

Prepared by, recording requested by  
and, after recording, return to:

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**MORTGAGE, SECURITY AGREEMENT,  
ASSIGNMENT OF LEASES AND RENTS,  
AND FIXTURE FILING**

**[This Mortgage is filed as, and shall constitute a Fixture Filing in accordance with Alabama Code  
§7-9A-502]**

THIS MORTGAGE (herein "Instrument"), made as of October 9, 2008, among the Mortgagor, **SHELBY MEDICAL PARTNERS, LLC**, an Alabama limited liability company, whose address is 3104 Blue Lake Drive, Suite 200, Birmingham, Alabama 35243 (herein "Borrower"), in favor of the Mortgagee, **RED MOUNTAIN BANK, N.A.**, whose address is 5 Inverness Center, Birmingham, Alabama 35242 (herein "LENDER").

**W I T N E S S E T H:**

THAT, WHEREAS, Borrower is justly indebted to LENDER in the sum of One Million Three Hundred Forty Thousand and No/100 Dollars (\$1,340,000.00), as evidenced by a certain Note (as hereinafter defined).

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower has granted, bargained, and sold and does hereby grant, bargain, sell, and convey to LENDER WITH POWER OF SALE all of Borrower's right, title and interest, now owned or hereafter acquired, including any reversion or remainder interest, in the real property located at County of Shelby, State of Alabama, and more particularly described on Exhibit "A" attached hereto and incorporated herein including all heretofore or hereafter vacated alleys and streets abutting the property, and all easements, rights, appurtenances, tenements, hereditaments, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock appurtenant to the property (collectively "Premises");

TOGETHER with all of Borrower's estate, right, title and interest, now owned or hereafter acquired, in:

(a) all buildings, structures, improvements, parking areas, landscaping, equipment, fixtures and articles of property now or hereafter erected on, attached to, or used or adapted for use in the operation of the Premises; including but without being limited to, all heating, air conditioning and incinerating apparatus and equipment; all boilers, engines, motors, dynamos, generating equipment, piping and plumbing fixtures, water heaters, ranges, cooking apparatus and mechanical kitchen equipment, refrigerators, freezers,



cooling, ventilating, sprinkling and vacuum cleaning systems, fire extinguishing apparatus, gas and electric fixtures, carpeting, floor coverings, under padding, elevators, escalators, partitions, mantels, built-in mirrors, window shades, blinds, draperies, screens, storm sash, awnings, signs, furnishings of public spaces, halls and lobbies, and shrubbery and plants, and including also all interest of any owner of the Premises in any of such items hereafter at any time acquired under conditional sale contract, chattel mortgage or other title retaining or security instrument, all of which property mentioned in this clause (a) shall be deemed part of the realty covered by this Instrument and not severable wholly or in part without material injury to the freehold of the Premises (all of the foregoing together with replacements and additions thereto are referred to herein as "Improvements"); and

(b) all compensation, awards, damages, rights of action and proceeds, including interest thereon and/or the proceeds of any policies of insurance therefor, arising out of or relating to a (i) taking or damaging of the Premises or Improvements thereon by reason of any public or private improvement, condemnation proceeding (including change of grade), sale or transfer in lieu of condemnation, or fire, earthquake or other casualty, or (ii) any injury to or decrease in the value of the Premises or the Improvements for any reason whatsoever;

(c) return premiums or other payments upon any insurance any time provided for the benefit of or naming LENDER, and refunds or rebates of taxes or assessments on the Premises;

(d) all the right, title and interest of Borrower in, to and under all written and oral leases and rental agreements (including extensions, renewals and subleases; all of the foregoing shall be referred to collectively herein as the "Leases") now or hereafter affecting the Premises including, without limitation, all rents, issues, profits and other revenues and income therefrom and from the renting, leasing or bailment of Improvements and equipment, all guaranties of tenants' performance under the Leases, and all rights and claims of any kind that Borrower may have against any tenant under the Leases or in connection with the termination or rejection of the Leases in a bankruptcy or insolvency proceeding;

(e) plans, specifications, contracts and agreements relating to the design or construction of the Improvements; Borrower's rights under any payment, performance, or other bond in connection with the design or construction of the Improvements; all landscaping and construction materials, supplies, and equipment used or to be used or consumed in connection with construction of the Improvements, whether stored on the Premises or at some other location; and contracts, agreements, and purchase orders with contractors, subcontractors, suppliers, and materialmen incidental to the design or construction of the Improvements;

(f) all contracts, accounts, rights, claims or causes of action pertaining to or affecting the Premises or the Improvements, including, without limitation, all options or contracts to acquire other property for use in connection with operation or development of the Premises or Improvements, management contracts, service or supply contracts, deposits, bank accounts, general intangibles (including without limitation trademarks, trade names and symbols), permits, licenses, franchises and certificates, and all commitments or agreements, now or hereafter in existence, intended by the obligor thereof to provide Borrower with proceeds to satisfy the loan evidenced hereby or improve the Premises or Improvements, and the right to receive all proceeds due under such commitments or agreements including refundable deposits and fees;

(g) all books, records, surveys, reports and other documents related to the Premises, the Improvements, the Leases, or other items of collateral described herein; and

(h) all additions, accessions, replacements, substitutions, proceeds and products of the real and personal property, tangible and intangible, described herein.



All of the foregoing described collateral is exclusive of any furniture, furnishings or trade fixtures owned and supplied by tenants of the Premises. The Premises, the Improvements, the Leases and all of the rest of the foregoing property are herein referred to as the "Property".

TO HAVE AND TO HOLD the Property and all parts, rights, members and appurtenances thereof to the use, benefit and behoof of LENDER and its successors and assigns in fee simple forever.

TO SECURE TO LENDER (a) the repayment of the indebtedness evidenced by Borrower's note dated of even date herewith in the principal sum of One Million Three Hundred Forty Thousand and No/100 Dollars (\$1,340,000.00), with interest thereon as set forth in the note, and all renewals, extensions and modifications thereof (herein "Note"); (b) the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Instrument or to fulfill any of Borrower's obligations hereunder or under the other Loan Documents (as defined below); (c) the performance of the covenants and agreements of Borrower contained herein or in the other Loan Documents; and (d) the repayment of all sums now or hereafter owing to LENDER by Borrower pursuant to any instrument which recites that it is secured hereby. The indebtedness and obligations described in clauses (a)-(d) above are collectively referred to herein as the "Indebtedness". The Note, this Instrument, and all other documents evidencing, securing or guaranteeing the Indebtedness [excluding the Guaranty of Timothy S. Blair, Len B. Shannon, Derek Waltchack, Andrew Patterson and Caroline Thompson Little ("Guarantors") and the Certificate and Indemnity Agreement Regarding Hazardous Substances of Mortgagor and Guarantors], as the same may be modified or amended from time to time, are referred to herein as the "Loan Documents". The terms of the Note secured hereby may provide that the interest rate or payment terms or balance due may be indexed, adjusted, renewed, or renegotiated from time to time, and this Instrument shall continue to secure the Note notwithstanding any such indexing, adjustment, renewal or renegotiation.

PROVIDED, ALWAYS, that if Borrower shall pay unto LENDER the Indebtedness and if Borrower shall duly, promptly and fully perform, discharge, execute, effect, complete and comply with and abide by each and every of the stipulations, agreements, conditions and covenants of the Note and this agreements, conditions and covenants for the Note and this Instrument, then this Instrument and all assignments contained herein and liens created hereby shall cease and be null and void; otherwise to remain in full force and effect.

Borrower represents and warrants that Borrower has good, marketable and insurable title to, and has the right to mortgage an indefeasible fee simple estate in, the Premises, Improvements, rents, and leases, and the right to convey the other Property, that the Property is unencumbered except as disclosed in writing (by title insurance commitment or otherwise) to and approved by LENDER prior to the date hereof, and that Borrower will warrant and forever defend the title to the Property against all claims and demands, subject only to the permitted exceptions set forth in Exhibit B attached hereto.

Borrower represents, warrants, covenants and agrees for the benefit of LENDER as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST. Borrower shall promptly pay when due the principal of and interest on the Indebtedness, any prepayment and other charges provided in the Loan Documents and all other sums secured by this Instrument.

