



20090819000320100 1/12 \$44.00
Shelby Cnty Judge of Probate, AL
08/19/2009 02:57:06 PM FILED/CERT

**This instrument was prepared by
and after recording return to:**

Lewis A. Burleigh, Esq.
Dechert LLP
200 Clarendon Street, 27th Floor
Boston, MA 02116

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

SCP 2009-C32-001 LLC,
Landlord

to

WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, as Trustee,
Lender

and

Alabama CVS Pharmacy, L.L.C.,
Tenant

Dated as of June 24, 2009

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement (this "Agreement") is dated as of the Effective Date set forth on **Schedule A** attached hereto and made a part hereof between WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, AS TRUSTEE ("Lender"), the Lessee set forth on **Schedule A** attached hereto and made a part hereof ("Tenant"), and the Borrower set forth on **Schedule A** attached hereto and made a part hereof ("Landlord").

RECITALS

- A. Tenant is the tenant under that certain Lease described on **Schedule A** attached hereto and made a part hereof (the "Lease"), of the premises described in **Exhibit A** attached hereto and made a part hereof (the "Land"), together with the buildings and improvements located on the Land ("Improvements") (collectively, the "Mortgaged Property"). A memorandum or short form of the Lease may be recorded approximately simultaneously with the recording of this Agreement with the Registry of Deeds/Office of the Clerk or in the Land Records, as applicable, in the county or counties, city or cities, or town or towns as applicable, and state or commonwealth where the Land is located (the "Registry").
- B. This Agreement is being entered into in connection with a mortgage loan (the "Loan") from Lender to Landlord, secured by, inter alia: (a) a first mortgage, deed of trust or deed to secure debt on and of the Landlord's interest in the Mortgaged Property (the "Security Instrument") dated as of the Effective Date to be recorded with the Registry concurrently with, but prior to, the recording of this Agreement; and (b) a first assignment of lease and rents (the "Assignment of Lease and Rents") dated as of even date herewith to be recorded with the Registry concurrently with, but prior to, the recording of this Agreement. The Security Instrument and the Assignment of Lease and Rents are hereinafter collectively referred to as the "Loan Documents."

AGREEMENT

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

- 1. Tenant agrees that the Lease, subject to the provisions of Section 20(a) of Part II of the Lease, and notwithstanding the exercise of a "Substitute Collateral Right" pursuant to paragraph 19 of the Security Instrument, is and shall be, at the option of Lender upon notice to Tenant, at any time and from time to time, either subject and subordinate, or superior, to the Loan Documents and to all present or future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Loan Documents, to the full extent of all amounts secured by the Loan Documents from time to time. Such options of Lender may be exercised an unlimited number of times. This Agreement shall constitute notice to Tenant that for the time being, until further written notice to the

contrary, Lender elects that the Lease is and shall be subject and subordinate as aforesaid. In addition, to the extent that the Lease shall entitle Tenant to notice of any mortgage, this Agreement shall constitute such notice to Tenant with respect to the Security Instrument.

2. Notwithstanding the provisions of Section 1 hereof, Lender agrees that, if the Lender exercises any of its rights under the Loan Documents, including an entry by Lender pursuant to the Security Instrument or a foreclosure of, or exercise of any power of sale under, the Security Instrument, or any sale or transfer in lieu thereof, Lender shall not disturb Tenant's right of quiet possession of the Mortgaged Property under the terms of the Lease so long as no "Event of Default" (as defined in the Lease) shall have occurred and be continuing.
3. Tenant agrees that, in the event of a foreclosure of the Security Instrument by Lender or the acceptance of a conveyance in lieu of foreclosure by Lender or any other succession of Lender to ownership of Landlord's interest in the Mortgaged Property, Tenant will attorn to and recognize Lender as its landlord under the Lease for the remainder of the Term (as defined in the Lease) of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform all of the obligations of Tenant pursuant to the Lease.
4. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:
 - (a) liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord), or
 - (b) subject to any defense or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord), or
 - (c) bound by any payment of "Fixed Rent" or "Additional Rent" (as such terms are defined in the Lease) which Tenant might have paid for more than one month in advance of the due date under the Lease to any prior Landlord, (including, without limitation, the then defaulting Landlord), except to the extent such monies are actually received by Lender, or
 - (d) bound by any obligation of any prior Landlord to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any such prior Landlord's interest, except the obligations set forth in paragraph 33 (Completion Reserve) of the Security Instrument, or
 - (e) accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender, or
 - (f) bound by any amendment or modification of the Lease or by any waiver or forbearance on the part of any prior Landlord (including, without limitation, the then defaulting Landlord), in either case to the extent the same is made or given without the prior written consent of Lender; or

