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STATE OF ALABAMA

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**COUNTY OF SHELBY** 

# MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND SECURITY AGREEMENT

THIS MORTGAGE, ASSIGNMENT OR RENTS AND LEASES AND SECURITY AGREEMENT (this "Mortgage") is made effective as of May 8, 2009, between MENTAL HEALTH BOARD OF CHILTON AND SHELBY COUNTIES, INC., an Alabama non-profit corporation ("Borrower") and COLONIAL BANK, an Alabama banking corporation ("Bank" or "Mortgagee").

THIS MORTGAGE IS FILED AS AND SHALL CONSTITUTE A FIXTURE FILING IN ACCORDANCE WITH THE PROVISIONS OF SECTION 7-9A-502 OF THE CODE OF ALABAMA.

## WITNESSETH:

WHEREAS, Borrower is justly indebted to Bank on a loan (the "Loan") pursuant to a Promissory Note dated as of even date herewith executed by Borrower in favor of Bank in the principal sum of One Million Five Hundred Thousand Dollars (\$1,500,000), payable to Bank with interest thereon as set out therein (the "Note");

WHEREAS, the Note is being issued pursuant to a Construction Loan Agreement dated of even date herewith (the "Loan Agreement");

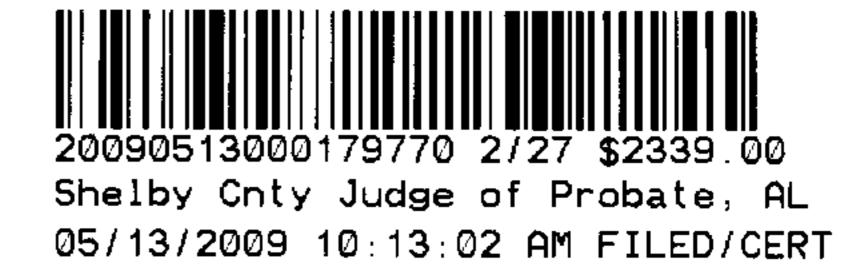
WHEREAS, Borrower may hereafter become indebted to Bank or to a subsequent holder of this Mortgage on loans or otherwise (Bank and any subsequent holder of this Mortgage being referred to herein as "Lender"); and,

WHEREAS, the parties desire to secure the payment and performance of all obligations and liabilities of Borrower under the Note, the Loan Agreement and the Loan Documents (hereinafter defined) (collectively the "Obligations").

NOW, THEREFORE, Borrower, in consideration of the premises, Bank's making the Loan and entering into the Loan Agreement, and to secure the prompt payment of all amounts due under the Note and/or the Loan Agreement, with the interest thereon, and any extensions, renewals, modifications and refinancing of same, and any charges herein incurred by Bank on account of Borrower, including but not limited to attorneys' fees, and further to secure the Obligations and the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note and set forth in all other documents evidencing, securing or executed in connection with the Loan (this Mortgage, the Note, the

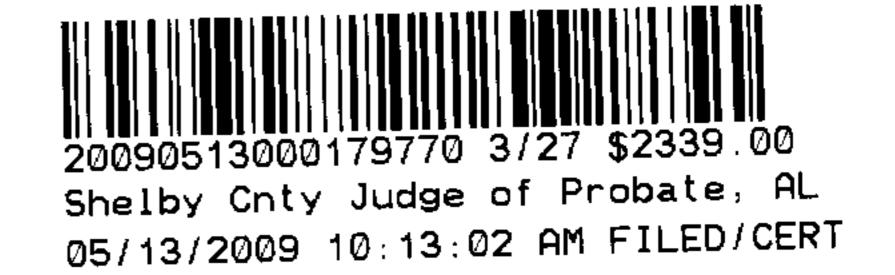
Prepared By:

William R. Cunningham, Jr., Esq. Capell & Howard, P. C. 150 South Perry Street Montgomery, Alabama 36104



Loan Agreement and such other documents are sometimes referred to herein as the "Loan Documents"), and any other indebtedness now or hereafter owed by Borrower to Bank ("Other Indebtedness"), in compliance with all the stipulations contained in the documents relating thereto ("Other Indebtedness Instruments"), have bargained and sold and do hereby grant, bargain, sell, alien and convey unto Bank, its successors and assigns, the following described land, real estate, estates, buildings, improvements, fixtures, furniture, and personal property (which together with any additional such property in the possession of Bank or hereafter acquired by Borrower and subject to the lien of this Mortgage, or intended to be so, as the same may be constituted from time to time is hereinafter sometimes referred to as the "Mortgaged Property") to-wit:

- (a) All that tract or parcel or parcels of land and estates particularly described on **Exhibit A** attached hereto and made a part hereof (the "Land");
- (b) All buildings, structures, and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, fittings, building materials, machinery, equipment, furniture and furnishings and personal property of every nature whatsoever now or hereafter owned by Borrower and used or intended to be used in connection with or with the construction and/or operation of said property, buildings, structures of other improvements, including all extensions, additions, improvements, betterments, renewals, substitutions, replacements and accessions to any of the foregoing, whether such fixtures, fittings, building materials, machinery, equipment, furniture, furnishings and personal property actually are located on or adjacent to the Land or not, and whether in storage or otherwise, and wheresoever the same may be located (the "Improvements");
- (c) All accounts, general intangibles, contracts and contract rights relating to the Land and Improvements, whether now owned or existing or hereafter created, acquired or arising, including without limitation, all construction contracts, architectural services contracts, management contracts, leasing agent contracts, purchase and sales contracts, put or other option contracts, and all other contracts and agreements relating to the construction of improvements on, or the operation, management and sale of all or any part of the Land and Improvements;
- (d) Together with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, leases, subleases, licenses, rights, titles, interests, privileges, liberties, tenements, hereditaments, and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Borrower of, in and to the same, including but not limited to:
- (i) All rents, royalties, profits, issues and revenues of the Land and Improvements from time to time accruing, whether under leases or tenancies now existing or hereafter created; and,
- (ii) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings of the taking of the Land and Improvements or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Land and Improvements or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets. Lender hereby is authorized on behalf of and in the name of Borrower to execute and deliver valid acquittances for, and appeal from, any such judgments or awards. Lender may



apply all such sums or any part thereof so received, after the payment of all its expenses, including costs and attorneys' fees, on any of the indebtedness secured hereby in such manner as it elects or, at its option, the entire amount or any part thereof so received may be released; and,

(e) All cash and non-cash proceeds and all products of any of the foregoing items or types of property described in (a), (b), (c) or (d) above, including, but not limited to, all insurance, contract and tort proceeds and claims, and including all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, consumer goods and general intangibles acquired with cash proceeds of any of the foregoing items or types of property described in (a), (b), (c) or (d) above.

The proceeds of the Loan secured by this Mortgage will be used to construct further improvements on the Land and will be disbursed pursuant to the Loan Agreement. This is therefore a construction mortgage.

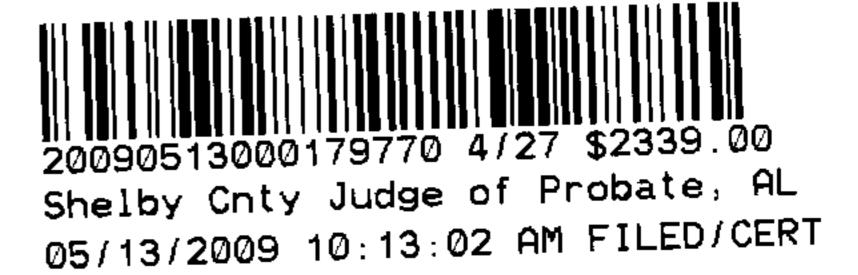
TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Lender, its successors and assigns forever, subject, however, to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, if (i) Borrower shall fully pay or cause to be fully paid to Lender the principal and interest payable with respect of the Loan, the Note and any and all other Indebtedness, and any extensions, renewals, modifications and refinancing of same, at the times and in the manner stipulated therein and herein, all without any deduction or credit for taxes or other similar charges paid by Borrower, and shall pay all charges incurred herein by Lender on account of Borrower, including, but not limited to, attorneys' fees, (ii) Borrower shall keep, perform and observe all and singular the covenants, conditions and agreements in this Mortgage, in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments expressed to be kept, performed, and observed by or on the part of Borrower, all without fraud or delay, and (iii) Lender shall have no further commitment or agreement to make advances, incur obligations or give value under the Loan, the Note, any other Loan Document or any Other Indebtedness Instrument (including without limitation advances, obligations or value relating to future advances, if any), then this Mortgage, and all the properties, interests and rights hereby granted, bargained, sold and conveyed shall cease, terminate and be void, but shall otherwise remain in full force and effect.