2. FUNDS FOR TAXES, INSURANCE AND OTHER CHARGES. At LENDER's election, from and after the occurrence of an Event of Default, Borrower shall pay in addition to each monthly payment on the Note, one-twelfth of the annual real estate taxes, insurance premiums, assessments, water and sewer rates, ground rents and other charges (herein "Impositions") payable with respect to the Property (as



estimated by LENDER in its reasonable discretion), to be held by LENDER without interest to Borrower, for the payment of such obligations. If the amount of such additional payments held by LENDER ("Funds") at the time of the annual accounting thereof shall exceed the amount deemed necessary by LENDER to provide for the payment of Impositions as they fall due, such excess shall be at Borrower's option, either repaid to Borrower or credited to Borrower on the next monthly installment or installments of Funds due. If at any time the amount of the Funds held by LENDER shall be less than the amount deemed necessary by LENDER to pay Impositions as they fall due, Borrower shall pay to LENDER any amount necessary to make up the deficiency within thirty (30) days after notice from LENDER to Borrower requesting payment thereof. Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, LENDER may apply, in any amount and in any order as LENDER shall determine in LENDER's sole discretion, any Funds held by LENDER at the time of application (i) to pay Impositions which are now or will hereafter become due, or (ii) as a credit against sums secured by this Instrument. Upon payment in full of all sums secured by this Instrument, LENDER shall refund to Borrower any Funds held by LENDER.

3. APPLICATION OF PAYMENTS. Unless applicable law provides otherwise, each complete installment payment received by LENDER from Borrower under the Note or this Instrument shall be applied by LENDER first in payment of amounts payable to LENDER by Borrower under Section 2 hereof, then to interest payable on the Note, then to principal of the Note, and then to interest and principal on any Future Advances in such order as LENDER, at LENDER's sole discretion, shall determine. Upon Borrower's breach of any covenant or agreement of Borrower in this Instrument, LENDER may apply, in any amount and in any order as LENDER shall determine in LENDER's sole discretion, any payments received by LENDER under the Note or this Instrument. Any partial payment received by LENDER shall, at LENDER's option, be held in a non-interest bearing account until LENDER receives funds sufficient to equal a complete installment payment.

4. CHARGES, LIENS. Except as set forth in Section 2 hereof, Borrower shall pay all Impositions attributable to the Property prior to delinquency by Borrower making payment directly to the payee thereof, or in such other manner as LENDER may designate in writing. If requested by LENDER, Borrower shall promptly furnish to LENDER all notices of Impositions which become due, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to LENDER receipts evidencing such payments. Borrower shall promptly discharge any lien which has, or may have, priority over or equality with, the lien of this Instrument, and Borrower shall pay, when due, the claims of all persons supplying labor or materials to or in connection with the Property. Without LENDER's prior written permission, Borrower shall not allow any lien inferior to this Instrument to be perfected against the Property. If any lien inferior to this Instrument is filed against the Property without LENDER's prior written permission and without the consent of Borrower, Borrower shall, within thirty (30) days after receiving notice of the filing of such lien, cause such lien to be released of record or bonded over and deliver evidence of such release or bond to LENDER.

5. INSURANCE. Borrower shall obtain and maintain the following types of insurance upon and relating to the Property:

(a) "All Risk" property and fire insurance (with extended coverage endorsement including malicious mischief and vandalism) in an amount not less than the lesser of the full replacement value of the Property or the Note (with a deductible not to exceed \$5,000), naming LENDER under a lender's loss payee endorsement and including agreed amount, inflation guard, replacement cost and waiver of subrogation endorsements;

(b) Comprehensive general liability insurance in an amount not less than \$1,000,000.00 insuring against personal injury, death and property damage and naming LENDER as additional insured;



(c) During any construction, builders risk coverage in form and substance satisfactory to the LENDER.

(d) Such other types of insurance or endorsements to existing insurance as may be required from time to time by LENDER in LENDER's standard lending practices.

Upon the request of LENDER, Borrower shall increase the coverages under any of the insurance policies required to be maintained hereunder or otherwise modify such policies in accordance with LENDER's request in LENDER's standard lending practices. All of the insurance policies required hereunder shall be issued by corporate insurers licensed to do business in the state in which the Property is located and rated A:X or better by A.M. Best Company, and shall be in form acceptable to LENDER. If and to the extent that the Property is located within an area that has been or is hereafter designated or identified as an area having special flood hazards by the Department of Housing and Urban Development or such other official as shall from time to time be authorized by federal or state law to make such designation pursuant to any national or state program of flood insurance, Borrower shall carry flood insurance with respect to the Property in amounts not less than the maximum limit of coverage then available with respect to the Property or the amount of the Indebtedness, whichever is less. Certificates of all insurance required to be maintained hereunder shall be delivered to LENDER, along with evidence of payment in full of all premiums required thereunder, contemporaneously with Borrower's execution of this Instrument. All such certificates shall be in form acceptable to LENDER and shall require the insurance company to give to LENDER at least thirty (30) days' prior written notice before canceling the policy for any reason or materially amending it. Certificates evidencing all renewal and substitute policies of insurance shall be delivered to LENDER, along with evidence of the payment in full of all premiums required thereunder, at least fifteen (15) days before termination of the policies being renewed or substituted. If any loss shall occur at any time when Borrower shall be in default hereunder, LENDER shall be entitled to the benefit of all insurance policies held or maintained by Borrower, to the same extent as if same had been made payable to LENDER, and upon foreclosure hereunder, LENDER shall become the owner thereof. LENDER shall have the right, but not the obligation, to make premium payments, at Borrower's expense, to prevent any cancellation, endorsement, alteration or reissuance of any policy of insurance maintained by Borrower, and such payments shall be accepted by the insurer to prevent same.

If any act or occurrence of any kind or nature shall result in material damage to or destruction of the Property (such event being called a "Loss"), Borrower will give prompt written notice thereof to LENDER. All insurance proceeds paid or payable in connection with any material Loss shall be paid to LENDER. If (i) no Event of Default has occurred and is continuing hereunder, (ii) Borrower provides evidence satisfactory to LENDER of its ability to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Property, and (iii) the available insurance proceeds are, in LENDER's judgment, sufficient to fully and completely restore, repair or replace the Property, Borrower shall have the right to apply all insurance proceeds received in connection with such material Loss either (a) to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such Loss, or (b) to the payment of the Indebtedness in such order as LENDER may elect. If an Event of Default has occurred and is continuing hereunder at the time of such Loss, if LENDER determines that Borrower will be unable to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Property, or if the available insurance proceeds are insufficient, in LENDER's judgment, to fully and completely restore, repair or replace the Property, then all of the insurance proceeds payable with respect to such Loss will be applied to the payment of the Indebtedness, or if so instructed by LENDER, Borrower will promptly, at Borrower's sole cost and expense and regardless of whether sufficient insurance proceeds shall be available, commence to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition, character immediately prior to such Loss. Borrower shall diligently prosecute any restoration, repairs or replacement of the Property undertaken by or on behalf of



Borrower pursuant to this Section 5. All such work shall be conducted pursuant to written contracts approved by LENDER in writing. Notwithstanding anything contained herein to the contrary, in the event the insurance proceeds received by LENDER following any Loss are insufficient in LENDER's judgment to fully and completely restore, repair or replace the Property, and if Borrower has complied with all of the other conditions described in this Section 5, Borrower may elect to restore, repair or replace the Property if it first deposits with LENDER such additional sums as LENDER determines are necessary in order to fully and completely restore, repair or replace the Property. In the event any insurance proceeds remain following the restoration, repair or replacement of the Property, such proceeds shall be applied to the Indebtedness in such order as LENDER may elect.

Borrower waives any and all right to claim or recover against LENDER or its officers, employees, agents and representatives, for loss of or damage to Borrower, the Property, Borrower's property or the property of others under Borrower's control from any cause insured against or required to be insured against under this Section 5.

