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Shelby Cnty Judge of Probate, AL  
12/27/2007 08:10:39AM FILED/CERT

## NONDISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT

THIS NONDISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT made this 20<sup>th</sup> day of December, 2007, by and between **WACHOVIA BANK, NATIONAL ASSOCIATION** ("Lender"), and **BUILDERS FIRSTSOURCE - SOUTHEAST GROUP, INC.**, a Delaware corporation ("Tenant"), whose address is 2001 Bryan Street, Suite 1600, Dallas, Texas 75201.

### WITNESSETH:

WHEREAS, Tenant is the owner of the tenant's interest under that certain Lease dated December 20, 2007, between Manis Family Limited Partnership, as landlord ("Landlord"), and Tenant; and under that certain Landlord Waiver and Estoppel Certificate dated December 20, 2007, executed by Landlord (as the same has been or may be renewed, extended, amended, modified or otherwise supplemented from time to time, collectively, the "Lease"); and

WHEREAS, Landlord is indebted to Lender, which indebtedness is secured by the lien of a certain Deed of Trust executed by Landlord for the benefit of Lender (as the same may be amended, modified or supplemented from time to time, the "Mortgage"), encumbering, inter alia, the Landlord's interest in the property more particularly described in Exhibit A attached hereto (the "Property"); and

WHEREAS, Lender has agreed upon certain conditions to grant certain rights of non-disturbance to Tenant in consideration for Tenant's obligations contained herein;

NOW, THEREFORE, in consideration of the premises and the mutual execution of this Agreement by the parties, Lender and Tenant hereby agree as follows:

1. Subordination. The Lease now is and at all times shall continue to be subject and subordinate in each and every respect to the Mortgage and to the lien of the Mortgage and to any and all increases, renewals, modifications, amendments, supplements, extensions, substitutions, and replacements of the Mortgage, including, without limitation, amendments which increase the amount of the indebtedness secured thereby.
2. Nondisturbance. So long as no default exists under the Lease or this Agreement beyond any applicable grace or cure period, the Lease shall not be terminated, nor shall Tenant's possession of the premises demised under the Lease or other rights and options thereunder be disturbed in any foreclosure action or proceeding instituted under or in connection with the Mortgage.
3. Attornment. If the interest of Landlord under the Lease shall be transferred to (a) Lender or Lender's nominee or designee, (b) any assignee or transferee from Lender or Lender's nominee or designee, or (c) any other person or entity as may become the owner of Landlord's interest by purchase at foreclosure or by deed in lieu of foreclosure or otherwise (any such party described in clause (a), (b) or (c) above, the "Successor Landlord"), Tenant shall be bound to Successor Landlord under all of the terms, covenants and conditions of the Lease with the same force and effect as if Successor Landlord were the landlord under the Lease; provided that no Successor Landlord shall be:
  - (a) bound by any rent or additional rent which Tenant might have paid to any prior lessor or landlord more than one (1) month prior to accrual of such rent and all such prepaid rent and additional rent shall remain due and owing without regard to such prepayment;



(b) bound by any amendment or modification of the Lease made without Lender's prior written consent, which shall not be unreasonably withheld, conditioned or delayed;

(c) liable to Tenant for any prepayment of rent or deposit, rental security or any other sums deposited with the original or any prior landlord under the Lease and not delivered to Lender;

(d) bound by any warranty or representation of Landlord under the Lease;

(e) liable for any act, omission, negligence or default of any prior landlord (other than to cure defaults of a continuing nature with respect to the maintenance or repair of the demised premises or the Property); or

(f) liable to Tenant for the construction of any improvements or restoration of same in connection with a casualty or condemnation event.

If during Successor Landlord's ownership of the Property, Tenant's use and enjoyment of the Property or the feasible or economic operation of Tenant's business thereon (as reasonably determined by Tenant), is materially adversely impaired by: (i) the inaccuracy or untruth of any warranty or representation of Landlord under the Lease; or (ii) the refusal of Successor Landlord to undertake Landlord's duty to construct any improvements or restore same in connection with a casualty or condemnation event, Tenant may terminate the Lease upon sixty (60) days' prior written notice and opportunity to cure to Successor Landlord.

Tenant hereby attorns to Successor Landlord and agrees to promptly execute and deliver any instrument that Successor Landlord may reasonably request to evidence such attornment; provided, however, that such attornment shall be effective and self-operative upon Successor Landlord's succeeding to the interest of Landlord under the Lease without the execution of any further instruments.