AND Borrower further represents, warrants, covenants and agrees with Lender as follows:

## ARTICLE I GENERAL

- 1.1 <u>Performance of Mortgage, Note and Loan Documents</u>. Borrower shall perform, observe and comply with all provisions hereof, of the Note, of the other Loan Documents, and of the Other Indebtedness Instruments, and shall duly and punctually pay to Lender the sum of money expressed in the Note, with interest thereon, and all other sums required to be paid by Borrower pursuant to the provisions of this Mortgage, of the Note, of the other Loan Documents, and of the Other Indebtedness Instruments, all without any deductions or credit for taxes or other similar charges paid by Borrower.
- 1.2 <u>Warranty of Title</u>. Borrower hereby warrants that it is lawfully seized of an indefeasible estate in fee simple in the land and real property hereby mortgaged, or is lawfully seized of such other estate or interest as is described on <u>Exhibit A</u> hereto except for the exceptions to title listed on <u>Exhibit B</u> hereto, and has good and absolute title to all existing personal property hereby granted as



security, and has good right, full power and lawful authority to sell, convey, mortgage and grant a security interest in the same in the manner and form aforesaid; that the same is free and clear of all grants, reservations, security interests, liens, charges, and encumbrances whatsoever, including, as to the personal property and fixtures, conditional sales contracts, chattel mortgages, security agreements, financing statements, and anything of a similar nature, and that Borrower shall and will warrant and forever defend the title thereto and the quiet use and enjoyment thereof unto Lender, its successors and assigns, against the lawful claims of all persons whomsoever.

- Construction Loan and Other Debts. This Mortgage is a construction loan 1.3 mortgage, the proceeds of which are loaned for the purpose of financing the construction of certain improvements on the Land. This Mortgage is subject to all of the terms, covenants and conditions of the Loan Agreement, which Loan Agreement, and all of its terms, covenants and conditions, are by this reference incorporated in this Mortgage and made a part of this Mortgage with the same force and effect as if set forth at length in this Mortgage. The proceeds of the construction loan secured by this Mortgage are to be advanced by Lender to Mortgagor in accordance with the provisions of the Loan Agreement. Mortgagor shall observe and perform all of the terms, covenants, conditions, provisions and agreements of the Loan Agreement on Mortgagor's part to be observed or performed. All advances made, and all indebtedness arising and accruing, under the Loan Agreement from time to time shall be secured by this Mortgage. It is expressly understood that this Mortgage is intended to and does secure not only the Loan, but also any and all Other Indebtedness, advances, obligations and liabilities, direct or contingent, of Borrower to Lender, whether now existing or hereafter arising, and any and all extensions, renewals, modifications and refinancing of same, or any part thereof, existing at any time before actual cancellation of this instrument on the probate records of the county or counties where the Mortgaged Property is located.
- shall begin to pay on the first day of each month thereafter one-twelfth (1/12) of the yearly taxes on the Mortgaged Property, as estimated by Lender, in addition to each regular installment of principal and interest. Such sums shall not draw interest and shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Lender. Borrower agrees to pay Lender the amount of any deficiency necessary to enable Lender to pay such taxes when due. Such sums may be applied by Lender to the reduction of the indebtedness secured hereby in any manner selected by Lender if an Event of Default shall occur under this Mortgage or under the Note, any of the other Loan Documents, or any of the Other Indebtedness Instruments, but, unless otherwise agreed by Lender in writing, no application of tax deposits to the Note, to Other Indebtedness, or to other obligations secured hereby, shall delay, reduce, alter or otherwise affect any regularly scheduled payment with respect to the Loan, the Other Indebtedness, or any such other obligations.
- 1.5 Other Taxes, Utilities and Liens. (a) Borrower shall pay promptly, when and as due (but in no event later than the delinquency date), and, if requested, will exhibit promptly to Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof or upon the revenues, rents, issues and profits of the Mortgaged Property or arising in respect of the occupancy, use or possession thereof, or upon the interest of Lender in the Mortgaged Property (other than any of the same for which provision has been made in Paragraph 1.4 of this Article I), or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property.
- (b) Borrower promptly shall pay all charges for labor and materials and shall not suffer any mechanic's, materialmen's, laborer's, statutory or other lien to be created or to remain

outstanding upon any of the Mortgaged Property except that Borrower shall not be required to pay or perform any such liens that are being actively contested in good faith by appropriate proceedings, provided that Borrower has posted such security for the payment or performance of such liens as Lender may reasonably require and, by reason of nonpayment, none of the Mortgaged Property is prejudiced or in danger of being sold, foreclosed or otherwise lost or forfeited, and, provided further, that if any action or other proceeding is instituted to enforce any lien against the Mortgaged Property, Borrower shall immediately make such payments, obtain such surety bonds and/or take such other action as Lender may reasonably require in order to release such lien.

- (c) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes, then Borrower immediately shall pay any increased taxes if allowed by law, and if Borrower fails to pay such additional taxes, or if Borrower is prohibited from paying such taxes, or if Lender in any way is adversely affected by such law, order, rule or regulation, then in any of such events, all indebtedness secured by this Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of Lender.
- Insurance. (a) Borrower shall, at its expense, procure for, deliver to and maintain for the benefit of, Lender until the Loan is fully repaid, original, fully paid (prepaid at least one (1) year in advance) insurance policies providing the following types of insurance relating to the Mortgaged Property, issued by such insurance companies, in such amounts, in such form and content and with such expiration dates as are approved by Lender, in Lender's sole discretion, such policies to provide that the insurer shall give Lender at least thirty (30) days' prior written notice of cancellation or termination (and Borrower shall be obligated to give immediate notice to Lender upon Borrower's learning of such cancellation or termination), in the manner provided for the giving of notices in this Mortgage, and to provide that no act or thing done by the insured shall invalidate or diminish the insurance provided to Lender and, except for liability policies, to contain noncontributing mortgagee or "loss payable" clauses satisfactory to Lender. Such policies shall include:

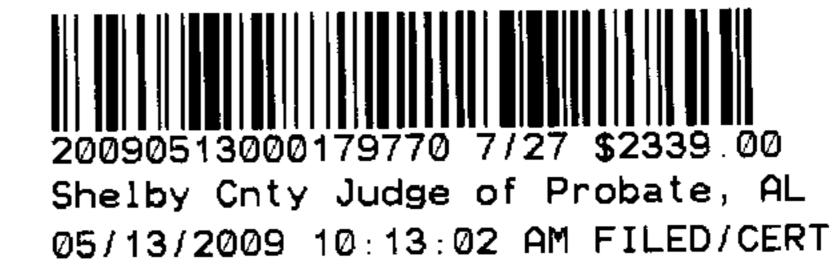
## I. During the Construction Period (as defined in the Loan Agreement):

- (A) "all risk" Builders Risk coverage with respect to the Mortgaged Property (including, without limitation coverage against collapse and such other hazards as Lender may, from time to time, require); and such insurance shall, at Lender's request, be written on a "completed value" "non-reporting" form basis;
- (B) Public liability insurance, with all-risk endorsement, covering all liabilities incident to the ownership, possession, occupancy and operation of the Mortgaged Property and naming Lender as an additional insured thereunder, having limits of not less than One Million Dollars (\$1,000,000.00) combined single limit coverage.
- (C) Flood hazard insurance, if the Mortgaged Property, or any part thereof, are in an area which is, at any time during the term of this Mortgage, identified by the Secretary of Housing and Urban Development as having special flood or mud slide hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended; and,
- (D) Such other insurance on the Mortgaged Property, any replacements or substitutions therefor, in such amounts as may from time to time be required by Lender, against other

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insurable casualties which at the time are commonly insured against in the case of properties of similar character and location;

- II. Upon the commencement of the Permanent Financing Period (as defined in the Loan Agreement) and in addition to Sub-items 1.6(a)I(B), (C) and (D):
- (A) Rent or business interruption insurance against loss of income in an amount not less than six (6) months' gross rental income from the Mortgaged Property; and,
- (B) Boiler and machinery insurance covering pressure vessels, air tanks, boilers, machinery, pressure piping, heating, air conditioning, and elevator and escalator equipment, provided that the Mortgaged Property contains equipment of such nature, and insurance against loss of occupancy or use arising from any breakdown in such equipment, in amounts satisfactory to Lender.
- (b) At least twenty (20) days prior to the expiration date of each policy maintained pursuant to this Paragraph 1.6, a renewal or replacement thereof satisfactory to Lender shall be delivered to Lender. At any time within twenty (20) days of Lender's written request therefor, Borrower shall deliver to Lender a copy of the policies required hereby, or certificates evidencing the existence thereof. Borrower shall deliver to Lender receipts evidencing the full payment of premiums for all such insurance policies and renewals or replacements. The delivery of any insurance policies hereunder shall constitute an assignment of all unearned premiums as further security hereunder. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment or partial extinguishment of the indebtedness secured hereby, all right, title and interest of Borrower in and to all insurance policies maintained pursuant to this Paragraph 1.6 then in force shall belong to the purchaser and Lender is hereby irrevocably appointed by Borrower as attorney-in-fact for Borrower to assign any such policy to said purchaser, without accounting to Borrower for any unearned premiums therefor.
- Borrower covenants and agrees that Lender is hereby authorized and empowered, at its option, to adjust, compromise or settle any loss under any insurance policies maintained pursuant hereto, and to collect and receive the proceeds from any policy or policies. Each insurance company is hereby authorized, directed and required to make payment for all such losses in amounts less than Five Thousand Dollars (\$5,000.00) to Borrower and Lender jointly. Each insurance company is hereby authorized, directed and required to make payments for all such losses in amounts of Five Thousand Dollars (\$5,000.00) or more directly and solely to Lender, instead of to Borrower and Lender jointly. In the event any insurance company fails to disburse directly and solely to Lender under the conditions set out above, and disburses instead either solely to Borrower or to Borrower and Lender jointly, Borrower agrees immediately to endorse and transfer such proceeds to Lender. Upon the failure of Borrower to endorse and transfer such proceeds as aforesaid, Lender may execute such endorsements or transfers for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender as its agent and attorney-in-fact so to do. After deducting from said insurance proceeds all of its expenses incurred in the collection and administration of such sums, including attorneys' fees, Lender may apply the net proceeds of any part thereof, at its sole option, (i) to the payment of the indebtedness hereby secured, whether or not due and in whatever order Lender elects, (ii) to the repair and/or restoration of the Mortgaged Property, upon such conditions as Lender may determine, and/or (iii) for any other purposes or objects for which Lender is entitled to advance funds under this Mortgage, all without affecting the lien of this Mortgage or any obligations secured hereby. Any balance of such proceeds then remaining shall be paid to Borrower or the person or entity lawfully entitled thereto. Lender shall not be obligated to see to the proper application of any amount paid over to Borrower and shall not be held