6. PRESERVATION AND MAINTENANCE OF PROPERTY. Borrower (a) shall not commit waste or permit impairment or deterioration of the Property, ordinary wear and tear excepted, (b) shall not abandon the Property, (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its original condition, or such other condition as LENDER may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair, (d) shall keep the Property, including all improvements, fixtures, equipment, machinery and appliances thereon, in good repair, ordinary wear and tear excepted, and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good repair, (e) shall comply with all laws, ordinances, regulations and requirements of any governmental body applicable to the Property, (f) if all or part of the Property is for rent or lease, then LENDER, at its option after the occurrence of an Event of Default, may require Borrower to provide for professional management of the Property by a property manager satisfactory to LENDER pursuant to a contract approved by LENDER in writing, unless such requirement shall be waived by LENDER in writing, (g) shall generally operate and maintain the Property in a manner to ensure maximum rentals, and (h) shall give notice in writing to LENDER of and, unless otherwise directed in writing by LENDER, appear in and defend any action or proceeding purporting to affect the Property, the security of this Instrument or the rights or powers of LENDER hereunder. Neither Borrower nor any tenant or other person, without the written approval of LENDER, shall remove, demolish or alter any improvement now existing or hereafter erected on the Property or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of fixtures, equipment, machinery and appliances with items of like kind.

Borrower represents, warrants and covenants that the Property is and shall be in compliance with the Americans with Disabilities Act of 1990 and all of the regulations promulgated thereunder, as the same may be amended from time to time.

7. USE OF PROPERTY. Unless required by applicable law or unless LENDER has otherwise agreed in writing, Borrower shall not allow changes in the use for which all or any part of the Property was intended at the time this Instrument was executed. Borrower shall not, without LENDER's prior written consent, (i) initiate or acquiesce in a change in the zoning classification (including any variance under any existing zoning ordinance applicable to the Property), (ii) permit the use of the Property to become a non-conforming use under applicable zoning ordinances, (iii) file any subdivision or parcel map affecting the Property, or (iv) amend, modify or consent to any easement or covenants, conditions and restrictions pertaining to the Property.



8. PROTECTION OF LENDER'S SECURITY. If Borrower fails to perform any of the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects the Property or title thereto or the interest of LENDER therein, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then LENDER at LENDER's option may make such appearances, disburse such sums and take such action as LENDER deems necessary, in its reasonable discretion, to protect LENDER's interest, including, but not limited to, (i) disbursement of attorneys' fees, (ii) entry upon the Property to make repairs, and (iii) procurement of satisfactory insurance as provided in Section 5 hereof.

Any amounts disbursed by LENDER pursuant to this Section 8, with interest thereon, shall become additional Indebtedness of Borrower secured by this Instrument. Unless Borrower and LENDER agree to other terms of payment, such amounts shall be immediately due and payable and shall bear interest from the date of disbursement at the lesser of five percent (5%) over the Interest Rate set forth in the Note or the highest rate which may be collected from Borrower under applicable law or, at LENDER's option, the rate stated in the Note. Borrower hereby covenants and agrees that LENDER shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by the Indebtedness. Nothing contained in this Section 8 shall require LENDER to incur any expense or take any action hereunder.

9. INSPECTION. LENDER may make or cause to be made reasonable entries upon the Property to inspect the interior and exterior thereof, upon reasonable prior notice to Borrower and during normal business hours.

10. FINANCIAL DATA / FINANCIAL COVENANTS.

(a) Borrower will furnish to LENDER within ninety (90) days after the close of its fiscal year (i) annual balance sheet and profit and loss statements prepared on a cash or accrual basis, consistently applied, and, if LENDER so requires after an Event of Default, accompanied by the annual audit report of an independent certified public accountant reasonably acceptable to LENDER, (ii) an income tax return, annual operating statement, together with a complete rent roll and other supporting data reflecting all material information with respect to the operation of the Property and Improvements, and (iii) all other financial information and reports that LENDER may from time to time reasonably request. Borrower shall cause income tax returns and personal financial statements of any Guarantor of any portion of the Indebtedness to be provided to LENDER on an annual basis.

(b) The balance of the Note shall not exceed eighty percent (80%) of the appraised stabilized value of the Property. Lender shall have the right to have the property appraised by an appraiser selected by Lender. Borrower shall pay down the principal balance of the Indebtedness if necessary to meet the loan to value requirement of this provision.

(c) Beginning (i) twenty-four (24) months after the date of this Instrument, Borrower shall maintain a minimum Debt Service Coverage Ratio of 1.15 to 1; and (ii) thirty-six (36) months after the date of this Instrument, Borrower shall maintain a minimum Debt Service Coverage Ratio of 1.20 to 1. In the event that the Debt Service Coverage Ratio falls below the required ratio, Borrower shall either, (i) pay down the principal balance of the Indebtedness or (ii) provide additional collateral acceptable to Lender, in its sole discretion, so that following such pay down or pledge of additional collateral, the Debt Service Coverage Ratio shall equal or exceed the required ratio. For purposes of this paragraph, the term "Debt Service Coverage Ratio" means a fraction, the numerator of which is the net operating income from the Real Property based on actual revenues minus actual operating expenses and provisions of capital expenses of \$.10 per square foot (or actual if greater) based on the previous three months annualized and the denominator of which is debt service



determined using an interest rate of the greater of the actual all-in interest rate under the Note, or an assumed interest rate of 7% (at an assumed twenty-five (25) year amortization schedule).

(d) Borrower covenants to maintain its bank accounts, including its primary operating account, on deposit with Lender.

11. CONDEMNATION. If the Property, or any material part thereof, shall be condemned for any reason, including without limitation fire or earthquake damage, or otherwise taken for public or quasi-public use under the power of eminent domain, or be transferred in lieu thereof, all damages or other amounts awarded for the taking of, or injury to, the Property shall be paid to LENDER who shall have the right, in its reasonable discretion, to apply the amounts so received against (a) the costs and expenses of LENDER, including reasonable attorneys' fees incurred in connection with collection of such amounts, and (b) the balance against the Indebtedness; provided, however, that if (i) no Event of Default shall have occurred and be continuing hereunder, (ii) Borrower provides evidence satisfactory to LENDER of its ability to pay all amounts becoming due under the Note during the pendency of any restoration or repairs to or replacement of the Property, (iii) LENDER determines, in its sole discretion, that the proceeds of such award are sufficient to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such taking (or, if the proceeds of such award are insufficient for such purpose, if Borrower provides additional sums to LENDER's satisfaction so that the aggregate of such sums and the proceeds of such award will be sufficient for such purpose), and (iv) Borrower provides evidence satisfactory to LENDER that none of the tenants of the Property will terminate their lease agreements as a result of either the condemnation or taking or the repairs to or replacement of the Property, the proceeds of such award, together with additional sums provided by Borrower, shall be placed in a separate account for the benefit of LENDER and Borrower to be used to restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such taking. All work to be performed in connection therewith shall be pursuant to a written contract therefor, which contract shall be subject to the prior approval of LENDER. To the extent that any funds remain after the Property has been so restored and repaired, the same shall be applied against the Indebtedness in such order as LENDER may elect. To enforce its rights hereunder, LENDER shall be entitled to participate in and control any condemnation proceedings and to be represented therein by counsel of its own choice, and Borrower will deliver, or cause to be delivered to LENDER such instruments as may be requested by it from time to time to permit such participation. In the event LENDER, as a result of any such judgment, decree or award, reasonably believes that the payment or performance of any of the Indebtedness is impaired, LENDER may declare all of the Indebtedness immediately due and payable.

12. BORROWER AND LIEN NOT RELEASED. From time to time, LENDER may, at LENDER's option, without giving notice to or obtaining the consent of Borrower, Borrower's successors or assigns or of any junior lienholder or guarantors, without liability on LENDER's part and notwithstanding Borrower's breach of any covenant or agreement of Borrower in this Instrument, extend the time for payment of the Indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of the Indebtedness, accept an extension or modification or renewal note or notes therefor, modify the terms and time of payment of the Indebtedness, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or plan of the Property, consent to the granting of any easement, join in any extension or subordination agreement, and agree in writing with Borrower to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by LENDER pursuant to the terms of this Section 12 shall not affect the obligation of Borrower or Borrower's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Borrower contained herein, shall not affect the guaranty of any person, corporation, partnership or other entity for payment of the Indebtedness, and shall not affect the lien or priority of the lien hereof on the Property. Borrower shall pay LENDER such title insurance premiums and attorneys fees as may be incurred at LENDER's option, for any such action if taken at Borrower's request.



