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Shelby Cnty Judge of Probate, AL  
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This instrument prepared by:  
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STATE OF ALABAMA )

COUNTY OF SHELBY )

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

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** (the “**Agreement**”) made as of this 16th day of November, 2010, by and among **VALLEYDALE OFFICE PLAZA, LLC**, an Alabama limited liability company, with an address of 2200 Valleydale Road, Suite 200, Birmingham, Alabama 35244 (the “**Owner**”), **PAIN AND REHABILITATION CENTER, INC.**, an Alabama corporation, with an address of 2270 Valleydale Road, Birmingham, Alabama 35244 (the “**Lessee**”), and **OAKWORTH CAPITAL BANK**, an Alabama licensed state banking corporation, with an address of 2100A Southbridge Parkway, Suite 445, Birmingham, Alabama 35209 (together with its successors or assigns, the “**Bank**”).

**RECITALS:**

Owner and Lessee are parties to that certain Lease Agreement dated as of February 5, 2010 (as amended, the “**Lease**”), pursuant to which Lessee leases from Owner certain real property located in Shelby County, Alabama, as more particularly described in Exhibit A attached hereto and incorporated herein (the “**Property**”).

Owner is borrowing the sum of \$2,100,000.00 from Bank (as amended, extended, restated, modified, renewed or refinanced, collectively, the “**Loan**”), pursuant to that certain Construction Loan Agreement by and between Bank and Owner of even date herewith (the “**Loan Agreement**”; capitalized terms used herein and not otherwise defined shall have the meanings ascribed in the Loan Agreement), as evidenced by that certain Promissory Note from Owner to Bank of even date herewith (as amended, extended, restated, modified, renewed or refinanced, collectively, the “**Note**”), and secured by, among other things, that certain Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement of even date herewith granting Bank a first priority mortgage lien on the real property that encompasses the Property (the “**Mortgage**”). The Loan Agreement, the Note, the Mortgage and the other documents, certificates, instruments and agreements executed by Owner, Lessee or others in connection with the Loan or to otherwise evidence or secure the Loan, and all renewals, supplements, or amendments thereto or a part thereof, are collectively referred to as the “**Loan Documents**”.

Lessee and Bank desire to confirm their understanding with respect to the Lease and the Loan Documents, and to have Owner confirm its agreement therewith.



## AGREEMENT:

In consideration of the covenants, terms, conditions, and agreements contained herein, the parties hereto agree as follows:

1. The Lease and any extensions, modifications or renewals thereof, including, but not limited to, any option to purchase or right of first refusal to purchase the Property or any portion thereof, if any, is and shall continue to be subject and subordinate in all respects to the Loan Documents and the liens and security interests created thereby.

2. Lessee agrees to deliver to Bank, in the manner set forth below, a copy of any notice of default sent to Owner by Lessee. If Owner fails to cure such default within the time provided in the Lease, Bank shall have the right, but not the obligation, to cure such default on behalf of Owner within thirty (30) calendar days after the time provided for Owner to cure such default in the Lease has expired or, if such default is curable but cannot be cured within that time, within a reasonable period provided Bank is proceeding with due diligence to cure such default. In such event, Lessee shall not terminate the Lease while such remedies are being diligently pursued by Bank. Further, Lessee shall not terminate the Lease on the basis of any default by Owner that is incurable by Bank (such as, for example, the bankruptcy of Owner or breach of any representation by Owner), provided Bank is proceeding with due diligence to commence an action to appoint a receiver or to obtain the right to possession of the Property by foreclosure, deed in lieu of foreclosure, or otherwise (each of the foregoing, a "**Foreclosure**"). Lessee hereby agrees that no action taken by Bank to enforce any rights under the Loan Documents by reason of any Default thereunder (including, without limitation, the appointment of a receiver, any Foreclosure or any demand for rent under any assignment of rents or leases) shall give rise to any right of Lessee to terminate the Lease, nor shall such action invalidate or constitute a breach of any of the terms of the Lease.