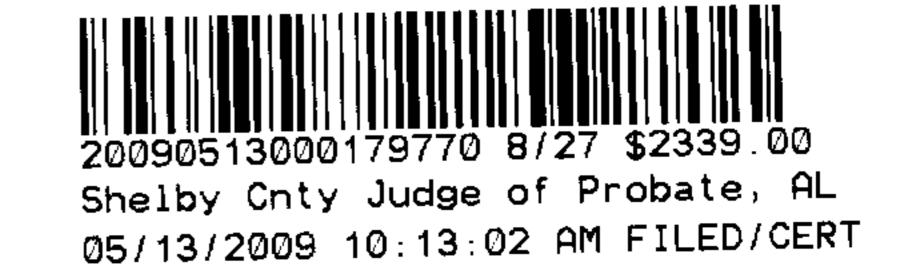


responsible for any failure to collect any insurance proceeds due under the terms of any policy, regardless of the cause of such failure.

Condemnation. If all or any portion of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental or quasi-governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, then the entire indebtedness secured hereby shall, at the option of Lender, become immediately due and payable, without notice to Borrower or any other person or entity. Promptly upon learning of the institution or the proposed, contemplated or threatened institution of any condemnation proceeding, Borrower will notify Lender of the pendency of such proceedings, and no settlement respecting awards in such proceedings shall be effected without the consent of Lender. Lender shall be entitled to receive all Damage Proceeds (as defined in the Loan Agreement) and other payments or relief relating to or payable as a result of such condemnation. Lender is hereby authorized, at its option, to commence, appear in and prosecute, in its own name or in the name of Borrower, any action or proceeding relating to any condemnation, and to settle or compromise any claim in connection therewith. All such Damage Proceeds, damages, claims and rights of action and the right thereto are hereby assigned by Borrower to Lender. If Lender does not elect to declare the entire indebtedness secured hereby immediately due and payable, as provided above, then Lender, after deducting from said Damage Proceeds all of its expenses incurred in the collection and administration of such sums, including, without limitation, attorneys' fees, shall apply the net proceeds or any part thereof, at its option, (i) to the payment of the indebtedness secured hereby, whether or not due and in whatever order Lender elects, (ii) to the repair and/or restoration of the Mortgaged Property upon such conditions as Lender may determine, and/or (iii) for any other purposes or objects for which Lender is entitled to advance funds under this Mortgage, all without affecting the lien of this Mortgage; and any balance of such moneys then remaining shall be paid to Borrower or any other person or entity lawfully entitled thereto; Lender shall not be obligated to see to the proper application of any amount paid over to Borrower. Borrower agrees to execute such further assignment of any Damage Proceeds, damages, claims and rights of action as Lender may require. If, prior to the receipt by Lender of any Damage Proceeds, the Mortgaged Property shall have been sold on foreclosure of this Mortgage, or as a result of other legal action relating to this Mortgage, the Note or other Loan Documents, Lender shall have the right to receive any such Damage Proceeds to the extent of any unpaid indebtedness secured hereby following such sale, with legal interest thereon, whether or not a deficiency judgment on this Mortgage, the Note or other Loan Documents shall have been sought or recovered, and to the extent of attorneys' fees, costs and disbursements incurred by Lender in connection with the collection of such award or proceeds.

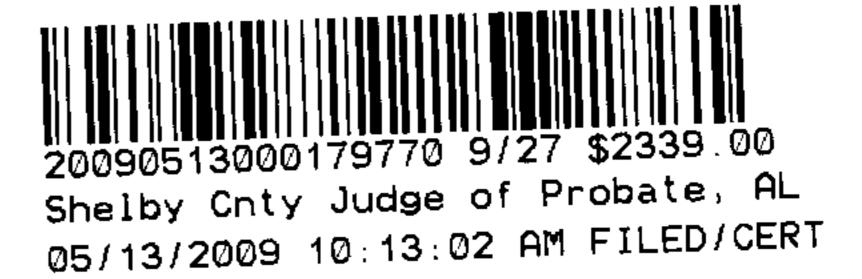
## 1.8 Care of the Property.

- (a) Borrower will preserve and maintain the Mortgaged Property in good condition and repair, and shall not commit or suffer any waste and shall not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof.
- (b) Borrower shall promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property, or any portion thereof.
- (c) Except as otherwise provided herein and in Section 4.6 of the Loan Agreement, no buildings, fixtures, personal property, or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of Lender. Borrower may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, tools,

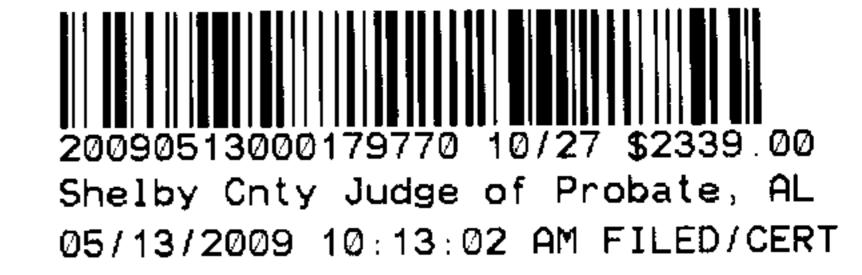


appliances, machinery or appurtenances, subject to the lien hereof which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in value at the time of disposition thereof Five Thousand Dollars (\$5,000.00) for any single transaction, or a total of Twenty Thousand Dollars (\$20,000.00) in any one year, upon replacing the same with, or substituting for the same, free and clear of all liens and security interests except those created by the Loan Documents or Other Indebtedness instruments, other furniture, furnishings, equipment, tools, appliances, machinery or appurtenances not necessarily of the same character, but of at least equal value and of equal or greater utility in the operation of the Mortgaged Property, and costing not less than the amount realized from the property sold or otherwise disposed of. Such substitute furniture, furnishings, equipment, tools, appliances, machinery and appurtenances shall forthwith become, without further action, subject to the provisions of this Mortgage.

- (d) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, Borrower shall give immediate written notice of the same to Lender.
- (e) Lender hereby is authorized to enter upon and inspect the Mortgaged Property, and to inspect Borrower's or Borrower's agent's records with respect to the ownership, use, management and operation of the Mortgaged Property, at any time during normal business hours.
- (f) If all or any part of the Improvements shall be damaged by fire or other casualty, Borrower promptly shall restore the Improvements to the equivalent of its original condition, regardless of whether or not there shall be any Damage Proceeds therefor; provided that if there are insurance proceeds, Borrower shall not be required to restore the Improvements as aforesaid unless Lender shall apply any net proceeds from the Damage Proceeds, as provided in Paragraph 1.6, toward restoring the damaged Improvements. If a part of the Improvements shall be physically damaged through condemnation, Borrower promptly shall restore, repair or alter the remaining property in a manner satisfactory to Lender; provided that if there are Damage Proceeds, Borrower shall not be required to restore the Improvements as aforesaid unless Lender shall apply any net proceeds of such Damage Proceeds as provided in Paragraph 1.7, toward restoring the damaged Improvements.
  - 1.9 Further Assurances; After-Acquired Property.
- Borrower's expense, will make, execute and deliver or cause to be made, executed and delivered to Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender any and all such other and further mortgages, instruments of further assurance, certificates and other documents as may, in the opinion of Lender be necessary or desirable in order to effectuate, complete, or perfect, or to continue and preserve the obligation of Borrower under the Note and this Mortgage, and the priority of this Mortgage as a first and prior lien upon all of the Mortgaged Property, whether now owned or hereafter acquired by Borrower. Upon any failure by Borrower so to do, Lender may make, execute, and record any and all such mortgages, instruments, certificates, and documents for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do. The lien and rights hereunder automatically will attach, without further act, to all after-acquired property attached to and/or used in the operation of the Mortgaged Property or any part thereof.