13. FORBEARANCE BY LENDER NOT A WAIVER. Any forbearance by LENDER in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any other right or remedy. The acceptance by LENDER of payment of any sum secured by this Instrument after the due date of such payment shall not be a waiver of LENDER's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other liens or charges by LENDER shall not be a waiver of LENDER's right to accelerate the maturity of the Indebtedness secured by this Instrument, nor shall LENDER's receipt of any awards, proceeds or damages under Sections 5 and 11 hereof operate to cure or waive Borrower's default in payment of sums secured by this Instrument.

14. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT. This Instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Borrower hereby grants and conveys to LENDER a first and prior security interest in all of the Property that constitutes personalty, whether now owned or hereafter acquired. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. In addition, Borrower agrees to execute and deliver to LENDER, upon LENDER's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Instrument in such form as LENDER may require to perfect a security interest with respect to the foregoing items. Borrower shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements LENDER may require. Without the prior written consent of LENDER, Borrower shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon Borrower's breach of any covenant or agreement of Borrower contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, LENDER shall have the remedies of a secured party under the Uniform Commercial Code, and LENDER may also invoke the remedies provided in Section 26 of this Instrument as to such items. In exercising any of said remedies LENDER may proceed against the items of real property and any items of personal property specified above separately or together and in any order whatsoever, without in any way affecting the availability of LENDER's remedies under the Uniform Commercial Code or of the remedies provided in Section 26 of this Instrument. Within ten (10) days following any request therefor by LENDER, Borrower shall prepare and deliver to LENDER a written inventory specifically listing all of the personal property covered by the security interest herein granted, which inventory shall be certified by Borrower as being true, correct, and complete.

15. LEASES OF THE PROPERTY. Borrower shall comply with and observe Borrower's obligations as landlord under all Leases of the Property or any part thereof. All Leases now or hereafter entered into will be in form and substance subject to the approval of LENDER which shall not be unreasonably withheld, conditioned, or delayed. All Leases of the Property shall specifically provide that such Leases are subordinate to this Instrument; that the tenant attorns to LENDER, such attornment to be effective upon LENDER's acquisition of title to the Property; that the tenant agrees to execute such further evidences of attornment as LENDER may from time to time request; that the attornment of the tenant shall not be terminated by foreclosure, and that LENDER shall not disturb tenant's right of possession provided that tenant is not in default of the lease. Borrower shall not, without LENDER's written consent, request or consent to the subordination of any Lease of all or any part of the Property to any lien subordinate to this Instrument. Upon LENDER's receipt of notice of the occurrence of any default or violation by Borrower of any of its obligations under the Leases, LENDER shall have the immediate right, but not the duty or obligation, without prior written notice to Borrower or to any third party, to enter upon the Property and to take such actions as LENDER may deem necessary to cure the default or violation by Borrower under the Leases. The costs incurred by LENDER



in taking any such actions pursuant to this paragraph shall become part of the Indebtedness, shall bear interest at the rate provided in the Note, and shall be payable by Borrower to LENDER on demand. LENDER shall have no liability to Borrower or to any third party for any actions taken by LENDER or not taken pursuant to this paragraph.

16. REMEDIES CUMULATIVE. Each remedy provided in this Instrument is distinct and cumulative to all other rights or remedies under this Instrument or afforded by law or equity, and may be exercised concurrently, independently, or successively, in any order whatsoever.

17. TRANSFERS OF THE PROPERTY OR BENEFICIAL INTERESTS IN BORROWER: ASSUMPTION. LENDER may, at its option, declare all sums secured by this Instrument to be immediately due and payable, and LENDER may invoke any remedies permitted by Section 26 of this Instrument, if title to the Property is changed without the prior written consent of LENDER, which consent shall be at LENDER's sole discretion. Any transfer of any interest in the Property or in the income therefrom, by sale, lease (except for leases to tenants in the ordinary course of managing income property which are approved by LENDER pursuant to Section 15 of this Instrument), contract, mortgage, deed of trust, further encumbrance or otherwise (including any such transfers as security for additional financing of the Property), and any change in the ownership interests in Borrower (including any transfer, pledge, assignment, or hypothecation of, or other change in, the ownership interests in Borrower or any legal entities which comprise or control Borrower), except transfers and changes in ownership by devise or descent, shall be considered a change of title. LENDER shall have the right to condition its consent to any proposed sale or transfer described in this Section 17 upon, among other things, LENDER's approval of the transferee's creditworthiness and management ability and the transferee's execution, prior to the sale or transfer, of a written assumption agreement containing such terms as LENDER may require, including, if required by LENDER, the imposition of an assumption fee of one percent (1%) of the then outstanding balance of the Indebtedness. Consent by LENDER to one transfer of the Property shall not constitute consent to subsequent transfers or waiver of the provisions of this Section 17. No transfer by Borrower shall relieve Borrower of liability for payment of the Indebtedness.

Borrower shall pay any recording tax, recording cost, title insurance premium, attorneys' fees, or other third-party expenses incurred by LENDER in connection with any transfer, plus a \$200 documentation fee, incurred by LENDER in connection with any transfer, whether or not consent is required.

18. NOTICE. Except for any notice required under applicable law to be given in another manner, any and all notices, elections, demands, or requests permitted or required to be made under this Instrument or under the Note shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, by telegram, or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar service requiring a receipt, to the other party at the address stated above, or to such other party and at such other address within the United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) days after the date of mailing by registered or certified mail, (iii) one (1) day after the date of mailing by Express Mail or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal upon presentation for delivery).

19. SUCCESSORS AND ASSIGNS BOUND: JOINT AND SEVERAL LIABILITY: AGENTS: CAPTIONS. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective heirs, successors and assigns of LENDER and Borrower, subject to the provisions of Section 17 hereof. If Borrower is comprised of more than one person or entity, whether as individuals, partners, partnerships or corporations, each such person or entity shall be jointly and severally liable for



Borrower's obligations hereunder. In exercising any rights hereunder or taking any actions provided for herein, LENDER may act through its employees, agents or independent contractors as authorized by LENDER. The captions and headings of the sections of this Instrument are for convenience only and are not to be used to interpret or define the provisions hereof.

20. WAIVER OF STATUTE OF LIMITATIONS. Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Instrument or to any action brought to enforce the Note or any other obligation secured by this Instrument.

21. WAIVER OF MARSHALING. Notwithstanding the existence of any other security interests in the Property held by LENDER or by any other party, LENDER shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. LENDER shall have the right to determine the order in which any or all portions of the Indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein. Borrower, any party who consents to this Instrument and any party who now or hereafter acquires a security interest in the Property and who has actual or constructive notice hereof hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

22. HAZARDOUS WASTE. Borrower has received no notification of any kind suggesting that the Property or any adjacent property is or may be contaminated with any hazardous waste or materials or is or may be required to be cleaned up in accordance with any applicable law or regulation; and Borrower further represents and warrants that, except as previously disclosed to LENDER in writing, to the best of its knowledge as of the date hereof after due and diligent inquiry, there are no hazardous waste or materials located in, on or under the Property or any adjacent property, or incorporated in any Improvements, nor has the Property or any adjacent property ever been used as a landfill or a waste disposal site, or a manufacturing, handling, storage, distribution or disposal facility for hazardous waste or materials. As used herein, the term "hazardous waste or materials" includes any substance or material defined in or designated as hazardous or toxic wastes, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any federal, state or local statute, regulation or ordinance now or hereafter in effect. Borrower shall promptly comply with all statutes, regulations and ordinances, and with all orders, decrees or judgments of governmental authorities or courts having jurisdiction, relating to the use, collection, treatment, disposal, storage, control, removal or cleanup of hazardous waste or materials in, on or under the Property or any adjacent property, or incorporated in any Improvements, at Borrower's expense. In the event that LENDER at any time reasonably believes that the Property is not free of all hazardous waste or materials or that Borrower has violated any applicable environmental law with respect to the Property, then immediately upon request by LENDER, Borrower shall obtain and furnish to LENDER, at Borrower's sole cost and expense, an environmental audit and inspection of the Property from an expert satisfactory to LENDER. In the event that Borrower fails to immediately obtain such audit or inspection, LENDER or its agents may perform or obtain such audit or inspection at Borrower's sole cost and expense. LENDER may, but is not obligated to, enter upon the Property and take such actions and incur such costs and expenses to effect such compliance as it deems advisable to protect its interest in the Property; and whether or not Borrower has actual knowledge of the existence of hazardous waste or materials on the Property or any adjacent property as of the date hereof, Borrower shall reimburse LENDER as provided in Section 23 below for the full amount of all costs and expenses incurred by LENDER prior to LENDER acquiring title to the Property through foreclosure or acceptance of a deed in lieu of foreclosure, in connection with such compliance activities. Neither this provision nor any of the other Loan Documents shall operate to put LENDER in the position of an owner of the Property prior to any acquisition of the Property by LENDER. The rights granted to LENDER herein and in the other Loan Documents are granted solely for the protection of LENDER's lien and security interest covering the Property, and do not grant to LENDER the right to control Borrower's actions, decisions or policies regarding hazardous waste or materials.



