

This document was prepared by:

Christine Keifer Borton
Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, Alabama 35203

After recording, return to above.

(Space Above For Recorder's Use Only)

NOTE AND MORTGAGE ASSUMPTION AGREEMENT

THIS NOTE AND MORTGAGE ASSUMPTION AGREEMENT (this "**Agreement**") is executed as of November 14th, 2011, and is entered into among **REGIONS BANK** ("**Lender**"), an Alabama banking corporation, **T & T INVESTMENTS, L.L.C.**, an Alabama limited liability company ("**Original Borrower**") and **PONDER PROPERTIES, L.L.C.**, an Alabama limited liability company ("**New Borrower**"). Original Borrower and New Borrower are hereinafter sometimes collectively referred to as "**Borrower Parties**".

PRELIMINARY STATEMENT

A. Original Borrower is the current owner of fee title to (i) that certain real property located in Shelby County, Alabama, commonly known as "**Victoria Plaza**" and more particularly described in **Exhibit A** attached hereto and made a part hereof and (ii) that certain real property located in Shelby County, Alabama, commonly known as "**Shelby Med Plaza**" and more particularly described in **Exhibit B** attached hereto and made a part hereof. Victoria Plaza and Shelby Med Plaza are hereinafter collectively referred to as the "**Property**".

B. Lender is the current owner and holder of a loan (the "**Victoria Loan**") in the original principal amount of \$635,000.00, as evidenced and/or secured by the documents described on **Exhibit C** attached hereto (together with any and all other agreements, documents, instruments evidencing, securing or in any manner relating to the Victoria Loan, as all of the same may be amended, restated, supplemented or otherwise modified from time to time, shall hereinafter be collectively referred to as the "**Victoria Loan Documents**"). The Victoria Loan is secured in part by Victoria Plaza, which is described in and encumbered by the "**Victoria Mortgage**" described on **Exhibit C**.

C. Lender is the current owner and holder of two other loans in the original principal amounts of \$175,000.00 ("**Shelby Med Loan I**") and \$60,000.00 ("**Shelby Med Loan II**"; and together with Shelby Med Loan I, the "**Shelby Med Loans**"; the Shelby Med Loans and the Victoria Loan are referred to together as the "**Loans**"), respectively, as evidenced and/or secured by the documents described on **Exhibit D** attached hereto (together with any and all other agreements, documents, instruments evidencing, securing or in any manner relating to the Shelby Med Loans, as all of the same may be amended, restated, supplemented or otherwise modified

from time to time, shall hereinafter be collectively referred to as the “**Shelby Med Loan Documents**”; and together with the Victoria Loan Documents, the “**Loan Documents**”). The Shelby Med Loans are secured in part by Shelby Med Plaza, which is described in and encumbered by the “**Shelby Med Mortgages**” described on **Exhibit D**. The Shelby Med Mortgages and Victoria Mortgage shall hereinafter be collectively referred to as the “**Mortgages**”.

D. New Borrower desires to acquire the Property from Original Borrower and to assume Original Borrower's obligations under the Loan Documents as provided herein.

E. A transfer of the Property to, and the assumption of the Loans by, a third party without the consent of the holder of the Mortgages is prohibited by the terms thereof.

F. The Lender has agreed to consent to the following requested actions (collectively the “**Requested Actions**”): (i) Original Borrower transferring the Property to New Borrower and (ii) New Borrower assuming all of Original Borrower's obligations under the Loan Documents on the terms and conditions hereinafter set forth.

In consideration of \$10.00 paid by each of the parties to the other, the mutual covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE 1

ACKNOWLEDGMENTS, WARRANTIES AND REPRESENTATIONS

1.1 **Original Borrower Representations.** As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, Original Borrower acknowledges, warrants, represents and agrees to and with Lender as follows:

(a) **Incorporation of Recitals.** All of the facts set forth in the Preliminary Statement of this Agreement are true and correct in all material respects and incorporated into this Agreement by reference.

(b) **Authority of Original Borrower.**

(i) **Original Borrower.** Original Borrower is a duly organized, validly existing limited liability company in good standing under the laws of the State of Alabama. Richard T. Ponder (“**Authorized Officer**”) as the managing member/member of Original Borrower, acting alone without the joinder of any other officer, manager or member of Original Borrower or any other party, has the power and authority to execute this Agreement on behalf of and to duly bind Original Borrower under this Agreement and the Loan Documents. The execution and delivery of, and performance under, this Agreement by Authorized Officer on behalf of Original Borrower has been duly and properly authorized pursuant to all requisite corporate action and will not (x) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Original Borrower or the articles of incorporation, bylaws or any other organizational document of Original Borrower in any material respect or (y) result in a breach of or constitute or cause a

default under any indenture, agreement, lease or instrument to which Original Borrower is a party or by which the Property may be bound or affected.

(c) Compliance with Laws. To Original Borrower's knowledge, all permits, licenses, franchises or other evidences of authority to use and operate the Property as it is presently being operated and as contemplated by the Loan Documents are current, valid and in full force and effect. Original Borrower has not received any written notice from any governmental entity claiming that Original Borrower or the Property is not presently in compliance with any laws, ordinances, rules and regulations bearing upon the use and operation of the Property, including, without limitation, any notice relating to any violations of zoning, building, environmental, fire, health, or other laws, ordinances, rules, codes or regulations.