- (b) Without limitation to generality of the other provisions of this Mortgage, including subparagraph (a) of this Paragraph 1.9, it hereby expressly is covenanted, agreed and acknowledged that the lien and rights hereunder automatically will attach to any further, greater, additional, or different estate, rights, titles or interests in or to any of the Mortgaged Property at any time acquired by Borrower by whatsoever means, including that in the event Borrower is the owner of an estate or interest in the Mortgaged Property or any part thereof (such as, for example, as the lessee or tenant) other than as the fee simple owner thereof, and prior to the satisfaction of record of this Mortgage Borrower obtains or otherwise acquires such fee simple or other estate, then such further, greater, additional, or different estate in the Mortgaged Property, or a part thereof, shall automatically, and without any further action or filing or recording on the part of Borrower or Lender or any other person or entity, be and become subject to this Mortgage and the lien hereof. In consideration of Lender's making the Loan as aforesaid, and to secure the Loan, the Other Indebtedness and obligations set forth above, Borrower hereby grants, bargains, sells and conveys to Lender, on the same terms as set forth in this Mortgage and intended to be a part hereof, all such after-acquired property and estates.
- 1.10 Additional Security. Lender also shall have and hereby is granted a security interest in all monies, securities and other property of Borrower, now hereafter assigned, held, received, or coming into the possession, control, or custody of Lender by or for the account of Borrower, whether expressly as collateral security, custody, pledge, transmission, collection or for any other purpose, and also upon any and all deposit balances, including any dividends declared, or interest accruing thereon, and proceeds thereof. On an Event of Default, Lender may, in addition to any other rights provided by this Mortgage or any of the other Loan Documents, but shall not be obligated to, apply to the payment of the Loan or Other Indebtedness secured hereby, and in such manner as Lender may determine, any such monies, securities or other property held or controlled by Lender. No such application of funds shall, unless otherwise expressly agreed by Lender in writing, reduce, alter, delay or otherwise affect any regularly scheduled payment with respect to the Loan or such Other Indebtedness or obligations.
- Leases Affecting Mortgaged Property. Borrower shall comply with and observe its obligations as landlord or tenant under all leases affecting the Mortgaged Property or any part thereof. If requested by Lender, Borrower shall furnish Lender with executed copies of all leases now or hereafter existing on the Mortgaged Property; and all leases now or hereafter entered into will be in form and substance subject to the approval of Lender. Borrower shall not accept payment of rent more than one (1) month in advance without the express written consent of Lender. If requested by Lender, Borrower shall execute and deliver to Lender, as additional security, such other documents as may be requested by Lender to evidence further the assignment to Lender hereunder, and to assign any and all such leases whether now existing or hereafter created, including, without limitation, all rents, royalties, issues and profits of the Mortgaged Property from time to time accruing. Borrower shall not cancel, surrender or modify any lease affecting the Mortgaged Property or any part thereof without the prior written consent of Lender.
- 1.12 Expenses. Borrower shall pay or reimburse Lender for all reasonable attorneys' fees, costs and expenses incurred by Lender in connection with the collection of the indebtedness secured hereby or the enforcement of any rights or remedies provided for in this Mortgage, in any of the other Loan Documents or the Other Indebtedness Instruments, or as may otherwise be provided by law, or incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which Lender is made a party, or appears as party plaintiff or defendant, affecting this Mortgage, the Note, any of the other Loan Documents, any of the Other Indebtedness Instruments, Borrower or the Mortgaged Property, including but not limited to the

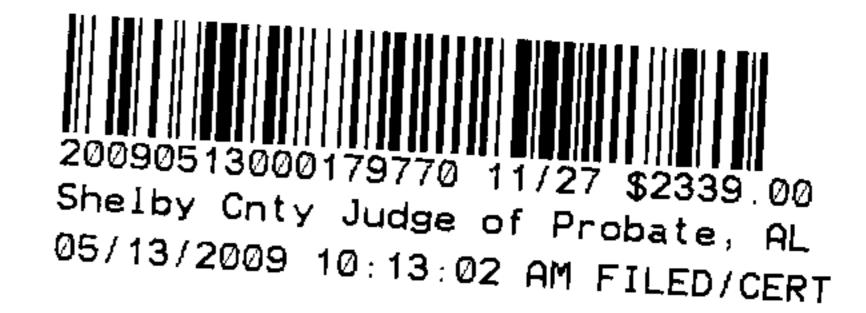


foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, any environmental condition of or affecting the Mortgaged Property, or any action to protect the security hereof; and any such amounts paid or incurred by Lender shall be added to the indebtedness secured hereby and shall be further secured by this Mortgage.

- Performance by Lender of Defaults by Borrower. If Borrower shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property, or otherwise described in Paragraphs 1.4 and 1.5 hereof; in the payment of any utility charge, whether public or private; in the payment of insurance premiums, in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, of the Note, of any of the other Loan Documents, or of any of the Other Indebtedness Instruments, then Lender, at its option, may perform or observe the same; and all payments made for costs or expenses incurred by Lender in connection therewith shall be secured hereby, shall become part of the Loan and shall be, without demand, immediately repaid by, Borrower to Lender with interest thereon calculated in the manner set forth in the Note, and at the default interest rate specified in the Note, or, if no default interest rate is specified, then at eighteen percent (18%). Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium, of the necessity for any such actions and of the amount necessary to be paid in satisfaction thereof. Lender hereby is empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or term, without thereby becoming liable to Borrower or any person in possession holding under Borrower for trespass or otherwise.
- 1.14 <u>Books and Records</u>. Borrower shall keep and maintain at all times full, true and accurate books of accounts and records, adequate to reflect correctly the results of the operation of the Mortgaged Property. Borrower shall furnish to Lender such financial statements, books, and records as required under the Loan Agreement.
- 1.15 <u>Estoppel Affidavits</u>. Within ten (10) days after written request from Lender, Borrower shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Loan and Other Indebtedness and whether or not any offsets or defenses exist against any principal and interest.

## 1.16 Transfer of the Mortgaged Property; Additional Financing.

(a) The identity and expertise of Borrower and its officers and Board Members were and continue to be material circumstances upon which Lender has relied in connection with, and which constitute valuable consideration to Lender for, the extending to Borrower of the Loan evidenced by the Note, and any change in such identity or expertise could materially impair or jeopardize the security for the payment of the indebtedness secured hereby. Borrower covenants and agrees with Lender, as part of the consideration for the extending to Borrower of the Loan evidenced by the Note, that, without Lender's prior written consent, Borrower shall not, voluntarily or by operation of law: (i) sell, transfer, convey, pledge, encumber, assign, grant a security interest in, or otherwise hypothecate or dispose of, all or any part of the Mortgaged Property or any interest therein, whether or not as collateral security for any other obligation of Borrower; (ii) if Borrower is a corporation, partnership, limited liability company, trust, or other entity, sell, transfer, convey, pledge, encumber, assign, hypothecate or dispose of any legal or beneficial interest in Borrower, nor change any of its general partners, members or managers; or (iii) cause or permit any junior encumbrance or lien to be placed on the Mortgaged Property or other security for the Loan. (Each of the events described in (i)-(iii)

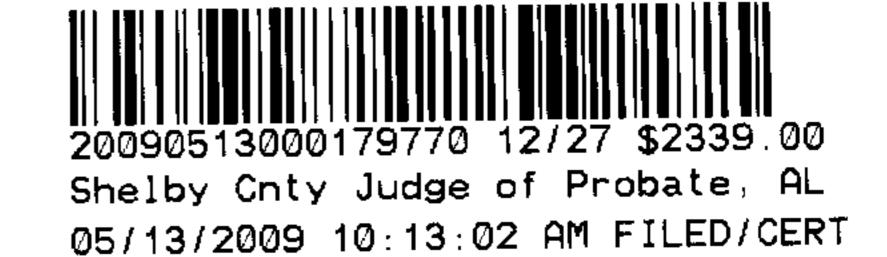


above hereafter referred to as a "<u>Transfer</u>".) Any such Transfer without the consent of Lender shall be null and void as to the Lender and shall constitute an Event of Default hereunder. Such consent may be given or withheld by Lender in its sole discretion and may be conditioned upon payment to Lender of a fee for processing the request for consent and other administrative costs incurred in connection therewith, and/or an increase in the rate of interest on the unpaid balance of the indebtedness secured hereby to a then current market rate, and/or a change in the term of the Note, all of which Borrower hereby agrees are reasonable conditions to the approval of any such transfer. Such consent may also be conditioned upon Borrower's and any such subordinate lender's joining with Lender in a subordination agreement containing such terms and conditions as Lender may, in its sole discretion, deem appropriate. In all events, if Lender consents to any such Transfer, the transferee shall be a creditworthy person or entity of sound financial reputation.

- (b) The consent by Lender to any Transfer shall not be deemed to constitute a novation of the indebtedness secured hereby or a consent to any further sale, transfer, pledge, encumbrance, creation of a security interest or other hypothecation or disposition, or to waive Lender's right, at its option, to exercise its remedies for default, without notice to or demand upon Borrower or to any other person or entity, upon any such Transfer, pledge, encumbrance, creation of a security interest in or other hypothecation, or disposition to which Lender shall not have consented.
- Inspection Rights and Easements. In addition to other inspection rights of Lender, Borrower shall and hereby does grant and convey to Lender, its agents, representatives, contractors, and employees, to be exercised by Lender following an Event of Default hereunder or under any of the other Loan Documents or Other Indebtedness, license to enter on the Mortgaged Property at any time and from time to time for the purpose of making such audits, tests, inspections, and examinations, including, without limitation, inspection of buildings and Improvements, subsurface exploration and testing and groundwater testing ("Inspections"), as Lender, in its sole discretion, deems necessary, convenient, or proper to determine the condition and use of the Mortgaged Property, to make an inventory of the Mortgaged Property, and to determine whether the ownership, use and operation of the Mortgaged Property are in compliance with all federal, state, and local laws, ordinances, rules, and regulations, including, without limitation, environmental laws, health and public accommodation laws, and ordinances, rules and regulations relating thereto. Notwithstanding the grant of the above license to Lender, Lender shall have no obligation to perform any such inspections, or to take any remedial action. All the costs and expenses incurred by Lender with respect to any inspections which Lender may conduct or take pursuant to this Paragraph 1.17, including, without limitation, the fees of any engineers, laboratories, and contractors, shall be repaid by Borrower, with interest, and shall be secured by this Mortgage and the other Loan Documents.