23. ADVANCES, COSTS AND EXPENSES. Borrower shall pay within ten (10) days after written demand from LENDER all sums advanced by LENDER and all costs and expenses incurred by LENDER in taking any actions pursuant to the Loan Documents including attorneys' fees and disbursements, accountants' fees, appraisal and inspection fees and the costs for title reports and guaranties, together with interest thereon at the rate applicable under the Note after an Event of Default from the date such costs were advanced or incurred. All such costs and expenses incurred by LENDER, and advances made, shall constitute advances under this Instrument to protect the Property and shall be secured by and have the same priority as the lien of this Instrument. If Borrower fails to pay any such advances, costs and expenses and interest thereon, LENDER may apply any undisbursed loan proceeds to pay the same, and, without foreclosing the lien of this Instrument, may at its option commence an independent action against Borrower for the recovery of the costs, expenses and/or advances, with interest, together with costs of suit, costs of title reports and guaranty of title, disbursements of counsel and reasonable attorneys' fees incurred therein or in any appeal therefrom.

24. ASSIGNMENT OF LEASES AND RENTS. Borrower, for good and valuable consideration, the receipt of which is hereby acknowledged, to secure the Indebtedness, does hereby absolutely and unconditionally grant, bargain, sell, transfer, assign, convey, set over and deliver unto LENDER all right, title and interest of Borrower in, to and under the Leases of the Property, whether now in existence or hereafter entered into, and all guaranties, amendments, extensions and renewals of said Leases and any of them, and all rents, income and profits which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Property.

Borrower represents, warrants, covenants and agrees with LENDER as follows:

(a) The sole ownership of the entire lessor's interest in the Leases is vested in Borrower, and Borrower has not, and shall not, perform any acts or execute any other instruments which might prevent LENDER from fully exercising its rights with respect to the Leases under any of the terms, covenants and conditions of this Instrument.

(b) The Leases are and shall be valid and enforceable in accordance with their terms and have not been and shall not be altered, modified, amended, terminated, canceled, renewed or surrendered except as approved in writing by LENDER. The terms and conditions of the Leases have not been and shall not be waived in any manner whatsoever except as approved in writing by LENDER.

(c) Borrower shall not alter the term or the amount of rent payable under any Lease without prior written notice to LENDER and LENDER's consent, which shall not be unreasonably withheld.

(d) To the best of Borrower's knowledge, there are no defaults now existing under any of the Leases and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases.

(e) Borrower shall give prompt written notice to LENDER of any notice received by Borrower claiming that a default has occurred under any of the Leases on the part of Borrower, together with a complete copy of any such notice.

(f) Each of the Leases shall remain in full force and effect irrespective of any merger of the interest of lessor and any lessee under any of the leases.

(g) Borrower will not permit any Lease to become subordinate to any lien other than the lien of this Instrument.



The assignment made hereunder is an absolute, present assignment from Borrower to LENDER, effective immediately, and is not merely an assignment for security purposes but is irrevocable by Borrower so long as the Indebtedness remains outstanding. Notwithstanding the foregoing, until a notice is sent to the Borrower in writing that an Event of Default (as defined below) has occurred under the terms and conditions of the Note or any instrument constituting security for the Note (which notice is hereafter called a "Notice"), Borrower is granted a license to receive, collect and enjoy the rents, income and profits accruing from the Property. If an Event of Default shall occur, LENDER may, at its option, after service of a Notice, receive and collect all such rents, income and profits as they become due, from the Property. LENDER shall thereafter continue to receive and collect all such rents, income and profits, until LENDER shall otherwise agree in writing. All sums received by Borrower after service of such Notice shall be deemed received in trust and shall be immediately turned over to LENDER.

Borrower hereby irrevocably appoints LENDER its true and lawful attorney-in-fact with power of substitution and with full power for LENDER in its own name and capacity or in the name and capacity of Borrower, from and after service of Notice, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property, either in its own name or in the name of Borrower or otherwise, which LENDER may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits and to demand, correct, receive, endorse, and deposit all checks, drafts, money orders or notes given in payment of such rents. Such appointment is coupled with an interest and is irrevocable. LENDER shall not be liable for or prejudiced by any loss of any note, checks, drafts, etc., unless such loss is found by a court of competent jurisdiction to have been due to the gross negligence or willful misconduct of LENDER.

LENDER shall apply the rents received from Borrower's lessees, to accrued interest and principal under the Note. If no Event of Default remains uncured, amounts received in excess of the aggregate monthly payment due under the Note shall be remitted to Borrower in a timely manner. Nothing contained herein shall be construed to constitute LENDER as a mortgagee-in-possession in absence of its physically taking possession of the Property.

Borrower also hereby irrevocably appoints LENDER as its true and lawful attorney-in-fact to appear in any state or federal bankruptcy, insolvency, or reorganization proceeding in any state or federal court involving any of the tenants of the Leases. Lessees of the Property are hereby expressly authorized and directed, from and after service of a Notice to pay any and all amounts due Borrower pursuant to the Leases to LENDER or such nominee as LENDER may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made.

If an Event of Default shall occur, LENDER is hereby vested with full power from and after service of a Notice to use all measures, legal and equitable, deemed by it necessary or proper to enforce the assignment granted hereunder and to collect the rents, income and profits assigned hereunder, including the right of LENDER or its designee, to enter upon the Property, or any part thereof, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Borrower relating thereto, and may exclude the Borrower, its agents and servants, wholly therefrom. Borrower hereby grants full power and authority to LENDER to exercise all rights, privileges and powers herein granted at any and all times after service of a Notice, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Property and of any indebtedness or liability of Borrower to LENDER, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on the Property or of making the same rentable, reasonable attorneys' fees incurred



in connection with the enforcement of the assignment granted hereunder, and of principal and interest payments due from Borrower to LENDER on the Note and this Instrument, all in such order as LENDER may determine. LENDER shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Borrower in the leases. It is further understood that the assignment granted hereunder shall not operate to place responsibility for the control, care, management or repair of the Property, or parts thereof, upon LENDER, nor shall it operate to make LENDER liable for the performance of any of the terms and conditions of any of the Leases, or for any waste of the Property by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger.

25. DEFAULT. The following shall each constitute an event of default ("Event of Default"):

(a) Failure or refusal by Borrower to make any payment of principal, interest, or prepayment premium under the Note when due or to pay any portion of any other sum secured by this Instrument when due and such failure shall continue for a period of five (5) days after written notice is given to Borrower by LENDER specifying such failure, provided however, that LENDER shall not be required to give written notice of such failure more than one (1) time in any twelve (12) month period; or

(b) Failure of Borrower within the time required by this Instrument to make any payment for taxes, insurance or for reserves for such payments, or any other payment necessary to prevent filing of or discharge of any lien, and such failure shall continue for a period of ten (10) days after written notice is given to Borrower by LENDER specifying such failure; or

(c) Failure by Borrower to observe or perform any obligations of Borrower to LENDER on or with respect to any transactions, debts, undertakings or agreements other than the transaction evidenced by the Note following the giving of any notice required thereunder and/or the expiration of any applicable period of grace provided thereby; or

(d) Failure of Borrower to make any payment or perform any obligation under any superior liens or encumbrances on the Property, within the time required thereunder, or commencement of any suit or other action to foreclose any superior liens or encumbrances; or

(e) Failure by Borrower to observe or perform any of its obligations under any of the Leases, following the giving of any notice required thereunder and/or the expiration of any applicable period of grace provided thereby; or