- (g) liable with respect to warranties or indemnities of any nature whatsoever made by any prior Landlord (including, without limitation, the then defaulting Landlord), including any warranties or indemnities regarding use, compliance with zoning, hazardous wastes or environmental laws, Landlord's title, Landlord's authority, habitability, fitness for purpose, or possession except for the limited covenant of title set forth in the Lease. In the event that Lender shall acquire Landlord's estate in and to the Mortgaged Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then equity interest, if any, in the Mortgaged Property, and Tenant shall look exclusively to such equity interest of Lender, if any, in the Mortgaged Property for the payment and discharge of any obligations or liability imposed upon Lender hereunder, under the Lease or under any new lease of the Mortgaged Property, except with respect to the misappropriation of insurance or condemnation proceeds which have been received by Lender.
5. Tenant hereby acknowledges Lender as being entitled to copies of all notices of Landlord default(s), if any, under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord and shall accept notices of default from Lender. Lender's cure of Landlord's default shall not be considered an assumption by Lender of Landlord's other obligations under the Lease. If, in curing any such default, Lender requires access to the Mortgaged Property to effect such cure, Tenant shall furnish access to the Mortgaged Property to Lender as required by Lender to effect such cure at all reasonable times and manners; provided that Tenant's occupancy, use and enjoyment of the Mortgaged Property is not unreasonably disrupted thereby. Unless Lender otherwise agrees in writing, Lender shall have no liability to perform Landlord's obligations under the Lease, both before and after Lender's exercise of any right or remedy under this Agreement except as to the rights of Tenant set forth in paragraph 2 hereof. Neither Lender nor any other purchaser at foreclosure or recipient of a deed in lieu thereof shall become liable under the Lease unless and until Lender or such other purchaser or recipient becomes, and then only with respect to periods in which Lender or its designee or nominee is, the owner of Landlord's interest in the Mortgaged Property. Lender shall have the right, without Tenant's consent but subject to the provisions of this Agreement, to foreclose, or exercise any power of sale under, the Security Instrument or to accept a conveyance in lieu of foreclosure of the Security Instrument or to exercise any other remedies under the Loan Documents.
6. Tenant agrees that Tenant shall not, without the prior written consent of Lender, (a) amend or modify the Lease, (b) terminate, cancel or surrender the Lease except in accordance with the express provisions thereof, or enter into any agreement with Landlord to do so, (c) pay any installment of Fixed Rent or Additional Rent under the Lease more than one month in advance of the due date thereof or otherwise than in the manner provided for in the Lease, or (d) sublease all or any part of the Mortgaged Property except in accordance with the terms of the Lease. Tenant further agrees that

upon the assignment or sublease of the Lease in accordance with the terms of the Lease, Tenant shall remain primarily liable for all obligations under the Lease.