4. Covenants of Tenant.

(a) Tenant agrees for the benefit of Lender that so long as the Mortgage remains a lien upon the Property, Tenant will not without Lender's consent (which shall not be unreasonably withheld, conditioned or delayed):

(i) pay any rent more than one (1) month in advance of accrual; or

(ii) consent to any modification or amendment of the terms of the Lease.

(b) If any act or omission of Landlord would give Tenant the right, immediately or after notice or lapse of a period of time or both, to cancel or terminate the Lease or to claim a partial or total eviction or constructive eviction, Tenant shall not exercise such right until:

(i) Tenant has given written notice of such act or omission to Landlord and, simultaneously, or as soon thereafter as possible, to Lender; and

(ii) Landlord and/or Lender shall have failed to cure the same within the time limits set forth in the Lease. However, with respect to any default which requires Lender to acquire title to or possession of the Property in order to effect the cure, Lender shall be allowed such additional time as may be reasonably necessary to institute and complete foreclosure proceedings or take such other action as may be required under the circumstances, not to exceed ninety (90) days.

5. Representations and Warranties. Tenant represents to Lender that:

- (a) The Lease is in full force and effect and has not been modified.
- (b) Tenant has accepted possession of the premises demised under the Lease.
- (c) No rent has been paid under the Lease more than one (1) month in advance of accrual.

6. Limited Liability.

(a) Except as specifically provided in this Agreement, Lender shall not, by virtue of this Agreement, the Mortgage or any other instrument to which Lender may be a party, be or become subject to any liability or obligation to Tenant whether under the Lease or otherwise.

(b) All obligations of a Successor Landlord under the Lease and this Agreement shall be applicable only to the period such Successor Landlord owns the Property and shall not be binding upon any Successor Landlord after the sale, conveyance, assignment or transfer by such Successor Landlord of its interest in the Property, and in the event of any such sale, conveyance, assignment or transfer, such Successor Landlord shall be relieved of all covenants and obligations under this Agreement and the Lease thereafter accruing. The liability of any Successor Landlord for its obligations under this Agreement and the Lease shall be limited to such Successor Landlord's interest in the Property, including without limitation the proceeds thereof, and Tenant shall not look to any other property or assets of such Successor Landlord in seeking either to enforce such Successor Landlord's obligations or to satisfy a judgment for such Successor Landlord's failure to perform such obligations.

7. Direct Payments to Lender. Tenant agrees that after Lender gives at least five (5) business days prior written notice to Tenant stating that a default has occurred under the Mortgage or under the loan documents delivered in connection with the Mortgage and that rent under the Lease should be paid to Lender, Tenant will pay to Lender, or in accordance with the directions of Lender, as and when due, all rent, additional rent and other monies due and to become due to Landlord under the Lease. Landlord hereby authorizes Tenant to make all payments as provided for in this paragraph and agrees that Tenant shall be wholly relieved of liability to Landlord in doing so.

8. Successors and Assigns.

(a) This Agreement shall be binding upon and inure to the benefit of (i) Lender and its successors and assigns, including any transferee or assignee of Lender of the Mortgage, (ii) any Successor Landlord, and (iii) Tenant and its successors and assigns as holders of the interest of the tenant under the Lease.

(b) The term "**Landlord**" as used in this Agreement shall be deemed to include the present landlord under the Lease and such landlord's successors in interest under the Lease. The term "**Tenant**", as used in this Agreement, shall be deemed to include the present tenant under the Lease and such Tenant's successor's in interest under the Lease.

9. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Alabama without regard to the principles of conflicts of law thereof.





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10. Notices. Any notices or communications given under this Agreement shall be in writing and shall be deemed to be properly given when and if delivered in person or on the first business day after being deposited for overnight delivery with Federal Express or a comparable express overnight delivery system or five (5) days after being sent by registered or certified mail, return receipt requested, postage prepaid, addressed to (a) Lender, at Wachovia Bank, N.A., Special Assets Group, 171 17th Street, 8th Floor, Atlanta, Georgia 30363; Frank Darrow, Vice President; (b) Tenant, at 2001 Bryan Street, Suite 1600, Dallas, Texas 75201, Attn: Donald F. McAleenan, or (c) Landlord c/o Morris, Manning & Martin, LLP, Attention: T. Daniel Brannon, 3343 Peachtree Road, N.E., 1600 Atlanta Financial Center, Atlanta, Georgia 30326, or as to each party, to such other address as the party may designate by a notice given in accordance with the requirements contained in this paragraph, provided that if the identity of Lender, Tenant or Landlord shall have changed, any notice designating a new address shall be signed by the previous Lender, Tenant or Landlord, as the case may be.