3. If Bank or its nominee or designee, or another purchaser of the Property upon a Foreclosure (Bank or any such person or entity, a "**Successor Owner**") succeeds to the interest of Owner under the Lease, such Successor Owner shall not disturb Lessee's possession of the Property and shall continue and recognize the Lease and Lessee's rights thereunder, and Lessee shall make full and complete attornment to Successor Owner as substitute Owner upon the same terms, covenants and conditions as provided in the Lease, including, but not limited to, any option to purchase or right of first refusal to purchase the Property as may be provided in the Lease. Lessee agrees that any such option or right of first refusal to purchase the Property or any portion thereof, as may be provided in the Lease shall not apply to and shall not in any way impair or delay any Foreclosure.

4. Lessee agrees that, if Successor Owner shall succeed to the interest of Owner under the Lease, Successor Owner shall not be:

(a) liable for any prior act or omission of Owner or any prior Owner or consequential damages arising therefrom;

(b) subject to any offsets or defenses which Lessee might have as to Owner or any prior Owner;



(c) required or obligated to credit Lessee with any rent or additional rent for any rental period beyond the then current month which Lessee might have paid Owner; or

(d) bound by any amendments or modifications of the Lease made without Bank's or Successor Owner's prior express written consent.

5. Lessee agrees that, without the prior express written consent of Bank in its sole discretion in each case, Lessee shall not (a) amend, modify, terminate or cancel the Lease or any extensions or renewals thereof, or tender a surrender of the Lease (except in each case that, upon a default by Owner under the Lease, Lessee may exercise its rights under the Lease after giving to Bank the notice and cure period required by this Agreement), (b) make a prepayment of any rent or additional rent more than one (1) month in advance of the due date thereof, or (c) subordinate or permit the subordination of the Lease to any lien or security interest subordinate to the Loan Documents. Any such purported action made without Bank's prior express written consent shall be void as against Bank or the holder of the Loan Documents.

6. To the extent that the Lease shall entitle Lessee to notice of the existence of any of the Loan Documents and the identity of any mortgagee or any ground lessor, this Agreement shall constitute such notice to Lessee with respect to the Loan Documents and Bank.

7. Upon and after the occurrence of a Default under the Loan Documents that is not cured after any applicable notice and/or cure periods, Bank shall be entitled, but not obligated, to require that Lessee pay all rent, additional rents, escrows and impounds under the Lease as directed by Bank, which payment shall, to the extent made, satisfy such payment obligations of Lessee under the Lease. Owner agrees to hold Lessee harmless with respect to any such payments made by Lessee to Bank.

8. Nothing in this Agreement shall impose upon Bank any liability for the obligations of Owner under the Lease unless and until Bank takes title to the Property, at which time Bank shall be responsible only for ongoing obligations arising after the date such Successor Owner takes title and possession of the Property. Anything herein or in the Lease to the contrary notwithstanding, in the event that a Successor Owner shall acquire title to the Property, Successor Owner shall have no obligation, nor incur any liability, beyond Successor Owner's then interest, if any, in the Property, and Lessee shall look exclusively to such interest, if any, of Successor Owner in the Property for the payment and discharge of any obligations imposed upon Successor Owner hereunder or under the Lease, and Successor Owner is hereby released or relieved of any other liability hereunder and under the Lease. Lessee agrees that, with respect to any money judgment which may be obtained or secured by Lessee against Successor Owner, Lessee shall look solely to the estate or interest owned by Successor Owner in the Property, and Lessee will not collect or attempt to collect any such judgment out of any other assets of Successor Owner.

9. Except as specifically provided in this Agreement, Bank shall not, by virtue of this Agreement, the Mortgage or any other instrument to which Bank may be party, be or become subject to any liability or obligation to Lessee under the Lease or otherwise.



10. The provisions of the Agreement shall be binding upon and insure to the benefit of the parties hereto and their respective successors and assigns. The words, "Bank", "Owner" and "Lessee" shall include their respective heirs, legatees, executors, administrators, beneficiaries, successors and assigns.

11. Any notice or other communication required or permitted to be given in connection with this Agreement shall be given at the applicable address set forth in the opening paragraph of this Agreement and in the manner set forth in the Loan Agreement.