(f) The Property is transferred or any agreement to transfer any part or interest in the Property in any manner whatsoever is made or entered into without the prior written consent of LENDER, except as specifically allowed under this Instrument, including without limitation creating or allowing any liens on the Property or leasing any portion of the Property; or

(g) Filing by Borrower of a voluntary petition in bankruptcy or filing by Borrower of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the seeking, consenting to, or acquiescing by Borrower in the appointment of any trustee, receiver, custodian, conservator or liquidator for



Borrower, any part of the Property, or any of the income or rents of the Property, or the making by Borrower of any general assignment for the benefit of creditors, or the inability of or failure by Borrower to pay its debts generally as they become due, or the insolvency on a balance sheet basis or business failure of Borrower, or the making or suffering of a preference within the meaning of federal bankruptcy law or the making of a fraudulent transfer under applicable federal or state law, or concealment by Borrower of any of its property in fraud of creditors, or the imposition of a lien upon any of the property of Borrower which is not discharged in the manner permitted by Section 4 of this Instrument, or the giving of notice by Borrower to any governmental body of insolvency or suspension of operations; or

(h) Filing of a petition against Borrower seeking any reorganization, arrangement, composition, readjustment, liquidation, or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debts, or the appointment of any trustee, receiver, custodian, conservator or liquidator of Borrower, of any part of the Property or of any of the income or rents of the Property, unless such petition shall be dismissed within sixty (60) days after such filing, but in any event prior to the entry of an order, judgment or decree approving such petition; or

(i) The institution of any proceeding for the dissolution or termination of Borrower voluntarily, involuntarily, or by operation of law; or

(j) Any warranty, representation or statement furnished to LENDER by or on behalf of Borrower under the Note, this Instrument, any of the other Loan Documents or the Certificate and Indemnity Agreement Regarding Hazardous Substances, shall prove to have been false or misleading in any material respect; or

(k) Failure of BORROWER to observe or perform any other covenant or condition contained in the Instrument and such default shall continue for thirty (30) days after notice is given to BORROWER specifying the nature of the failure, or if the default cannot be cured within such applicable cure period, BORROWER fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions; provided, however, that no notice of default and no opportunity to cure shall be required with respect to defaults under Section 17 or Section 22 hereof or if during the prior twelve (12) months LENDER has already sent a notice to BORROWER concerning default in performance of the same obligation; or

(l) Failure of Borrower to observe or perform any other obligation under any other Loan Document or the Certificate and Indemnity Regarding Hazardous Substances when such observance or performance is due, and such failure shall continue beyond the applicable cure period set forth in such Loan Document, or if the default cannot be cured within such applicable cure period, Borrower fails within such time to commence and pursue curative action with reasonable diligence or fails at any time after expiration of such applicable cure period to continue with reasonable diligence all necessary curative actions. No notice of default and no opportunity to cure shall be required if during the prior twelve (12) months LENDER has already sent a notice to Borrower concerning default in performance of the same obligation; or

(m) Any of the foregoing events occur with respect to any Guarantors of any of Borrower's obligations in connection with the Indebtedness, or any such Guarantor dies or becomes incompetent.

## 26. RIGHTS AND REMEDIES ON DEFAULT.



26.1 Remedies. Upon the occurrence of any Event of Default and at any time thereafter, LENDER may exercise any one or more of the following rights and remedies:

(a) LENDER may declare all sums secured by this Instrument immediately due and payable, including any prepayment premium which Borrower would be required to pay.

(b) LENDER shall have the right to foreclose this Instrument in accordance with applicable law.

(c) In the event of any foreclosure, to the extent permitted by applicable law, LENDER will be entitled to a judgment which will provide that if the foreclosure sale proceeds are insufficient to satisfy the judgment, execution may issue for any amount by which the unpaid balance of the obligations secured by this Instrument exceeds the net sale proceeds payable to LENDER.

(d) With respect to all or any part of the Property that constitutes personalty, LENDER shall have all rights and remedies of secured party under the Uniform Commercial Code.

(e) LENDER shall have the right to have a receiver appointed to take possession of any or all of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, to collect all the rents and revenues from the Property and apply the proceeds, over and above cost of the receivership, against the sums due under this Instrument, and to exercise all of the rights with respect to the Property described in Section 24 above. The receiver may serve without bond if permitted by law. To the extent permitted by law, LENDER's right to the appointment of a receiver shall exist whether or not apparent value of the Property exceeds the sums due under this Instrument by a substantial amount. Employment by LENDER shall not disqualify a person from serving as a receiver.

(f) In the event Borrower remains in possession of the Property after the Property is sold as provided above or LENDER otherwise becomes entitled to possession of the Property upon default of Borrower, Borrower shall become a tenant at will of LENDER or the purchaser of the Property and shall pay a reasonable rental for use of the Property while in Borrower's possession.

(g) LENDER shall have any other right or remedy provided in this Instrument, the Note, or any other Loan Document or instrument delivered by Borrower in connection therewith, or available at law, in equity or otherwise.

(h) LENDER shall have all the rights and remedies set forth in Sections 23 and 24.

26.2 Foreclosure and Power of Sale. If an Event of Default shall have occurred and be continuing, LENDER shall be authorized to take possession of the Property by publication once a week for three (3) consecutive weeks of the time, place, and terms of sale, by publication in some newspaper published in Shelby County, State of Alabama, to sell the same, as a whole or in parcels, in front of the courthouse door of Shelby County, Alabama, at public outcry, to the highest and best bidder for cash, in order to pay the Indebtedness and accrued interest thereon. LENDER may bid and purchase at such sale. The aforesaid power of sale is granted in addition to the other remedies provided by law for collection of the Indebtedness and shall not be exhausted by one exercise thereof but may be exercised until LENDER has received full payment of the Indebtedness.

If at the time of the sale LENDER shall deem it best for any reason to postpone or continue said sale for one or more days, LENDER may do so, in which event notice of such postponement or continuance shall be made in such manner as the LENDER may deem sufficient under the laws of the State of



Alabama. At any such public sale, LENDER may execute and deliver to the purchaser a conveyance of the Property or any part of the Property in fee simple with full warranty and, to this end, Borrower hereby constitutes and appoints LENDER as the agent and attorney-in-fact of Borrower to make such sale and conveyance, and thereby to divest Borrower of all right, title or equity that Borrower may have in and to the Property and to vest the same in the purchaser or purchasers at such sale or sales. Said appointment is coupled with an interest and shall be irrevocable. Any recitals contained in the conveyance as to the happening of the default, and such recitals shall be presumptive evidence that all preliminary acts prerequisite to said sale and deed were in all things duly complied with, and said recitals shall be conclusive against Borrower.

Upon any public sale pursuant to the aforementioned power of sale and agency, the proceeds of said sale shall be applied as provided by law. In the event that such proceeds are insufficient to pay all costs and expenses of sale, LENDER may advance such sums as it in its sole and absolute discretion shall determine for the purpose of paying all or any part of such costs and expenses, and all such sums shall be a part of the Indebtedness, payable on demand with interest at the rate provided in the Note as applicable upon default. Borrower shall remain liable for any deficiency resulting if the proceeds of sale are inadequate to repay the Indebtedness.

26.3 Notice of Sale of Personal Property. LENDER shall give Borrower reasonable notice of the time and place of any public sale of any personal property or of the time after which any private sale or other intended disposition of the personal property is to be made. Reasonable notice shall mean notice given in accordance with applicable law, including notices given in the manner and at the times required for notices in a nonjudicial foreclosure.

26.4 Waiver; Election of Remedies. A waiver by either party of a breach of a provision of this Instrument shall not constitute a waiver of or prejudice the party's right otherwise to demand strict compliance with that provision or any other provision. Election by LENDER to pursue any remedy shall not exclude pursuit of any other remedy, and all remedies of LENDER under this Instrument are cumulative and not exclusive. An election to make expenditures or take action to perform an obligation of Borrower shall not affect LENDER's right to declare a default and exercise its remedies under this Instrument.

27. SATISFACTION OF MORTGAGE. Upon payment of all sums secured by this Instrument, LENDER shall execute a satisfaction (or at Borrower's option, an assignment) of this Instrument and shall surrender this Instrument and all notes evidencing Indebtedness secured by this Instrument to the person or persons legally entitled thereto. Such person or persons shall pay LENDER's costs incurred in connection with satisfaction or assignment of this Instrument.