11. No Oral Modifications. This Agreement contains the entire agreement between the parties hereto and cannot be changed, modified, waived or canceled except by agreement in writing executed by the party against whom enforcement of such change, modification, waiver or cancellation is sought.

12. Interpretation. Whenever used herein, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders, as the sense of the context may permit.

13. Counterparts. This instrument may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties hereto had signed the same document. All of such counterparts shall be construed together and shall constitute one instrument, but in making proof, it shall only be necessary to produce one such counterpart. Signature and acknowledgment pages may be detached from the counterparts and attached to a single copy of this document to physically form one document, which may be recorded.

14. Captions. The captions contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs.


15. Superseding Lease. In the event of any conflict between the terms of this Agreement and the terms of the Lease, the terms of this Agreement shall prevail.

*[Signatures on following page]*

IN WITNESS WHEREOF, Lender and Tenant have executed the foregoing agreement as of the day and year first hereinabove written.

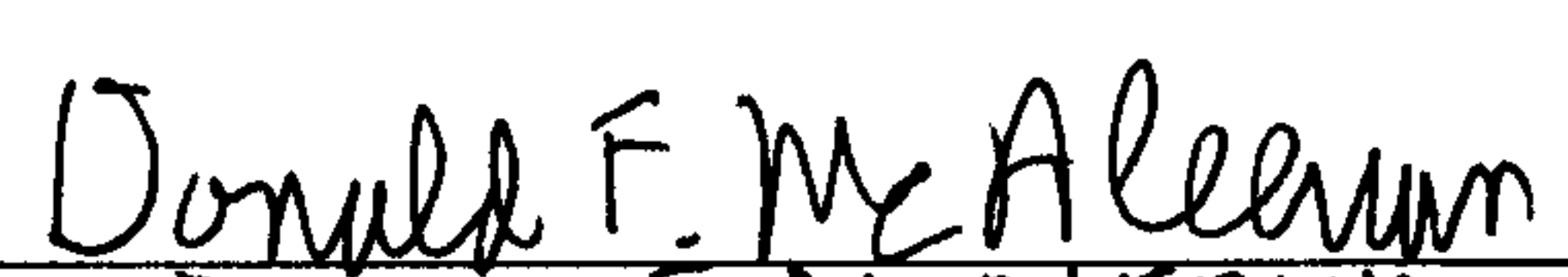
**LENDER:**

WACHOVIA BANK, NATIONAL ASSOCIATION,  
a national banking association

By:   
Name: FRANK DARROW  
Title: SENIOR VICE PRESIDENT

**TENANT:**

BUILDERS FIRSTSOURCE -  
SOUTHEAST GROUP, INC. LLC  
a Delaware ~~corporation~~ limited liability company

By:   
Name: DONALD F. MCALEENAN  
Title: SR. VICE PRESIDENT

Acknowledged and Agreed to by:

**THE MANIS FAMILY LIMITED PARTNERSHIP,**  
a Georgia limited partnership

By: Manis Real Estate Investments, L.L.C.,  
a Georgia limited liability company, sole General Partners

By: \_\_\_\_\_  
James T. Manis, Manager

By: \_\_\_\_\_  
Mark W. Manis, Manager



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IN WITNESS WHEREOF, Lender and Tenant have executed the foregoing agreement as of the day and year first hereinabove written.

**LENDER:**

WACHOVIA BANK, NATIONAL ASSOCIATION,  
a national banking association

By: 

Name: FRANK DARROW

Title: Senior Vice President

**TENANT:**

**BUILDERS FIRSTSOURCE -  
SOUTHEAST GROUP, INC.**  
a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and Agreed to by:

**THE MANIS FAMILY LIMITED PARTNERSHIP,**  
**a Georgia limited partnership**

By: Manis Real Estate Investments, L.L.C.,  
a Georgia limited liability company, sole General Partners

By: 

James T. Manis, Manager

By: 