12. This Agreement contains the entire agreement between the parties and no modifications shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

13. This Agreement may be executed in multiple counterparts, all of which shall be deemed originals and with the same effect as if all parties had signed the same document. All of such counterparts shall be construed together and shall constitute one instrument.

14. Owner or Lessee shall indemnify, save, defend and hold Bank harmless from any loss, cost, expense or liability, including fees of accountants, attorneys, consultants and expert witnesses reasonably incurred in defending or enforcing Bank's rights arising out of or related to this Agreement or otherwise relating to the relationship of the parties, regardless of whether they are incurred before, during or after any litigation or other dispute resolution procedure, regardless of Bank's success on the merits and regardless of whether they relate to issues arising out of or related to contract, tort, bankruptcy or any other area of law.

15. This Agreement shall be governed by and interpreted, construed and enforced according to the laws of the State of Alabama. The parties submit to exclusive personal jurisdiction of the state courts in Jefferson County in the State of Alabama for the enforcement of any and all obligations under this Agreement, the Loan Documents, or arising out of or related to the transactions contemplated thereby

**16. EACH PARTY HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE LOAN DOCUMENTS OR THE LOAN, OR (B) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF BANK, OWNER OR LESSEE WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. OWNER AND LESSEE AGREE THAT BANK MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF OWNER AND LESSEE IRREVOCABLY TO WAIVE THEIR RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF BANK TO MAKE THE LOAN, AND THAT, TO THE EXTENT**

**PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY  
WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN OWNER,  
LESSEE AND BANK SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT  
JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.**

**[SIGNATURES ON FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the day and year first above written.

**OWNER:**

**VALLEYDALE OFFICE PLAZA, LLC**, an Alabama limited liability company

By:

  
Moiz Fouladbakhsh

Its:

Sole Member

**STATE OF ALABAMA**

)

)

**COUNTY OF JEFFERSON**

)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Moiz Fouladbakhsh, whose name as the Sole Member of **VALLEYDALE OFFICE PLAZA, LLC**, an Alabama limited liability company, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said agreement, he, as such Sole Member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal, this 16<sup>th</sup> day of November, 2010.



Notary Public

My Commission Expires:

May 10, 2013



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**LESSEE:**

**PAIN AND REHABILITATION CENTER,  
INC.,** an Alabama corporation

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

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

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

STATE OF Alabama )

COUNTY OF Jefferson )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Daniel M. Doleys PhD, whose name as the Director of **PAIN AND REHABILITATION CENTER, INC.,** an Alabama corporation, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said agreement, he/she, as such Director and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal, this 16<sup>th</sup> day of November, 2010.

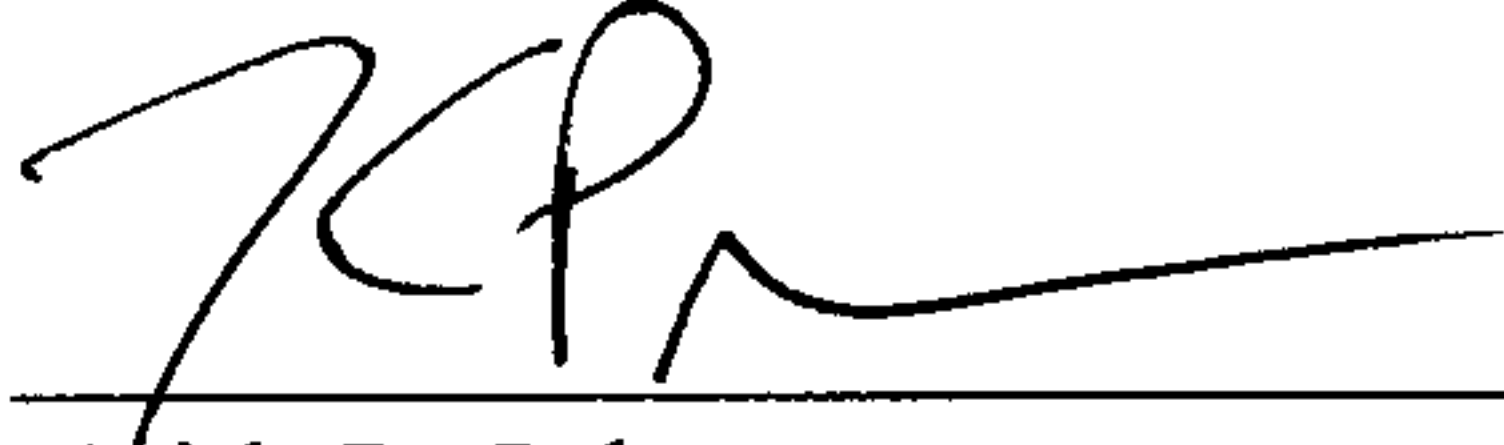
Charlene Brooks  
Notary Public  
My Commission Expires: 5/25/14