# ARTICLE II ASSIGNMENT OF RENTS AND LEASES

2.1 <u>Assignment.</u> Borrower, in consideration of Lender's making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby sell, assign and transfer unto Lender all leases, subleases and lease guaranties of or relating to all or part of the Mortgaged Property, whether now existing or hereafter created or arising, including, without limitation, those certain leases, if any, specifically

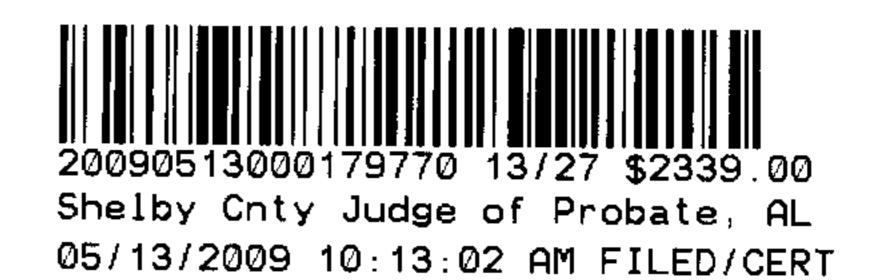


described on an exhibit to this Mortgage, and all the rents, issues and profits now due and which may hereafter become due under or by virtue of any such lease, whether written or verbal, or any letting of, or of any agreement for the use or occupancy of the Mortgaged Property or any part thereof, which may have been heretofore or may be hereafter made or agreed to or which may be made or agreed to by Lender under the powers herein granted, it being the intention of the parties to hereby establish an absolute and present transfer and assignment of all the said leases, subleases, lease guaranties and agreements, and all the avails thereof, to Lender, and Borrower does hereby appoint irrevocably Lender its true and lawful attorney in its name and stead (with or without taking possession of the aforesaid Mortgaged Property as hereinafter provided), to rent, lease or let all or any portion of the Mortgaged Property to any party or parties at such rental and upon such term, in its discretion as it may determine, and to collect all of said avails, rents, issues and profits arising from or accruing at any time hereafter, and all now due or that may hereafter become due under each and all of the leases, subleases, lease guaranties and agreements, written or verbal, or other tenancy existing or which may hereafter exist on the Mortgaged Property, with the same rights and powers and subject to the same immunities, exoneration of liability and rights of recourse and indemnity as Lender would have upon taking possession of the

2.2 <u>Prepayment of Rent</u>. Borrower represents and agrees that no rent has been or will be paid by any person in possession of any portion of the Mortgaged Property for more than one (1) installment in advance and that no rent has or will be waived, released, reduced, or discounted, or otherwise discharged or compromised by Borrower. Borrower waives any right of setoff against any person in possession of any portion of the Mortgaged Property. Borrower agrees that it will not assign any of the rents or profits except to the purchaser or grantee of the Mortgaged Property.

Mortgaged Property pursuant to the provisions hereinafter set forth.

- 2.3 <u>Not Mortgagee in Possession; No Liability</u>. Nothing herein contained shall be construed as constituting Lender as "mortgagee in possession" in the absence of the taking of actual possession of the Mortgaged Property by Lender pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.
- 2.4 <u>Present Assignment</u>. It is the intention of the parties that this assignment of rents and leases shall be a present assignment; however, it is expressly understood and agreed, anything herein contained to the contrary notwithstanding, that Borrower shall have the right to collect the rents so long as there exists no Event of Default under this Mortgage, and, provided further, that Borrower's right to collect such rents shall terminate and cease automatically upon the occurrence of any such Event of Default without the necessity of any notice or other action whatsoever by Lender.
- 2.5 No Obligation of Lender Under Leases. Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any leases, subleases or rental agreements relating to the Mortgaged Property, and Borrower shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which it may or might incur under any leases, subleases or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said leases, subleases or agreements. Should Lender incur any such liability, loss or damage, under said leases or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against Lender in connection with any one or more of said leases, subleases or agreements, Borrower agrees to reimburse Lender for the amount

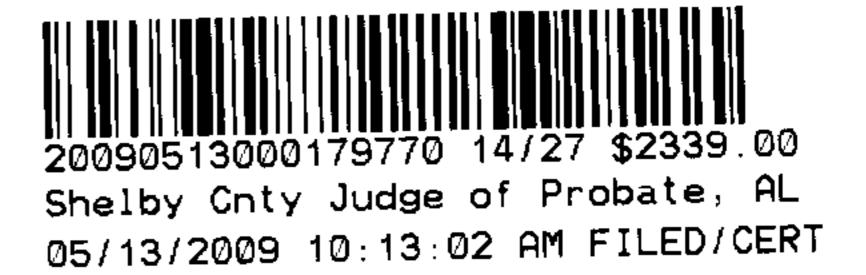


thereof, including costs, expenses and reasonable attorney's fees immediately upon demand, and until the same are fully reimbursed by Borrower, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.

- 2.6 <u>Instruction to Lessees</u>. Borrower does further specifically authorize and instruct each and every present and future lessee, tenant, sublessee or subtenant of the whole or any part of the Mortgaged Property to pay all unpaid rental agreed upon any lease, sublease or tenancy to Lender upon receipt of demand from said Lender to pay the same.
- 2.7 <u>Default (Assignment)</u>. Upon the occurrence of any Event of Default, as described in Paragraph 4.1 of this Mortgage, then, in addition to the right to demand and collect directly from tenants rents accruing from leases of the Mortgaged Property, Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

## ARTICLE III SECURITY AGREEMENT

- Grant of Security Interest. Borrower (the "debtor" for purposes of the Uniform Commercial Code), in consideration of Lender's (the "secured party" for purposes of the Uniform Commercial Code) making the Loan as aforesaid and for other good and valuable consideration, and to secure the prompt payment of same, with the interest thereon, and any extensions, renewals, modifications and refinancings of same, and any charges herein incurred by Lender on account of Borrower, including but not limited to attorneys' fees, and any and all Other Indebtedness, and further to secure the performance of the covenants, conditions and agreements hereinafter set forth and set forth in the Note, in the other Loan Documents, and in the Other Indebtedness Instruments, does hereby assign and grant to Lender title to and a security interest in such portions of the Mortgaged Property the security interest in and disposition of which is governed by the Uniform Commercial Code (the "Collateral").
- 3.2 <u>Definitions</u>. All terms used herein which are defined in the Alabama Uniform Commercial Code (the "<u>Uniform Commercial Code</u>") shall have the same meaning herein as in the Uniform Commercial Code unless otherwise indicated herein.
- 3.3 Financing Statements. No financing statement covering any Collateral or any proceeds thereof is on file in any public office, except for financing statements, if any, specifically set forth on Exhibit C attached hereto and made a part hereof, and except for the financing statements filed in connection herewith. At Lender's request, Borrower will execute one or more financing statements pursuant to the Uniform Commercial Code in form satisfactory to Lender, and will pay the cost of filing the same in all public offices wherever filing is deemed by Lender to be necessary or desirable. Borrower authorizes Lender to prepare and to file financing statements covering the Collateral and to sign Borrower's signature to such financing statements in jurisdictions where Borrower's signature is required. Borrower promises to pay to Lender the fees incurred in filing the financing statements, including but not limited to mortgage recording taxes payable in connection with filings on fixtures, which fees shall become part of the indebtedness secured hereby.
- 3.4 <u>Representations of Borrower (Collateral)</u>. With respect to all of the Collateral, Borrower represents and warrants that:
  - (a) the Collateral is used or bought primarily for business purposes;