Mark W. Manis, Manager



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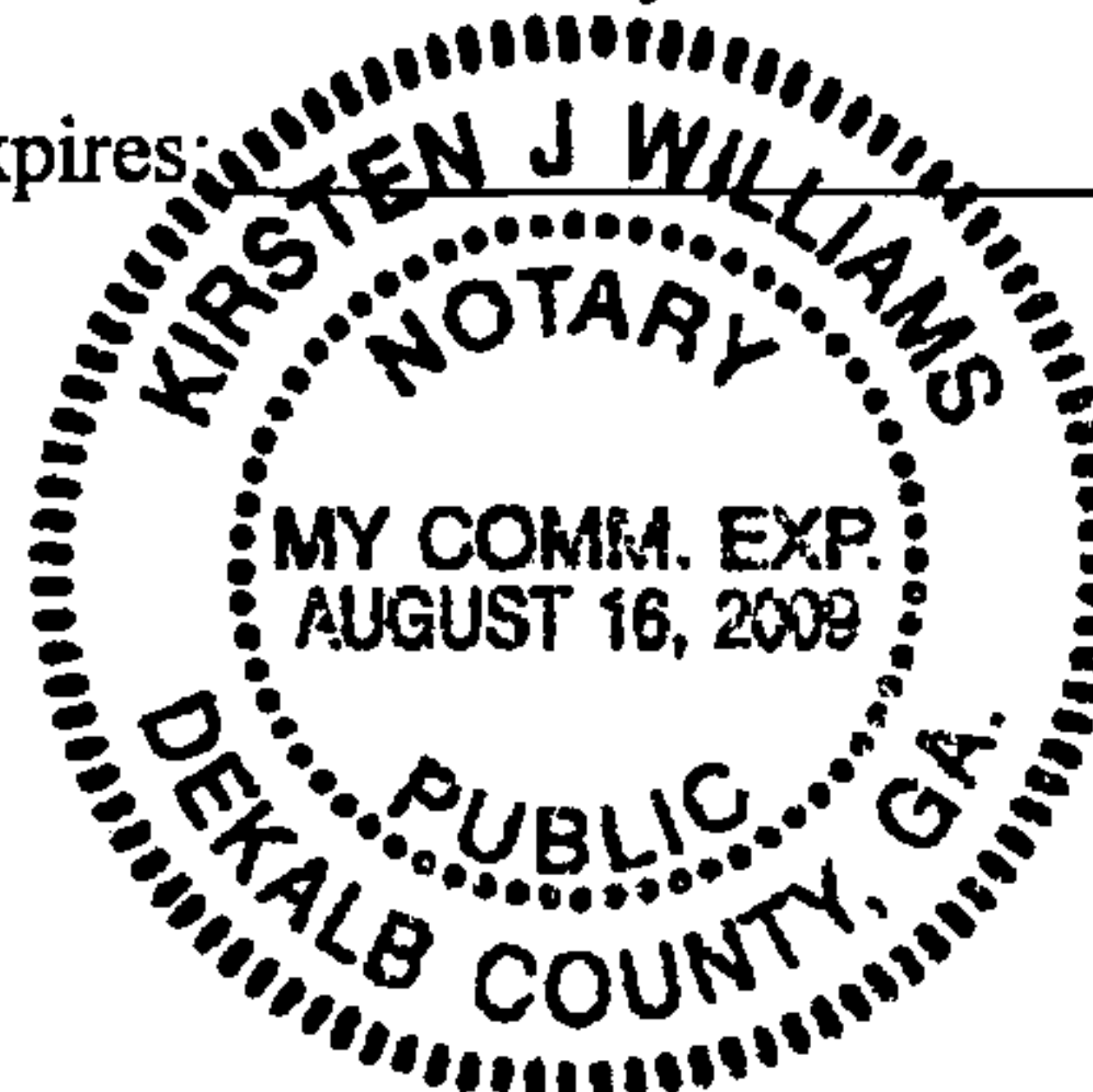
THE STATE OF GA §  
COUNTY OF DeKalb § SS.  
§

I, Kirsten J Williams, a Notary Public for the County and State aforesaid, certify that Frank Darrow, Senior Vice President of Wachovia Bank, National Association, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said national association for the purposes therein stated.

Witness my hand and official seal this 20th day of December, 2007.

Kirsten Williams  
NOTARY PUBLIC, State and County aforesaid

My Commission Expires:



THE STATE OF TEXAS §  
COUNTY OF DALLAS § SS.  
§

I, April May, a Notary Public for the County and State aforesaid, certify that Donald F. McAleerian, Senior Vice President of BUILDERS FIRSTSOURCE - SOUTHEAST GROUP, INC., a Delaware corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of BUILDERS FIRSTSOURCE - SOUTHEAST GROUP, INC., for the purposes therein stated.

Witness my hand and official seal this 20 day of December, 2007.