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**BANK:**


**OAKWORTH CAPITAL BANK**, an Alabama  
state banking corporation


By:   
Keith P. Johnson  
Its: Associate Managing Director

**STATE OF ALABAMA** )  
 )  
**COUNTY OF JEFFERSON** )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Keith P. Johnson, whose name as Associate Managing Director of **OAKWORTH CAPITAL BANK**, an Alabama state banking corporation, is signed to the foregoing agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said agreement, he, as such Associate Managing Director and with full authority, executed the same voluntarily for and as the act of said banking corporation on the day the same bears date.

Given under my hand and official seal, this 16<sup>th</sup> day of November, 2010.

  
Notary Public  
My Commission Expires: May 10, 2013

  
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## EXHIBIT A

### LEGAL DESCRIPTION

A parcel of land situated in the Northeast one-quarter of the Southeast one-quarter of Section 20, Township 19 South, Range 2 West, Shelby County, Alabama, known as Lot 1 Valleydale Office Plaza as recorded in Map Book 42, Page 19 in the Office of the Judge of Probate, Shelby County, Alabama and being more particularly described as follows:

Commence at the Southwest corner of said quarter-quarter section and run North 00 degrees 00 minutes 00 seconds West along the West line of said quarter-quarter section for a distance of 332.95 feet to a point on the Northwestern right of way line of Valleydale Road (80' right of way) and a point on a curve to the left, said curve having a radius of 5689.64 feet, a central angle of 00 degrees 11 minutes 26 seconds, a chord distance of 18.93 and a chord bearing of N 46 degrees 31 minutes 07 seconds East, thence run along arc of said curve and along said right of way of Valleydale Road for a distance of 18.93 feet to a found capped rebar stamped "PLS#15153", said point also being the POINT OF BEGINNING; thence leaving said right of way, run North 00 degrees 00 minutes 00 seconds West for a distance of 512.44 feet to a found capped rebar stamped "PLS#15153"; thence run South 90 degrees 00 minutes 00 seconds East for a distance of 121.98 feet to a set 5/8" rebar capped and stamped CA-560LS; thence run South 00 degrees 00 minutes 00 seconds East for a distance of 304.58 feet to a set 5/8" rebar capped and stamped CA-560LS; said point being at the point of beginning of a tangent curve to the left, said curve having a radius of 87.00 feet, a central angle of 41 degrees 49 minutes 54 seconds and a chord distance of 62.12 feet and a chord bearing of South 20 degrees 54 minutes 57 seconds East; thence run in a Southerly to Southeasterly direction along the arc of said curve for a distance of 63.52 feet to a set 5/8" rebar capped and stamped CA-560LS on the Northwesterly right of way line of Valleydale Road and a point on a non-tangent curve to the left, said curve having a radius of 5689.68 feet, a central angle of 02 degrees 05 minutes 38 seconds, a chord distance of 207.93 feet and a chord bearing of South 43 degrees 53 minutes 34 seconds West; thence run in a Southwesterly direction along arc of said curve and along the Northwesterly right of way of said Valleydale Road for a distance of 207.94 feet to the POINT OF BEGINNING. Said parcel contains 55,568 square feet or 1.28 acres more or less.



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