecessor-in-interest to the Servient Parcel), conveyed a 30-foot easement for ingress and egress to MCBA over the Servient Parcel (such easement being more particularly described in Exhibit C (the "Ingress and Egress Easement").

D. MCBA has granted a mortgage on the Dominant Parcel and the Ingress and Egress Easement to Commonwealth pursuant to a certain Mortgage dated February 19, 1980 and recorded in Real Book 400, at page 882 in the Probate Office.

E. MCBA ground leased the Dominant Parcel and the Ingress and Egress Easement 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").

Inst # 1994-26784

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SHELBY COUNTY JUDGE OF PROBATE  
011 MCD 34.50

W. E. H. F.

F. 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.

G. 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.

H. SMC has requested that MCBA, AMB, A. H. Bean and Commonwealth consent to the termination of the Ingress and Egress Easement in consideration of SMC creating and granting (i) a non-exclusive easement appurtenant for utilities benefiting the Dominant Parcel over, under and across the Ingress and Egress Easement and (ii) a new non-exclusive easement appurtenant for ingress and egress to the Dominant Parcel as more particularly described in that certain Declaration of Easements executed by the parties hereto concurrently herewith.

### Declaration

NOW, THEREFORE, for the purposes set forth in the foregoing recitals, and for the benefit of MCBA, AMB, A. H. Bean and Commonwealth (to the extent of their interest in the Dominant Parcel), SMC does hereby declare and provide as follows:

1. Termination of Ingress and Egress Easement. SMC, MCBA, AMB, A. H. Bean and Commonwealth all hereby terminate, release and cancel the Ingress and Egress Easement created for the benefit of the Dominant Parcel and for the benefit of the Owners, Permittees, and Mortgagees (hereinafter defined), having from time to time an interest in the Dominant Parcel.

2. Declaration of Utility Easement. SMC hereby declares, establishes, grants and provides for the benefit of (i) MCBA (as long as MCBA is the owner of an interest in the Dominant Parcel) and any subsequent owner(s) or ground lessee(s) of all, or any portion of all, or any of the Dominant 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 Parcels, and the heirs, successors and assigns of any such holder (herein collectively called the "Mortgagees") to run with the title to the Servient Parcel a non-exclusive right to construct, maintain and locate utilities, including, but not limited to, electrical lines, gas lines, water lines, sewer lines, cable television lines and telephone lines over, across and under that certain real property more particularly described on Exhibit D hereto (the "Utility Easement Parcel") for the purpose of providing utility services, to and from the Dominant Parcel and such an easement is expressly reserved and set apart for such purpose or purposes. Any of SMC, Owner, Permittee or Mortgagee shall have the right to relocate any of the utilities provided that such relocation shall be under or within the Utility Easement Parcel, the person



undertaking such relocation pay all the costs thereof and such relocation does not unreasonably interfere with the use of such Utility Easement by any of MCBA or the Owners, Permittees or Mortgagees of the Dominant Parcel.

3. **Non-Exclusive Nature of Easement.** The utility easement created and established herein is a non-exclusive easement and it is further provided that the Utility Easement Parcel can be used by the Owner thereof for any such use or purpose that does not unreasonably interfere with the providing of utility services to the Dominant Parcel, including, but not limited to, paving the Utility Easement Parcel, locating curbs, gutters and other similar improvements thereon and using said parcel as a parking lot.

4. **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, the Mortgagees and the 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.

5. **Easements Appurtenant, Term, etc.** The easement, rights, privileges and benefits created or granted under this Declaration and each provision hereof shall be enforceable by SMC, the Mortgagees and the Owners by injunction, or by specific performance, and shall be deemed an easement appurtenant, and a covenant running, with the title to the Servient Parcel and the Dominant Parcel, except as or until terminated as above. This Declaration shall be binding upon, and inure to the benefit of, the respective heirs, legal representatives, successors and assigns of SMC, the Mortgagees and the Owners as herein provided.

6. **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.

7. **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.

8. **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, each of SMC, MCBA, Commonwealth, AMB, and A. H. Bean have executed this Declaration on the day and year first above written.

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

By: 

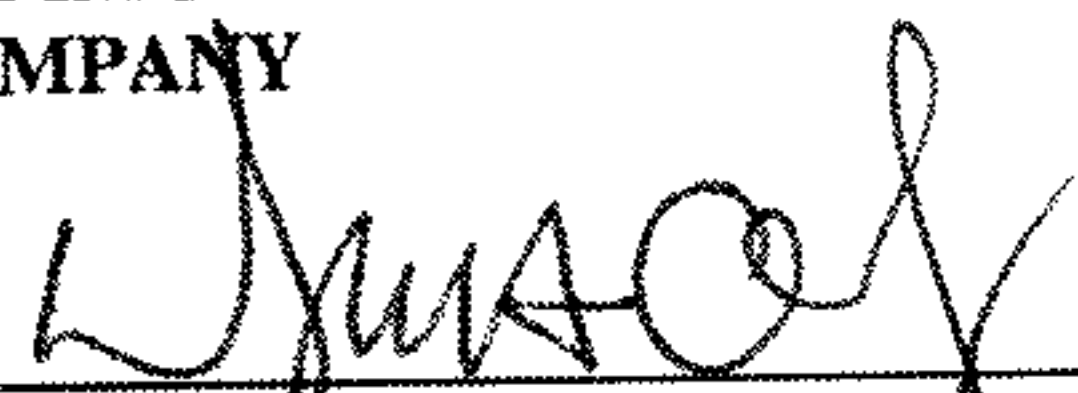
Its: Pres.

**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. Colvert, whose name as President of the **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 25<sup>th</sup> day of August, 1994.

Allen J. Hester  
Notary Public

[AFFIX SEAL]

My Commission Expires: May 3, 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 the **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 5<sup>th</sup> day of August, 1994.

Patricia S. Herring  
Notary Public

[AFFIX SEAL]

My Commission Expires: \_\_\_\_\_

**MY COMMISSION EXPIRES OCTOBER 28, 1995**



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 20<sup>th</sup> day of July, 1994.

John J. Woodruff  
Notary Public

[AFFIX SEAL]

My Commission Expires: 6/2/97

STATE OF South Carolina )  
COUNTY OF York )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that V. C. 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 12 day of July, 1994.

Cheryl B. Rastad  
Notary Public

[AFFIX SEAL]

My Commission Expires: 5-21-02

STATE OF Alabama )  
COUNTY OF Tuscaloosa )

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 29<sup>th</sup> day of July, 1994.

R. L. M. [Signature]

Notary Public

AFFIX SEAL

My Commission expires: 11/5/1995

## EXHIBIT A

### (Description of Servient Parcel)

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.

AND ALSO a 5 foot strip lying South of and parallel to the following line; begin at the Southwest corner of Lot B according to the Amended Map of Greater Shelby Office Plaza recorded in Map Book 7, Page 141 and run West along a prolongation of the South line thereof a distance of 410.83 feet to its intersection with U.S. Highway 31.



**EXHIBIT B**

**(Description of Dominant 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.

## EXHIBIT C

### (Description of Ingress and Egress Easement)

A 30 foot strip lying North of and parallel to the following line; begin at the Southwest corner of Lot B according to the Amended Map of Greater Shelby Office Plaza recorded in Map Book 7, Page 141 and run West along a prolongation of the South line thereof a distance of 410.83 feet to its intersection with U.S. Highway 31.