APRIL MAY  
Notary Public - State of Texas  
My Commission Expires  
July 1, 2011

April May  
NOTARY PUBLIC, State and County aforesaid

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

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THE STATE OF Georgia §  
COUNTY OF Floyd § SS.

I, MARY Ann Wade, a Notary Public for the County and State aforesaid, certify that  
MARK W. Mambo & James T. Manis, PARTNERS of  
Manis Family Limited Partnership personally appeared before me this day and acknowledged the due  
execution of the foregoing instrument on behalf of said family partnership for the purposes therein stated.

Witness my hand and official seal this 20 day of December, 2007.

Mary Ann Wade  
NOTARY PUBLIC, State and County aforesaid  
My Commission Expires: 8/14/10



20071227000578720 9/11 \$41.00  
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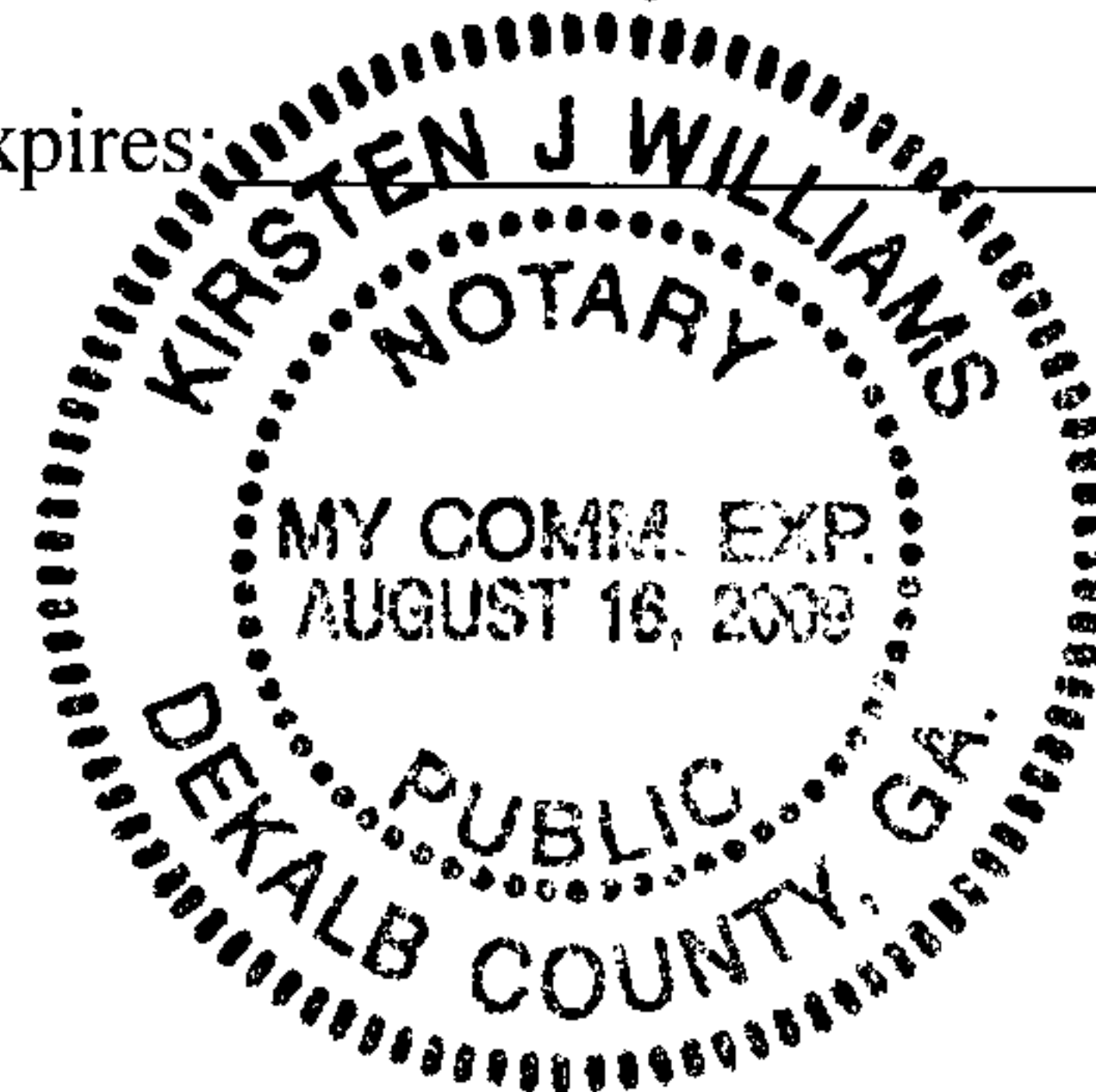
THE STATE OF GA §  
COUNTY OF DeKalb § SS.  
§

I, Kirsten J Williams, a Notary Public for the County and State aforesaid, certify that Frank Darrow, Senior Vice President of Wachovia Bank, National Association, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of said national association for the purposes therein stated.