28. IMPOSITION OF TAX BY STATE.

28.1 State Taxes Covered. The following constitute state taxes to which this Section applies:

- (a) A specific tax upon mortgages or upon all or any part of the indebtedness secured by a mortgage.
- (b) A specific tax on a mortgagor which the taxpayer is authorized or required to deduct from payments on the indebtedness secured by a mortgage.
- (c) A tax on a mortgage chargeable against the mortgagee or the holder of the note secured.



(d) A specific tax on all or any portion of the indebtedness or on payments of principal and interest made by a mortgagor.

28.2 Remedies. If any state tax to which this Section applies is enacted subsequent to the date of this Instrument, this shall have the same effect as an Event of Default, and LENDER may exercise any or all of the remedies available to it unless the following conditions are met:

(a) Borrower may lawfully pay the tax or charge imposed by state tax, and

(b) Borrower pays the tax or charge within thirty (30) days after notice from LENDER that the tax law has been enacted.

29. ATTORNEYS' FEES. In the event suit or action is instituted to enforce or interpret any of the terms of this Instrument (including without limitation efforts to modify or vacate any automatic stay or injunction), the prevailing party shall be entitled to recover all expenses reasonably incurred at, before and after trial and on appeal whether or not taxable as costs, or in any bankruptcy proceeding including, without limitation, attorneys' fees, witness fees (expert and otherwise), deposition costs, copying charges and other expenses. Whether or not any court action is involved, all reasonable expenses, including but not limited to the costs of searching records, obtaining title reports, surveyor reports, and title insurance, incurred by LENDER that are necessary at any time in LENDER's opinion for the protection of its interest or enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest from the date of expenditure until repaid at the interest rate as provided in the Note. The term "attorneys' fees" as used in the Loan Documents shall be deemed to mean such fees as are reasonable and are actually incurred.

30. GOVERNING LAW: SEVERABILITY. This Instrument shall be governed by the law of the State of Alabama applicable to contracts made and to be performed therein (excluding choice-of-law principles). In the event that any provision or clause of this Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Instrument or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Instrument and the Note are declared to be severable.

31. TIME OF ESSENCE. Time is of the essence of this Instrument.

32. CHANGES IN WRITING. This Instrument and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Borrower or LENDER relating to this Instrument shall be superior to the rights of the holder of any intervening lien or encumbrance.

33. NO OFFSET. Borrower's obligation to make payments and perform all obligations, covenants and warranties under this Instrument and under the Note shall be absolute and unconditional and shall not be affected by any circumstance, including without limitation any setoff, counterclaim, abatement, suspension, recoupment, deduction, defense or other right that Borrower or any guarantor may have or claim against LENDER or any entity participating in making the loan secured hereby. The foregoing provisions of this section, however, do not constitute a waiver of any claim or demand which Borrower or any guarantor may have in damages or otherwise against LENDER or any other person, or preclude Borrower from maintaining a separate action thereon; provided, however, that Borrower waives any right it may have at law or in equity to consolidate such separate action with any action or proceeding brought by LENDER.



34. AUTHORIZATION TO INSERT. Borrower authorizes LENDER or its agent to insert in the spaces provided herein the amount of the Note, the mortgagee's loan policy number, the title company issuing such policy, the total amounts of the obligations secured, and the last payment due dates, if any of the foregoing information is not typed in on this document.

35. MAXIMUM INTEREST CHARGES. Notwithstanding anything contained herein or in any of the Loan Documents to the contrary, in no event shall LENDER be entitled to receive interest on the loan secured by this Instrument (the "Loan") in amounts which, when added to all of the other interest charged, paid to or received by LENDER on the Loan, causes the rate of interest on the Loan to exceed the highest lawful rate. Borrower and LENDER intend to comply with the applicable law governing the highest lawful rate and the maximum amount of interest payable on or in connection with the Loan. If the applicable law is ever judicially interpreted so as to render usurious any amount called for under the Loan Documents, or contracted for, charged, taken, reserved or received with respect to the Loan, or if acceleration of the final maturity date of the Loan or if any prepayment by Borrower results in Borrower having paid or demand having been made on Borrower to pay, any interest in excess of the amount permitted by applicable law, then all excess amounts theretofore collected by LENDER shall be credited on the principal balance of the Note (or, if the Note has been or would thereby be paid in full, such excess amounts shall be refunded to Borrower), and the provisions of the Note, this Instrument and any demand on Borrower shall immediately be deemed reformed and the amounts thereafter collectible thereunder and hereunder shall be reduced, without the necessity of the execution of any new document, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for thereunder and hereunder. The right to accelerate the final maturity date of the Loan does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and LENDER does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to LENDER for the use, forbearance or detention of the Loan shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread through the full term of the Loan until payment in full so that the rate or amount of interest on account of the Loan does not exceed the applicable usury ceiling. By execution of this Instrument, Borrower acknowledges that it believes the Loan to be nonusurious and agrees that if, at any time, Borrower should have reason to believe that the Loan is in fact usurious, it will give LENDER written notice of its belief and the reasons why Borrower believes the Loan to be usurious, and Borrower agrees that LENDER shall have ninety (90) days following its receipt of such written notice in which to make appropriate refund or other adjustment in order to correct such condition if it in fact exists.

36. WAIVER OF JURY TRIAL. BORROWER AND LENDER EACH KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY IN ANY ACTIONS BROUGHT BY BORROWER OR LENDER IN CONNECTION WITH THIS MORTGAGE, ANY OF THE LOAN DOCUMENTS, THE INDEBTEDNESS SECURED HEREBY, OR ANY OTHER STATEMENTS OR ACTIONS OF LENDER.

*[ Signature on following page ]*

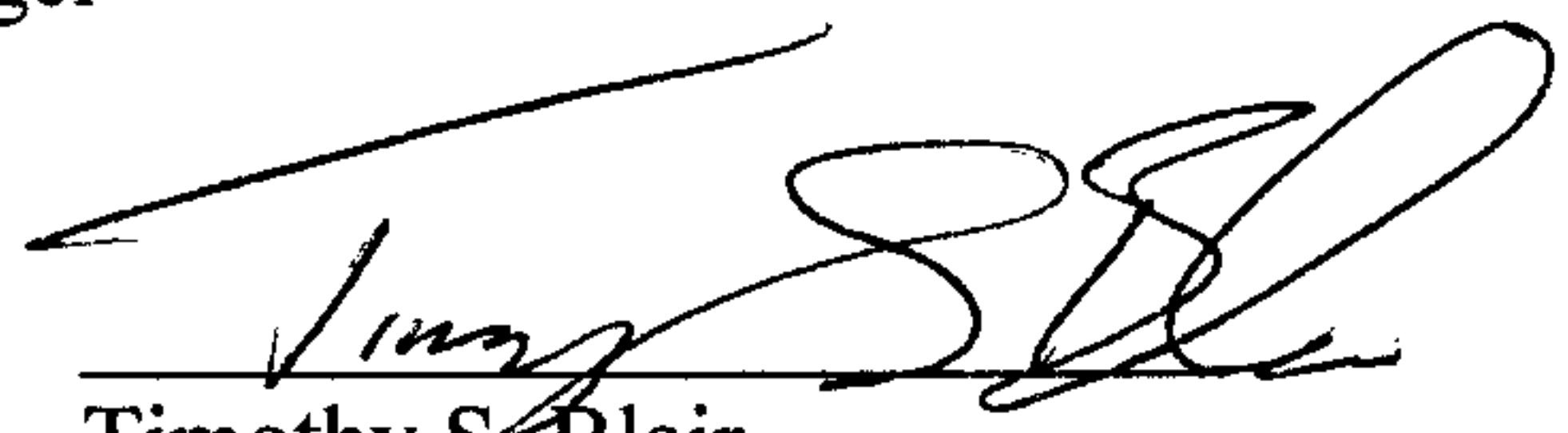


IN WITNESS WHEREOF, Borrower has executed this Instrument or has caused the same to be executed by its representatives thereunto duly authorized.