- (b) the Collateral is being acquired and/or installed with the proceeds of the Note which Lender may disburse directly to the seller, contractor, subcontractor or other party in accordance with any of the Loan Documents;
- (c) all the Collateral will be kept at the address of Borrower shown in Paragraph 5.8(a) or, if not, at the real property described in **Exhibit A** hereto. Borrower promptly shall notify Lender of any change in the location of the Collateral. Except for transactions in the ordinary course of Borrower's business, Borrower, its agents or employees, will not remove the Collateral from said location without the prior written consent of Lender;
- (d) if certificates of title are issued or outstanding with respect to any of the Collateral, Borrower shall cause Lender's interest to be properly noted thereon; and,
- (e) In error, Borrower acquired title to the Property in the name of "Mental Health Board of Chilton and Shelby County, Inc.", which is one and the same as Borrower's name as set forth on the first page of this Mortgage. Furthermore, Borrower's true and correct name has always been as set forth on the first page of this Mortgage, except as otherwise disclosed in writing to Lender, and Borrower shall promptly advise Lender in writing of any change in Borrower's name or Borrower's state of organization.
- 3.5 <u>Assignment by Lender</u>. If at any time or times by sale, assignment, negotiation, pledge, or otherwise, Lender transfers any or all of the indebtedness or instruments secured hereby, such transfer shall, unless otherwise specified in writing, carry with it Lender's rights and remedies hereunder with respect to such indebtedness or instruments transferred, and the transfere shall become vested with such rights and remedies whether or not they are specifically referred to in the transfer. If and to the extent Lender retains any of such indebtedness or instruments, Lender shall continue to have the rights and remedies herein set forth with respect thereto.
- 3.6 No Obligation of Lender Under Assigned Contracts. Lender shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under any contracts or agreements relating to the Mortgaged Property, and Borrower shall and does hereby agree to indemnify and hold Lender harmless of and from any and all liability, loss or damage which it may or might incur under any such contracts or agreements or under or by reason of the assignment thereof and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in said contracts or agreements. Should Lender incur any such liability, loss or damage, under said contracts or agreements or under or by reason of the assignment thereof, or in the defense of any claims or demands asserted against Lender in Connection with any one or more of said Contracts or agreements, Borrower agrees to reimburse Lender for the amount thereof, including costs, expenses and reasonable attorneys' fees immediately upon demand, and until the same are fully reimbursed by Borrower, all such costs, expenses and attorneys' fees shall be secured by the assignment hereunder and by this Mortgage.
- 3.7 <u>Default (Security Agreement)</u>. Upon the occurrence of any Event of Default, as described in Paragraph 4.1 of this Mortgage, Lender shall have all rights and remedies set forth in Article IV or elsewhere in this Mortgage.

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# ARTICLE IV EVENTS OF DEFAULT AND REMEDIES

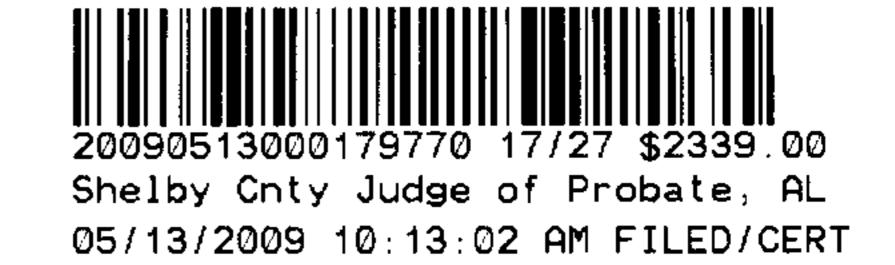
- 4.1 <u>Event of Default</u>. The term "<u>Event of Default</u>," wherever used in this Mortgage, shall mean the occurrence or existence of any one or more of the following events or circumstances:
  - (a) An Event of Default shall occur under the Note (as defined therein); or,
- (b) Failure by Borrower to pay any escrow deposit or other charge payable under this Mortgage or under any other Loan Document (after giving effect to any grace or cure period provided specifically therein); or,
- (c) Failure by Borrower to duly observe any other covenant, condition or agreement of this Mortgage, and the continuance of such failure for thirty (30) days or more after written notice of same to Borrower; or,
- (d) The fact that any representation or warranty of Borrower contained in this Mortgage or in any other Loan Document proves to be untrue or misleading in any material respect as of the time made or as of any subsequent time prior to the satisfaction in full of the Indebtedness; or,
- (e) The occurrence of any default, event of default, Default, or Event of Default under any of the other Loan Documents or Other Indebtedness Instruments; or,
- of any of Borrower's obligations hereunder, of a voluntary petition in bankruptcy or Borrower's or any such Guarantor's adjudication as a bankrupt or insolvent, or the filing by Borrower or any Guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution 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 Borrower's or any Guarantor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of Borrower or any Guarantor or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or of any interest or estate therein, or the making of any general assignment for the benefit of creditors or the admission in writing of its inability to pay its debts generally as they become due; or,
- approving a petition filed against Borrower or any Guarantor of any of the indebtedness secured hereby or of any of Borrower's obligations hereunder, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of Borrower or any Guarantor or of all or any substantial part of the Mortgaged Property or of any or all at the rents, revenues, issues, earnings, profits or income thereof, or of any interest or estate therein, without the consent or acquiescence of Borrower and/or any Guarantor which appointment shall remain unvacated and unstayed for an aggregate of thirty (30) days (whether or not consecutive); or,

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- (h) Any Transfer (other than a Transfer, if any, which, by the express terms of Paragraph 1.16, does not require Lender's consent) to which Lender shall not have first consented in writing.
- 4.2 <u>Acceleration of Maturity</u>. If an Event of Default shall have occurred, then the entire balance of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby (or such parts as Lender may elect) with interest accrued thereon (or such parts as Lender may elect) shall, at the option of Lender, become due and payable without notice or demand, time being of the essence. Any omission on the part of Lender to exercise such option when entitled to do so shall not be considered as a waiver of such right. In the event of acceleration by Bank and in the case Borrower shall fail to pay the same forthwith upon such demand, Lender shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs, which shall include the reasonable compensation, expenses and disbursements of the Lender's agents and attorneys

## 4.3 Right of Lender to Enter and Take Possession.

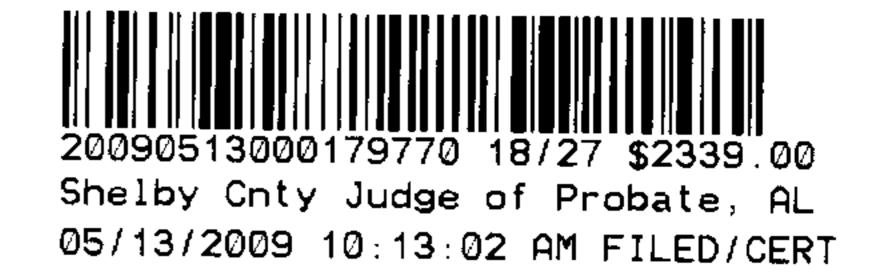
- (a) If an Event of Default shall have occurred and be continuing, Borrower, upon demand of Lender, shall forthwith surrender to Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, Lender or its agents may enter and take and maintain possession of all the Mortgaged Property, together with all the documents, books, records, papers and accounts of Borrower or then owner of the Mortgaged Property relating thereto, and may exclude Borrower and its agents and employees wholly therefrom.
- Upon every such entering upon or taking of possession, Lender, as attorney-infact or agent of Borrower, or in its own name as Mortgagee and under the powers herein granted, may hold, store, use, operate, manage and control the Mortgaged Property (or any portion thereof selected by Lender) and conduct the business thereof either personally or by its agents, and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property; (ii) insure or keep the Mortgaged Property (or any portion thereof selected by Lender) insured; (iii) manage and operate the Mortgaged Property (or any portion thereof selected by Lender) and exercise all the rights and powers of Borrower in its name or otherwise, with respect to the same, including legal action, for the recovery of rent, legal dispossessory actions against tenants holding over and legal actions in distress of rent, and with full power and authority to cancel or terminate any lease or sublease for any cause or on any ground which would entitle Borrower to cancel the same, and to elect to disaffirm any lease or sublease made subsequent to this Mortgage or subordinated to the lien hereof; (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted Lender, all as Lender from time to time may determine to be to its best advantage; and Lender may collect and receive all the income, revenues, rents, issues and profits of the Mortgaged Property (or any portion thereof selected by Lender), including those past due as well as those accruing thereafter, and, after deducting (aa) all expenses of taking, holding, managing, and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (bb) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (cc) the cost of such insurance, (dd) such taxes, assessments and other charges prior to this Mortgage as Lender may determine to pay, (ee) other proper charges upon the Mortgaged Property or any part thereof, and (ff) the reasonable compensation, expenses and disbursements of the attorneys and agents of Lender, Lender shall apply the remainder of the moneys so received by Lender, first to the payment of accrued interest under the Note; second to the payment of tax deposits required in Paragraph



- 1.4; third to the payment of any other sums required to be paid by Borrower under this Mortgage or under the other Loan Documents; fourth to the payment of overdue installments of principal on the Note; fifth to the payment of any sums due under Other Indebtedness Instruments, whether principal, interest or otherwise; and the balance, if any, as otherwise required by law.
- (c) Whenever all such Events of Default have been cured and satisfied, Lender may, at its option, surrender possession of the Mortgaged Property to Borrower, or to whomsoever shall be entitled to possession of the Mortgaged Property as a matter of law. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