Witness my hand and official seal this 20th day of December, 2007.

Kirsten Williams  
NOTARY PUBLIC, State and County aforesaid

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



THE STATE OF TEXAS §  
COUNTY OF DALLAS § SS.  
§

I, \_\_\_\_\_, a Notary Public for the County and State aforesaid, certify that \_\_\_\_\_ of BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, INC., a Delaware corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of BUILDERS FIRSTSOURCE – SOUTHEAST GROUP, INC., for the purposes therein stated.

Witness my hand and official seal this \_\_\_\_\_ day of December, 2007.

\_\_\_\_\_  
NOTARY PUBLIC, State and County aforesaid

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

IN WITNESS WHEREOF, Lender and Tenant have executed the foregoing agreement as of the day and year first hereinabove written.

**LENDER:**

WACHOVIA BANK, NATIONAL ASSOCIATION,  
a national banking association

By: 

Name: FRANK DARROW

Title: Senior Vice President

**TENANT:**

**BUILDERS FIRSTSOURCE -  
SOUTHEAST GROUP, INC.**  
a Delaware corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Acknowledged and Agreed to by:

**THE MANIS FAMILY LIMITED PARTNERSHIP,**  
a Georgia limited partnership

By: Manis Real Estate Investments, L.L.C.,  
a Georgia limited liability company, sole General Partners

By: \_\_\_\_\_

James T. Manis, Manager

By: \_\_\_\_\_

Mark W. Manis, Manager



**EXHIBIT "A-1"**  
**LEGAL DESCRIPTION**

The following land located in the Southeast Quarter of the Southeast Quarter (SE 1/4 SE 1/4) of Section 26, Township 19 South, Range 1 West, in the County of Shelby, and State of Alabama, being more particularly described as follows:

Commence at an axle with 4" x 4" concrete witness monument being the Southeast corner of Section 26, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed South 88° 42' 05" West along the South boundary of said section for a distance of 187.31 feet (set 1/4" rebar) to the point of beginning. From this beginning point continue South 88° 42' 05" West along the South boundary of said section for a distance of 626.55 feet (set 1/4" rebar) to a point on the Easterly right-of-way of Shelby County Paved Road No. 433, said point being a point on the curvature of a concave curve right having a delta angle of 29° 13' 35" and a radius of 151.77 feet; thence proceed Northwesterly along the curvature of said curve for a chord bearing and distance of North 32° 07' 51" West, 76.58 feet (set 1/4" rebar) to the P. T. of said curve; thence proceed North 17° 31' 03" West along the Easterly right-of-way of said road for a distance of 122.30 feet (set 1/4" rebar) to the P. C. of a concave curve left having a delta angle of 33° 45' 17" and a radius of 798.09 feet; thence proceed Northwesterly along the curvature of said curve for a chord bearing and distance of North 34° 23' 42" West, 463.41 feet (set 1/4" rebar) to the P. T. of said curve; thence proceed North 51° 16' 21" West along the Easterly right-of-way of said road for a distance of 199.78 feet (set 1/4" rebar) to the P. C. of a concave curve right having a delta angle of 05° 54' 46" and a radius of 257.13 feet; thence proceed Northwesterly along the curvature of said curve for a chord bearing and distance of North 48° 18' 58" West, 26.54 feet (set 1/4" rebar) to its point of intersection with the West boundary of the Southeast one-fourth of the Southeast one-fourth of said Section 26; thence proceed North 00° 13' 16" West along the West boundary of said quarter-quarter section for a distance of 59.32 feet (set 1/4" rebar) to a point on the Southerly right-of-way of the CSX Railroad (100 foot right-of-way), said point being South 0° 13' 16" East of and 551.69 feet from a 1" open top pipe in place accepted as the Northwest corner of the Southeast one-fourth of the Southeast one-fourth of said Section 26; thence proceed North 66° 23' 01" East along the Southerly right-of-way of said CSX Railroad for a distance of 744.90 feet (set 1/4" rebar); thence proceed South 23° 36' 59" East for a distance of 1146.03 feet to the point of beginning.