7. Tenant has no knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant hereby consents to the Assignment of Lease and Rents and confirms its agreement with the provisions of paragraph 15 thereof. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignment, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignment or by any subsequent receipt or collection of rents thereunder, unless Lender shall become the owner of the Mortgaged Property or shall specifically undertake such liability in writing.
8. In accordance with the terms of the Lease, Tenant agrees to permit Lender and/or Landlord and Lender's and/or Landlord's representatives access to, and an opportunity to inspect, the Mortgaged Property during normal business hours and upon reasonable notice. Tenant further acknowledges and agrees to be bound by the license and right of access granted to Lender and its agents, employees, contractors, engineers, architects, nominees, attorneys and other representatives pursuant to paragraph 23(b) of the Security Instrument.
9. If Tenant is a corporation, the individual executing this Agreement on behalf of such corporation is duly authorized to execute and deliver this Agreement on behalf of such corporation, and that this Agreement is binding upon such corporation in accordance with its terms.
10. Any notice, demand, statement, request or consent made hereunder shall be effective and valid only if in writing, referring to this Agreement, signed by the party giving such notice, and delivered either personally to such other party, or sent by nationally recognized overnight courier delivery service or by certified mail of the United States Postal Service, postage prepaid, return receipt requested, addressed to the other party at such party's Notice Address as indicated on **Schedule A** attached hereto and made a part hereof (or to such other address or person as either party or person entitled to notice may by notice to the other party specify).

Unless otherwise specified, notices shall be deemed given as follows: (i) if delivered personally, when delivered, (ii) if delivered by nationally recognized overnight courier delivery service, on the day following the business day such material is sent, or (iii) if sent by certified mail, three (3) business days after such notice has been sent.

11. The term "Lender" as used herein includes any successors or assigns of the Lender named herein, including without limitation, any co-lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a conveyance in lieu of foreclosure, and their successors and assigns, and the term "Tenant" as used herein includes the Tenant named herein (the "Original Tenant") and any successors or assigns of the Original Tenant.

12. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other provisions of this Agreement shall remain in full force and effect.
13. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, except by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.
14. This Agreement shall be construed in accordance with the laws of the State or Commonwealth in which the Mortgaged Property is located.

[Signatures appear on the following pages.]



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IN WITNESS WHEREOF, the foregoing instrument has been executed by the undersigned as of the day and year first written above.



LENDER:

WELLS FARGO BANK NORTHWEST,
NATIONAL ASSOCIATION, a national
banking association, as Trustee

By: 
Name: Val T. Orton
Title: Vice President

ACKNOWLEDGEMENT

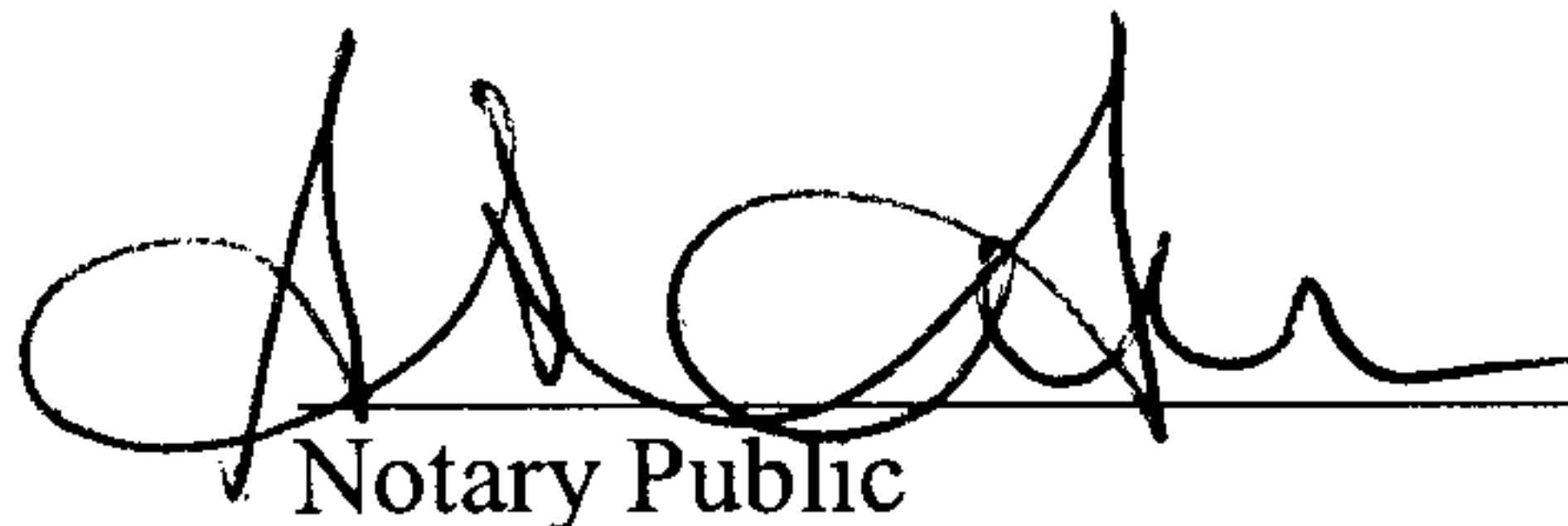
STATE OF UTAH)
) ss:
COUNTY OF SALT LAKE)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Val T. Orton, whose name as Vice President of WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION, a national banking association, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, acting in his capacity as such officer and with full authority executed the same voluntarily for and as the act of said national banking association.