#### 4.4 Receiver.

- (a) If an Event of Default shall have occurred and be continuing, Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the indebtedness hereby secured or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the rents, profits, issues, royalties and revenues thereof.
- (b) Borrower shall pay to Lender upon demand all costs and expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions contained in this Paragraph 4.4; and all such expenses shall be secured by this Mortgage.
- 4.5 <u>Lender's Power of Enforcement</u>. If an Event of Default shall have occurred and be continuing, Lender may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy (a) to enforce payment of the Loan; (b) to foreclose this Mortgage; (c) to enforce or exercise any right under any Other Indebtedness Instrument; and (d) to pursue any other remedy available to Lender, all as Lender may elect.
- 4.6 Rights of a Secured Party. Upon the occurrence of an Event of Default, Lender, in addition to any and all remedies it may have or exercise under this Mortgage, the Note, any of the other Loan Documents, the Other Indebtedness Instruments or under applicable law, may immediately and without demand exercise any and all of the rights of a secured party upon default under the Uniform Commercial Code, all of which shall be cumulative. Such rights shall include, without limitation:
- (a) The right to take possession of the Collateral without judicial process and to enter upon any premises where the Collateral may be located for the purposes of taking possession of, securing, removing, and/or disposing of the Collateral without interference from Borrower and without any liability for rent, storage, utilities or other sums;
- (b) The right to sell, lease, or otherwise dispose of any or all of the Collateral, whether in its then condition or after further processing or preparation, at public or private sale; and unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender shall give to Borrower at least ten (10) days' prior notice of the time and place of any public sale of the Collateral or of the time after which any private sale or other intended disposition of the Collateral is to be made, all of which Borrower agrees shall be reasonable notice of any sale or disposition of the Collateral;

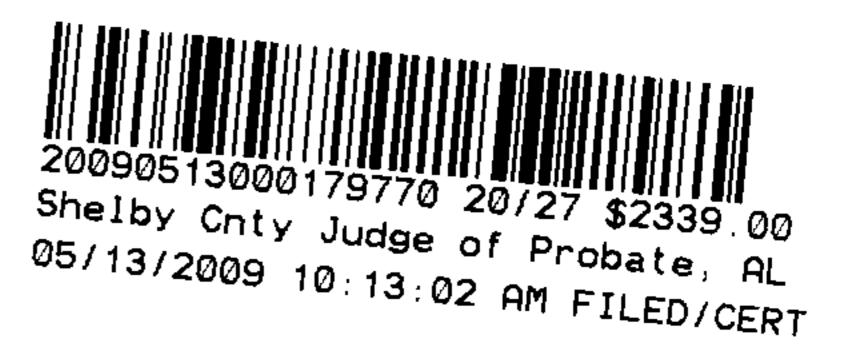


- (c) The right to require Borrower, upon request of Lender, to assemble and make the Collateral available to Lender at a place reasonably convenient to Borrower and Lender; and
  - (d) The right to notify account debtors, and demand and receive payment therefrom.

To effectuate the rights and remedies of Lender upon default, Borrower does hereby irrevocably appoint Lender attorney-in-fact for Borrower, with full power of substitution to sign, execute, and deliver any and all instruments and documents and do all acts and things to the same extent as Borrower could do, and to sell, assign, and transfer any collateral to Lender or any other party.

- Mortgaged Property to the highest bidder at public auction in front of the courthouse door in the county or counties, as may be required, where the Mortgaged Property is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county or counties, as may be required, and, upon payment of the purchase money, Lender or any person conducting the sale for Lender is authorized to execute to the purchaser at said sale a deed to the Mortgaged Property so purchased. Lender may bid at said sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner as Lender may elect. The provisions of Paragraph 4.6 of this Mortgage shall apply with respect to Lender's enforcement of rights or interests in personal property which constitutes Mortgaged Property hereunder.
- 4.8 <u>Application of Foreclosure or Sale Proceeds</u>. The proceeds of any foreclosure sale pursuant to this Mortgage shall be applied as follows:
- (a) First, to the costs and expenses of (i) retaking, holding, storing and processing the Collateral and preparing the Collateral or the Mortgaged Property (as the case may be) for sale, and (ii) making the sale, including a reasonable attorneys' fee for such services as may be necessary in the collection of the indebtedness secured by this Mortgage or the foreclosure of this Mortgage;
- (b) Second, to the repayment of any money, with interest thereon to the date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, which Lender may have paid, or become liable to pay, or which it may then be necessary to pay for taxes, insurance, assessments or other charges, liens, or debts as hereinabove provided, and as may be provided in the Note or the other Loan Documents, such repayment to be applied in the manner determined by Lender;
- (c) Third, to the payment of the indebtedness (including but not limited to the Loan and the Other Indebtedness) secured hereby, with interest to date of sale at the applicable rate or rates specified in the Note, this Mortgage, the other Loan Documents or the Other Indebtedness Instruments, as applicable, whether or not all of such indebtedness is then due, and any such payment shall first be applied to any late or other charges due hereunder, then to interest and then to principal;
  - (d) Fourth, the balance, if any, shall be paid as provided by law.

- 4.9 <u>Lender's Option on Foreclosure</u>. At the option of Lender, this Mortgage may be foreclosed as provided by law or in equity, in which event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose this Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants party defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by Borrower, a defense to any proceedings instituted by Lender to collect the sums secured hereby, or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.
- 4.10 <u>Waiver of Exemption</u>. Borrower waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Borrower waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby.
- 4.11 <u>Suits to Protect the Mortgaged Property</u>. Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or in violation of this Mortgage; (b) to preserve or protect its interest in the Mortgaged Property and in the income, revenues, rents and profits arising therefrom; and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of Lender.
- 4.12 <u>Delay or Omission No Waiver</u>. No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by the Note, this Mortgage, any of the other Loan Documents, or the Other Indebtedness Instruments to Lender may be exercised from time to time and as often as may be deemed expedient by Lender.
- 4.13 <u>Discontinuance of Proceedings—Position of Parties Restored</u>. In case Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Lender, then and in every such case Borrower and Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Lender shall continue as if no such proceeding had been taken.
- 4.14 <u>Remedies Cumulative</u>. No right, power, or remedy conferred upon or reserved to Lender by this Mortgage is intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder, or under the Note, any of the other Loan Documents, the Other Indebtedness Instruments or now or hereafter existing at law or in equity or by statute.
- 4.15 <u>Notice of Defaults Under the Loan Documents and Other Credit Arrangements.</u> Borrower shall give prompt notice to Lender of any defaults by Borrower under this Mortgage or any of the other Loan Documents, and of any notice of default received by Borrower under any other credit arrangement of Borrower.



# ARTICLE V MISCELLANEOUS

- Binding Effect. Subject to Paragraph 1.16, wherever in this Mortgage one of the parties hereto is named or referred to, the heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives of such party shall be included, and all covenants and agreements contained in this Mortgage by or on behalf of Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, administrators, executors, successors, assigns, distributees, and legal and personal representatives, whether so expressed or not.
- 5.2 <u>Headings</u>. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for convenience of reference only, are not to be considered a part hereof, and shall not limit or otherwise effect any of the terms hereof. "Herein," "hereby," "hereunder," "hereof," and other equivalent words or phrases refer to this Mortgage and not solely to the particular portion thereof in which any such word or phrase is used, unless otherwise clearly indicated by the context.
- 5.3 <u>Gender; Number</u>. Whenever the context so requires, the masculine includes the feminine and neuter, the singular includes the plural, and the plural includes the singular.
- 5.4 <u>Invalid Provisions to Affect No Others</u>. In case any one or more of the covenants, agreements, terms or provisions contained in this Mortgage, in the Note, in any of the other Loan Documents, or in the Other Indebtedness Instruments shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein, and in the Note, in the other Loan Documents and in the Other Indebtedness Instruments shall be in no way affected, prejudiced or disturbed thereby and shall be enforced to the greatest extent permitted by law.
- 5.5 <u>Loan Documents</u>. Wherever reference is made herein to this Mortgage, the Note, the Loan Documents, or the Other Indebtedness Instruments, such reference shall include all renewals, extensions, modifications and refinancings thereof.
- 5.6 <u>Conflict in Loan Documents</u>. In the event of conflict in the terms of any provision in this Mortgage, the Note, any of the other Loan Documents, or the Other Indebtedness Instruments, the terms of the provision most favorable to Lender shall apply.
- 5.7 <u>Instrument Under Seal</u>. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.
- 5.8 Addresses and Other Information. The following information, which Borrower hereby warrants, covenants, and agrees is correct, is provided in order that this Mortgage shall comply with the requirements of the Uniform Commercial Code, as enacted in the State of Alabama, for instruments to be filed as financing statements:

(a) Name of Borrower (Debtor): Mental Health Board of Chilton and Shelby Counties, Inc.

Address of Borrower: 110 Medical Center Drive

Clanton, AL 35045

Attention: Melodie D. Crawford

(b) Name of Lender (Secured Party): Colonial Bank

Address of Lender: 100 Colonial Bank Boulevard

Montgomery, Alabama 36117

Attention: Keith Wallace

(c) Record Owner of Real Estate described on **Exhibit A** hereto: Borrower

- 5.9 <u>Applicable Law</u>. This Mortgage shall be governed by the laws of the State of Alabama without regard to choice of law principles.
- 5.10 Rider. Additional provisions of this Mortgage, if any, are set forth below or on a Rider attached hereto as Exhibit D and made a part hereof.
- 5.11 Notices, Demands, and Requests. All notices, demands or requests provided for or permitted to be given pursuant to this Mortgage shall be given in accordance with the Loan Agreement.