**BORROWER:**

**SHELBY MEDICAL PARTNERS, LLC**  
an Alabama limited liability company

By: Pannonia Holdings, Inc.  
an Alabama corporation  
Its: Manager

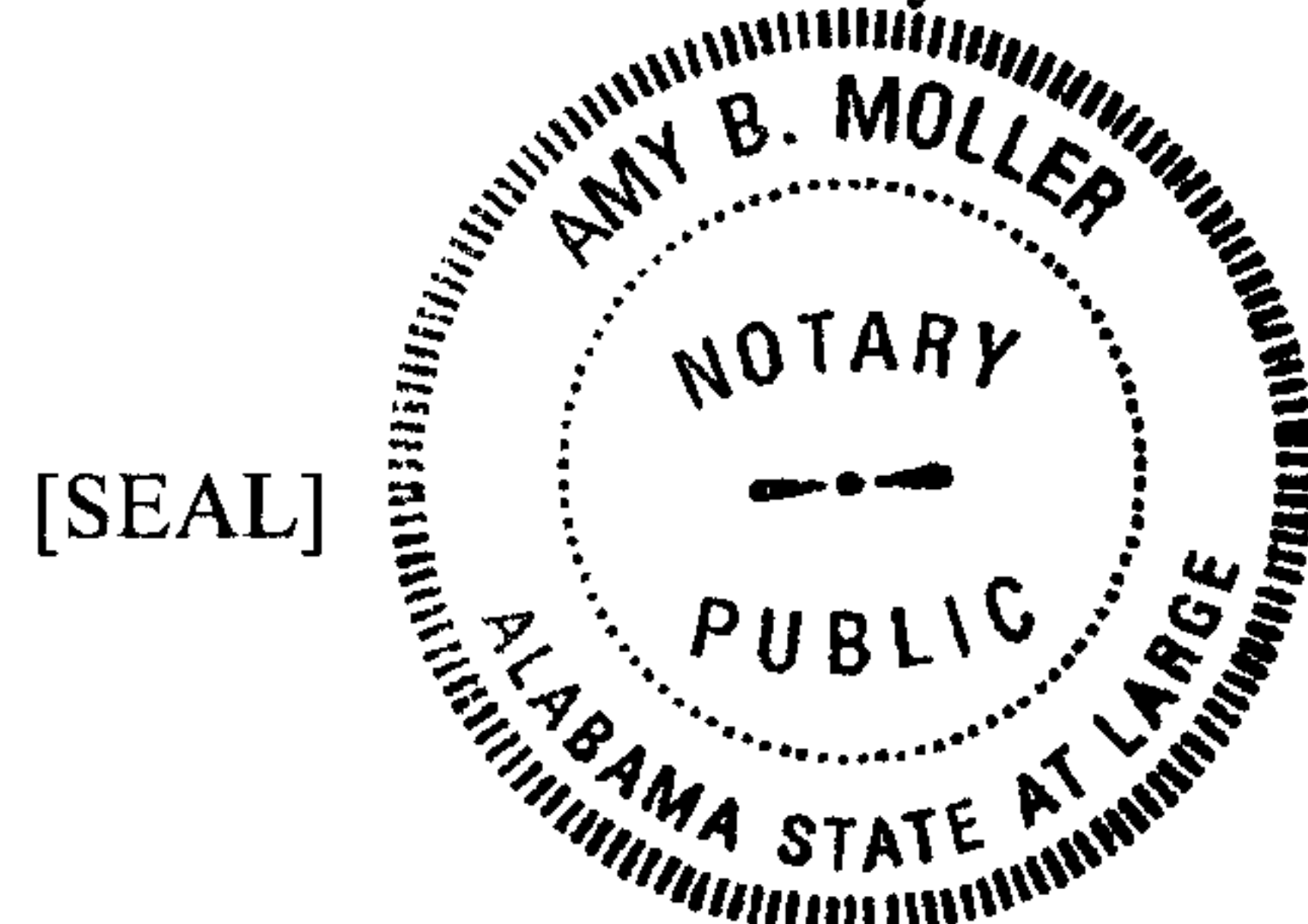
By:   
Timothy S. Blair  
Its: President

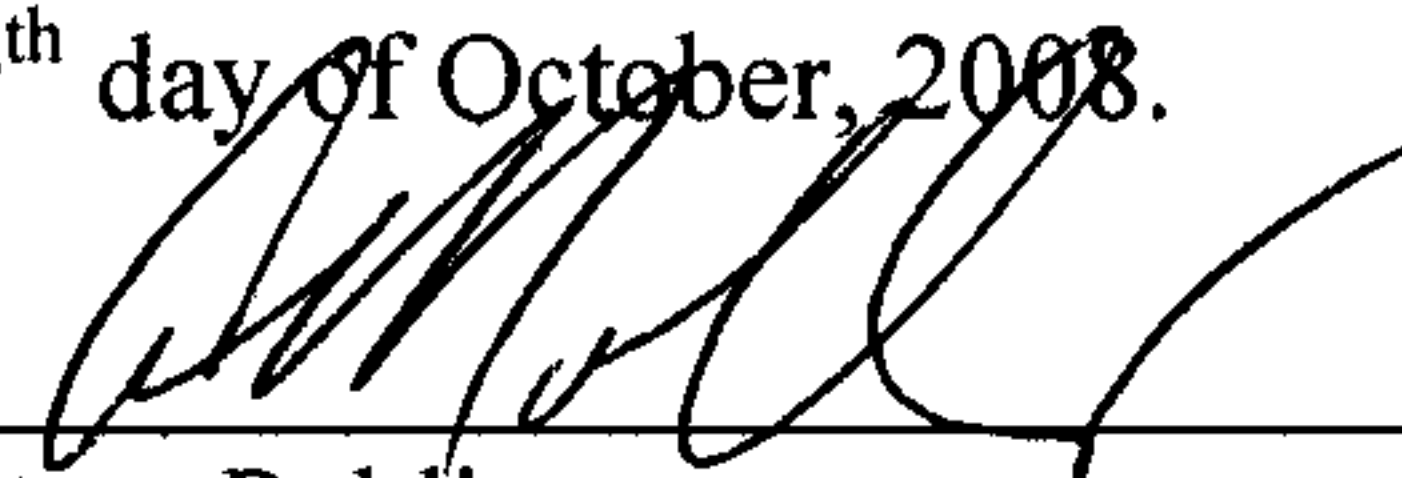
STATE OF ALABAMA                   )  
  ) ss.  
COUNTY OF JEFFERSON           )

**ACKNOWLEDGEMENT**

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Timothy S. Blair, whose name as President of Pannonia Holdings, Inc., which is the Manager of Shelby Medical Partners, 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 thereof, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 9<sup>th</sup> day of October, 2008.



  
\_\_\_\_\_  
Notary Public  
My Commission Expires: MY COMMISSION EXPIRES  
DECEMBER 12, 2011



**EXHIBIT "A"**

**LEGAL DESCRIPTION**


**Parcel I:**

Lots 19, 20, 21 and 22, Block 4, according to the Nickerson – Scott Survey, as recorded in Map Book 3, Page 34, in the Probate Office of Shelby County, Alabama, being a subdivision of a part of the East ½ of the SE ¼ of Section 35 and part of the NW ¼ of the SW ¼ of Section 36, all in Township 20 South, range 3 West.

**Parcel II:**

All rights of access to and parking upon, Lots 23 and 24 in Block 4 according to the Nickerson – Scott Survey as recorded in said Map Book 3, Page 34 in said Probate Office, as created in an instrument from Frank Abernathy to the board that is recorded in Deed Book 344 at page 517 in the records of the Office of the Judge of Probate of Shelby County, Alabama.

SITUATED IN SHELBY COUNTY, ALABAMA


  
20081017000409750 21/22 \$2084.00  
Shelby Cnty Judge of Probate, AL  
10/17/2008 03:31:53PM FILED/CERT



## **EXHIBIT B**

### **PERMITTED EXCEPTIONS**

1. Property taxes for 2008 and subsequent years not yet due and payable.
2. Any prior reservation or conveyance, together with release of damages of minerals of every kind and character, including, but not limited to gas, oil, sand, and gravel in, on and under subject property.

  
20081017000409750 22/22 \$2084.00  
Shelby Cnty Judge of Probate, AL  
10/17/2008 03:31:53PM FILED/CERT