Given under my hand and official seal this ____ day of June, 2009.



[Notarial Seal]



Notary Public

My commission expires: November 02, 2010

[Signatures continued on following page.]

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IN WITNESS WHEREOF, the foregoing instrument has been executed by the undersigned as of the day and year first written above.

TENANT:

Alabama CVS Pharmacy, L.L.C., an Alabama limited liability company

[CORPORATE SEAL]

By: 

Name: Michael B. Nulman

Title: Assistant Secretary

ACKNOWLEDGEMENT

STATE OF RHODE ISLAND)

)

ss:

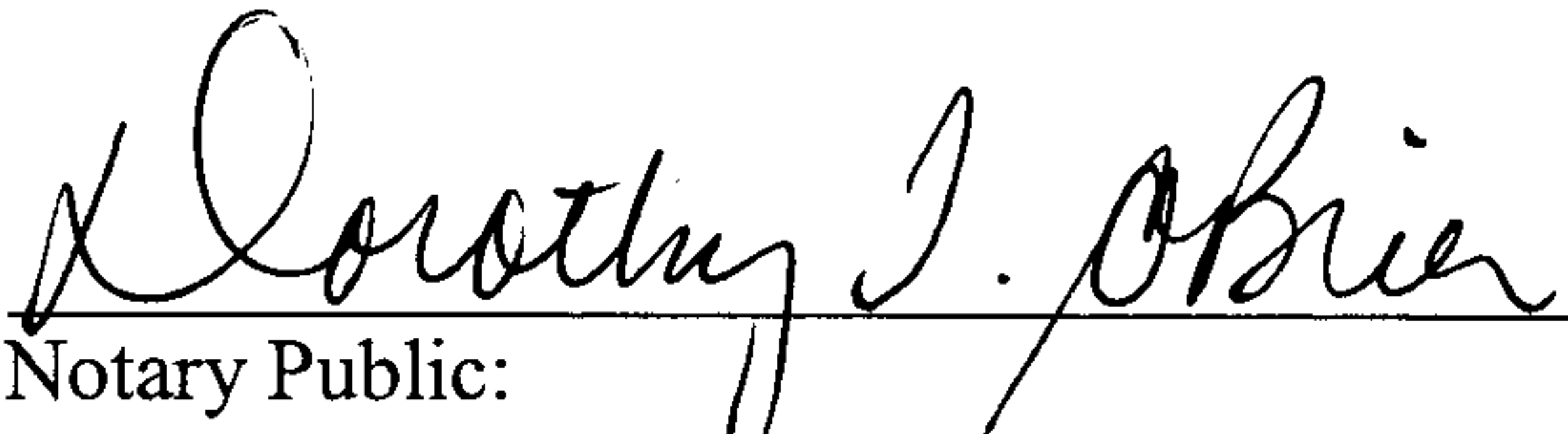
COUNTY OF PROVIDENCE)

)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Michael B. Nulman, whose name as Assistant Secretary of Alabama CVS Pharmacy, L.L.C., 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 of said instrument, he, acting in his capacity 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 12 day of June, 2009.

[Notarial Seal]


Notary Public:

My commission expires:

Dorothy T. O'Brien

Notary Public

State of Rhode Island

[Signatures continued on the following page.]

My Commission Expires 08/15/2009

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IN WITNESS WHEREOF, the foregoing instrument has been executed by the undersigned as of the day and year first written above.