#### 5.12 Waiver.

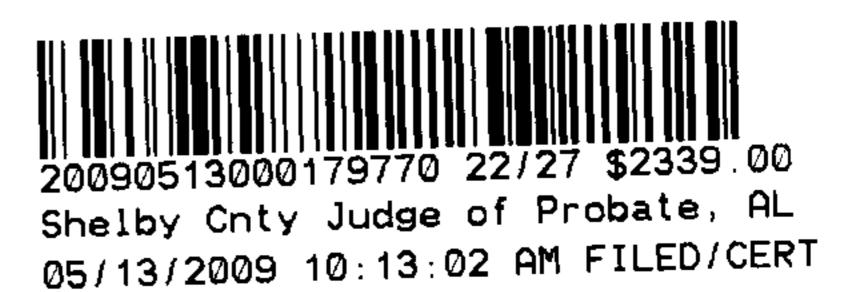
(a) No delay or omission of Lender or of any holder of the Note to exercise any right, power or remedy accruing upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein; and every right, power and remedy given by this Mortgage to Lender may be exercised from time to time and as often as may be deemed expedient by Lender. No consent or waiver, express or implied, by Lender to or of any breach or default by Borrower in the performance of the obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance of the same or any other obligations of Borrower hereunder. Failure on the part of Lender to complain of any act or failure to act or to declare an Event of Default, irrespective of how long such failure continues, shall not constitute a waiver by Lender of its rights hereunder or impair any rights, powers or remedies consequent on any breach or default by Borrower.

(b) If Lender: (i) grants forbearance of an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment of any sums secured hereby; (iii) waives or does not exercise any right granted herein or in the Note or other Loan Documents; (iv) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms, covenants, conditions or agreements of the Note or this Mortgage or other Loan Documents; (v) consents to the filing of any map, plat or replat affecting the Mortgaged Property; (vi) consents to the granting of any easement or other right affecting the Mortgaged Property; or (vii) makes or consents to any agreement subordinating the lien hereof, any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, this Mortgage, the other Loan Documents or any other obligation of

20090513000179770 21/27 \$2339.00 Shelby Cnty Judge of Probate, AL 05/13/2009 10:13:02 AM FILED/CERT Borrower or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or Guarantor; nor shall any such act or omission preclude Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any default then made or of any subsequent default. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Lender, without notice, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms, covenants, conditions or agreements hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any liabilities, obligations or undertakings of Borrower. In no event, however, shall the provisions of this paragraph be construed in derogation of Paragraph 1.16 hereof.

- 5.13 <u>Replacement of Note</u>. Upon receipt of evidence reasonably satisfactory to Borrower of the loss, theft, destruction or mutilation of the Note, and in the case of any such loss, theft or destruction, upon delivery of an indemnity agreement reasonably satisfactory to Borrower or, in the case of any such mutilation, upon surrender and cancellation of the Note, Borrower will execute and deliver, in lieu thereof, a replacement Note, identical in form and substance to the Note and dated as of the date of the Note and upon such execution and delivery all references in this Mortgage to the Note shall be deemed to refer to such replacement Note.
- 5.14 <u>Assignment</u>. This Mortgage is assignable by Lender, and any assignment hereof by Lender shall operate to vest in the assignee all rights and powers herein conferred upon and granted to Lender.
- 5.15 <u>Reserves</u>. Borrower shall establish and maintain any and all reserves required by this Mortgage (all such reserves being hereinafter collectively referred to as the "<u>Reserves</u>"). Borrower hereby grants Lender a security interest in the Reserves and any certificate(s) of deposit or other instrument(s) given in lieu of, or in addition to, such Reserves.
- 5.16 <u>Arbitration</u>. Borrower and Bank have agreed to the arbitration provisions as set forth in the Loan Agreement.
- 5.17 WAIVER OF JURY TRIAL. EACH LOAN PARTY, TO THE FULLEST EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES, RELINQUISHES AND FOREVER FORGOES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE LOAN OR ANY CONDUCT, ACT OR OMISSION OF ANY LOAN PARTY, LENDER, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH ANY LOAN PARTY OR LENDER, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

[Signatures appear on the immediately following page]



IN WITNESS WHEREOF, Borrower has caused this Mortgage to be executed and effective as of the day and year first above written, although actually executed on the date or dates reflected below.

BORROWER (Mortgagor, Debtor):

By:

Melodie D. Crawford

Its Chief Executive Officer

By:

Vicki M. Potts

Its Chief Financial Officer

(SEAL)

#### STATE OF ALABAMA

## MONTGOMERY COUNTY

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Melodie D. Crawford and Vicki M. Potts, whose names as Chief Executive Officer and Chief Financial Officer of Mental Health Board of Chilton and Shelby Counties, Inc., an Alabama non-profit corporation, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the foregoing instrument, they, as such officers and with full authority, executed the same voluntarily on behalf of said non-profit corporation as of the date hereof.

Given under my hand and official seal this 8<sup>th</sup> day of May, 2009.

[SEAL]

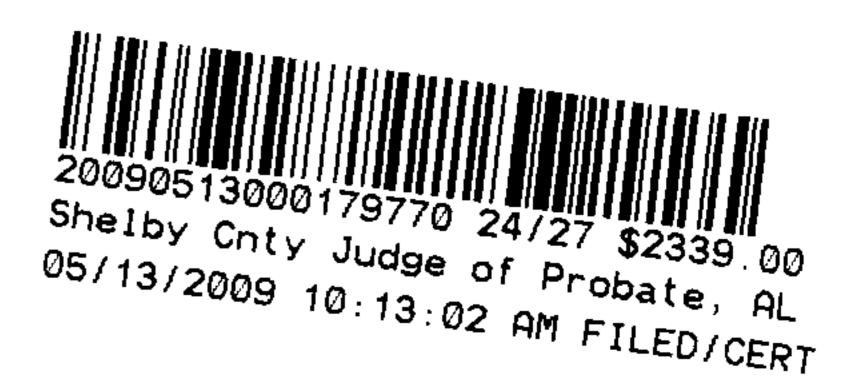
My Commission Expires: 03/06/2010

### EXHIBIT A

(Legal Description of the Property)

A PARCEL OF LAND LYING IN THE SOUTH ½ OF THE SOUTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 11, TOWNSHIP 24 NORTH, RANGE 13 EAST, BEING BETTER DESCRIBED AS FOLLOWS:

BEGIN AT THE NORTHWEST CORNER OF THE SOUTH ½ OF THE SOUTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 11, TOWNSHIP 24 NORTH, RANGE 13 EAST; THENCE NORTH 89°56′44″ EAST ALONG THE NORTH LINE OF THE SOUTH ½ OF SAID ¼-1/4, A DISTANCE OF 1,299.81 FEET; THENCE SOUTH 00°57′27″ EAST, A DISTANCE OF 21.05 FEET; THENCE SOUTH 89°31′17″ EAST, A DISTANCE OF 264.74 FEET TO THE WESTERLY ROAD RIGHT OF WAY OF U.S. HIGHWAY NUMBER 31; THENCE SOUTH 10°35′08″ WEST ALONG SAID ROAD RIGHT OF WAY, A DISTANCE OF 681.40 FEET; THENCE NORTH 84°27′25″ WEST, A DISTANCE OF 644.13 FEET; THENCE SOUTH 85°12′06″ WEST, A DISTANCE OF 399.15 FEET; THENCE SOUTH 89°38′00″ WEST, A DISTANCE OF 389.73 FEET TO THE WEST LINE OF THE SOUTH ½ OF SAID ¼-1/4; THENCE NORTH 00°57′27″ WEST ALONG SAID WEST LINE, A DISTANCE OF 665.58 FEET TO THE POINT OF BEGINNING. CONTAINING 983,106 SQUARE FEET OR 22.57 ACRES.



## EXHIBIT B

## (Permitted Exceptions)

- 1. Ad valorem taxes for the year 2009, which said taxes are exempt.
- 2. Rights or claims of parties in possession not shown by the Public Records.
- 3. Easements, or claims of easments, not shown by the Public Records.
- 4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title to the land that would be disclosed by an accurate and complete survey of the land. The term "encroachment" includes encroachments of existing improvements located on the land onto adjoining land, and encroachments onto the land of existing improvements located on adjoining land.
- 5. 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 or under subject property.
- No coverage is afforded hereunder as to the specific amount of acreage referred to in the legal description under Exhibit "A".
- 7. Transmission Line Permit to Alabama Power Company as shown by instrument recorded in Deed Book 98 at page 75 and Deed Book 104 at page 151 in the Office of the Judge of Probate of Shelby County, Alabama.
- 8. Right-of-way granted to Shelby County, as shown by instruments recorded in Deed Book 102 at Page 418 and Deed Book 102 at Page 439 in the aforesaid Probate Office.
- Right of Way Easement in favor of South Central Bell Telephone Company dated September 30, and recorded December 13, 1985 in Book 52 at Page 82 in the aforesaid Probate Office.
- 10. The following matters as reflected on that certain survey prepared by Jeff D. Arrington, AL. No. 18664, dated November 24, 2008 including the following:
  - a. overhead power lines;
  - b. encroachment of building at the south line of the proeprty; and,
  - c. pump shed.

## EXHIBIT C

No financing statement covering any collateral or any proceeds thereof is on file in any public office, except for financing statements filed in connection herewith, and any listed below:

**NONE** 

## EXHIBIT D

(Additional Provisions)

**NONE**