LANDLORD:

[CORPORATE SEAL]

SCP 2009-C32-001 LLC, a Delaware limited liability company

By: 

Name: Brett L. Landes

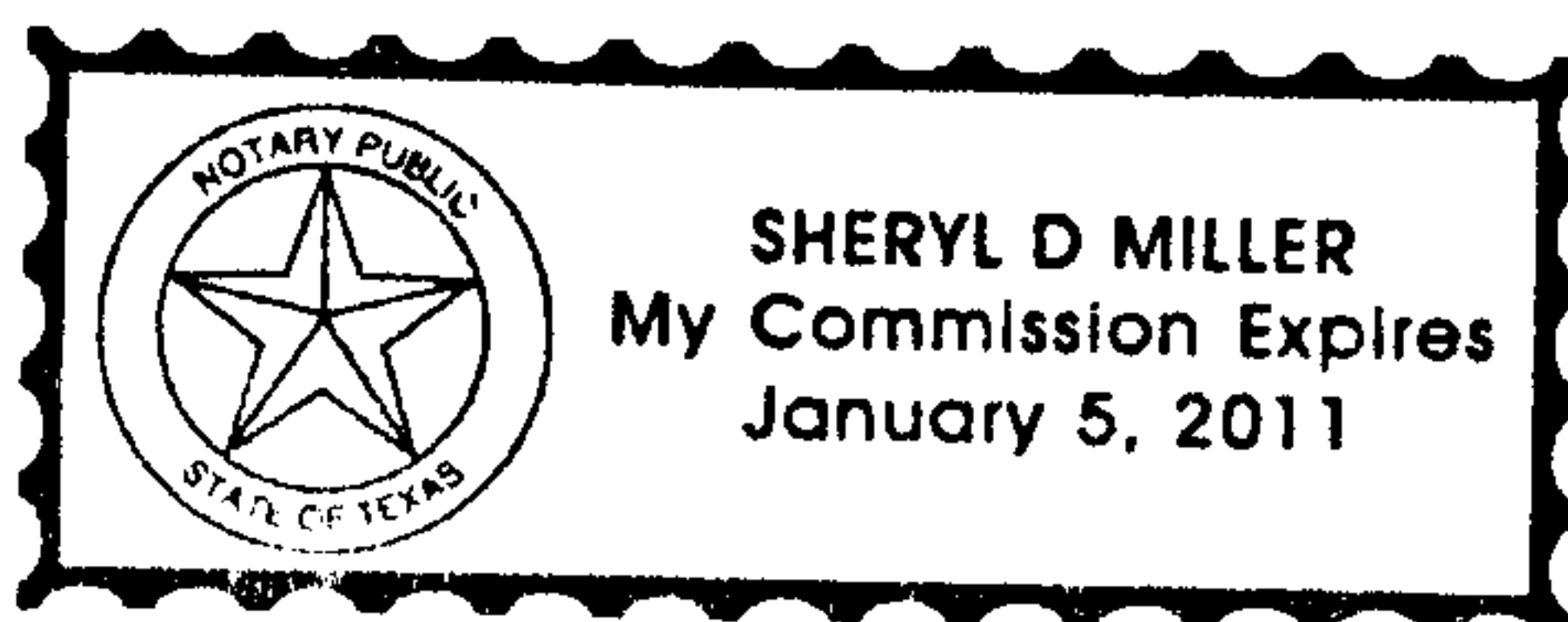
Title: President

ACKNOWLEDGEMENT

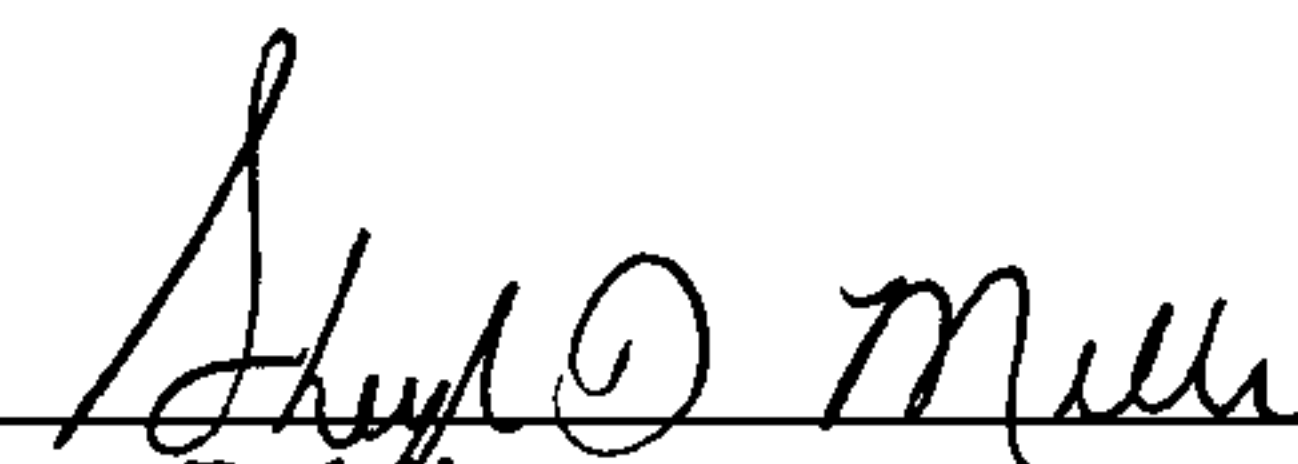
STATE OF TEXAS)
) ss.
COUNTY OF DALLAS)

I, the undersigned Notary Public in and for said County, in said STATE, hereby certify that Brett L. Landes, whose name as President of SCP 2009-C32-001 LLC, a Delaware 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 of said instrument, he, acting in his capacity 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 12 day of June, 2009.



[Notarial Seal]


Notary Public
My commission expires:

AL SNDA


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**SCHEDULE A
MASTER SCHEDULE**


| | |
|--------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Effective Date: | June 24, 2009 |
| Borrower: | SCP 2009-C32-001 LLC, a Delaware limited liability company |
| Address of (1) Borrower's principal place of business; (2) Guarantor's principal place of business; and (3) Borrower Notice Address | 2525 Fairmount Street, Suite 200, Dallas, Texas 75201, Attn: Greg Lovasz With a copy to: 11910 Greenville Avenue, Suite 400 Dallas, Texas 75243 Attn: Lorne O. Liechty, Esq. |
| Borrower's Taxpayer Identification Number: | 20-5322712 |
| Loan Amount: | \$3,791,520.22 |
| Security Instrument: | Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing |
| Guarantor: | SCP 2009-C32 L.P., a Texas limited partnership |
| Lease: | Lease, dated as of June 19, 2009, between Borrower, as landlord, and Lessee, as tenant |
| Lessee: | Alabama CVS Pharmacy, L.L.C., an Alabama limited liability company |



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| | |
|-------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Lender Notice Address: | <p>Wells Fargo Bank Northwest, National Association, as Trustee 299 South Main Street MAC: U1228-120, 12th Floor Salt Lake City, Utah 84111 Attn.: Corporate Trust Services/Val T. Orton Fax: (801) 246-5053</p> <p>With a copy to: Dechert LLP 200 Clarendon Street, 27th floor Boston, Massachusetts 02116 Attn: Lewis A. Burleigh, Esq. Fax: (617) 426-6567</p> |
| Lessee Notice Address: | <p>Alabama CVS Pharmacy, L.L.C. c/o CVS Corporation One CVS Drive Woonsocket, Rhode Island 02895 Attn: Property Administration Dept./Store # 467 Fax: (401) 770-7887</p> <p>With a copy to: Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. One Financial Center Boston, Massachusetts 02111 Attn.: Andrew R. Urban, Esq. Fax: (617) 542-2241</p> |

[End of Schedule A Master Schedule]



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Store No. 467
Calera, Alabama

EXHIBIT A

LEGAL DESCRIPTION

Lot 1 of "Lot 1 & 2 CVS Addition to Calera Subdivision," recorded in Map Book 40,
page 52, Deed Records of Shelby County, Alabama.


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