(d) Leases. All occupied premises at Victoria Plaza and Shelby Med Plaza are occupied by tenants pursuant to leases that are currently in full force and effect (the "Leases"). To Original Borrower's knowledge, there are no existing defaults under any of the Leases and all of the Leases are being assigned by Original Borrower to New Borrower simultaneously herewith.

(e) Title to Property and Legal Proceedings. Original Borrower is the current owner of fee title in the Property. There are no pending or threatened suits, judgments, arbitration proceedings, administrative claims, executions or other legal or equitable actions or proceedings against Original Borrower or the Property, or any pending or threatened condemnation proceedings or annexation proceedings affecting the Property, or any agreements to convey any portion of the Property, or any rights thereto to any person, entity, or government body or agency not disclosed in this Agreement.

(f) Loan Documents. The Loan Documents constitute valid and legally binding obligations of Original Borrower enforceable against Original Borrower, as limited herein, and the Property in accordance with their terms. Original Borrower acknowledges and agrees that, except as set forth in Section 3.2, nothing contained in this Agreement, nor the Requested Actions, shall release or relieve Original Borrower from its obligations, agreements, duties, liabilities, covenants and undertakings under the Loan Documents arising prior to the date hereof. Original Borrower has no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature whatsoever against Lender or any of Lender's predecessors in interest, and any subsidiary or affiliate of Lender and all of the past, present and future officers, directors, contractors, employees, agents, servicers, attorneys, representatives, participants, successors and assigns of Lender and Lender's predecessors in interest (collectively, "**Lender Parties**") or with respect to (i) the Loans, (ii) the Loan Documents, or (iii) the Property. To the extent Original Borrower would be deemed to have any such defenses, setoffs, claims, counterclaims or causes of action as of the date hereof, Original Borrower knowingly waives and relinquishes them.

(g) Bankruptcy. Original Borrower has no intent to (i) file any voluntary petition under any Chapter of the Bankruptcy Code, Title 11, U.S.C.A. ("**Bankruptcy Code**"), or in any manner to seek any proceeding for relief, protection, reorganization, liquidation or similar relief for debtors ("**Debtor Proceeding**") under any local, state, federal or other insolvency law or laws providing relief for debtors, (ii) directly or indirectly to cause any involuntary petition under any Chapter of the Bankruptcy Code to be filed against Original

Borrower or any directors, officers or shareholders thereof or (iii) directly or indirectly to cause the Property or any portion or any interest of Original Borrower in the Property to become the property of any bankrupt estate or the subject of any Debtor Proceeding.

(h) No Default. To Original Borrower's knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both, could constitute a default or Event of Default under the Loan Documents.

(i) Reaffirmation. Original Borrower reaffirms and confirms the truth and accuracy of all representations and warranties set forth in the Loan Documents, in all material respects, as if made on the date hereof.

1.2 **Acknowledgments, Warranties and Representations of New Borrower.** As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, New Borrower acknowledges, warrants, represents and agrees to and with Lender as follows:

(a) Incorporation of Recitals. All of the facts set forth in the Preliminary Statement of this Agreement are true and correct in all material respects and incorporated into this Agreement by reference.

(b) Authority of New Borrower.

(i) New Borrower. New Borrower is a duly organized, validly existing limited liability company in good standing under the laws of the State of Alabama. Richard T. Ponder ("**Authorized Officer**") as the managing member/member of New Borrower, acting alone without the joinder of any other officer, manager or member of New Borrower or any other party, has the power and authority to execute this Agreement on behalf of and to duly bind New Borrower under this Agreement and the Loan Documents. The execution and delivery of, and performance under, this Agreement and the Loan Documents by New Borrower has been duly and properly authorized pursuant to all requisite company action and will not (x) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to New Borrower or the articles of organization, operating agreement, or any other organizational document of New Borrower in any material respect or (y) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which New Borrower is a party or by which the Property may be bound or affected.

(c) Bankruptcy Proceedings. New Borrower has not been a party to any Debtor Proceeding within seven (7) years prior to the date of this Agreement.

(d) Defaults on Other Indebtedness. New Borrower has not materially defaulted under its obligations with respect to any other indebtedness.

(e) Prohibited Person. New Borrower warrants and represents that New Borrower is not (i) currently identified on the United States Treasury Department's Office of Foreign Assets Control most current list of "**Specifically Designated and Blocked Persons**"

(which list may be published from time to time in various media including, but not limited to, the OFAC website, <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf> (the "OFAC List") or (ii) someone who commits, threatens to commit or supports "terrorism," as that term is defined in EO13224, or (iii) to the knowledge of New Borrower, otherwise affiliated with an entity or person listed above (any and all parties or persons described in clauses [i] – [ii] above are herein referred to as a "Prohibited Person") and New Borrower has implemented procedures to ensure that no person who now or hereafter owns any direct or indirect equity interest in New Borrower is a Prohibited Person or controlled by a Prohibited Person. To the knowledge of New Borrower, none of New Borrower nor any person who directly or indirectly controls New Borrower is in violation of any legal requirements relating to anti-money laundering or anti-terrorism, including, without limitation, legal requirements related to transacting business with Prohibited Persons or the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56, and the related regulations issued thereunder, including temporary regulations, all as amended from time to time. To the knowledge of New Borrower, no tenant at the Property currently is identified on the OFAC List or otherwise qualifies as a Prohibited Person, and no tenant at the Property is owned or controlled by a Prohibited Person.

(f) Loan Documents. The Loan Documents, from and after the date hereof, are valid and legally binding obligations of New Borrower, enforceable against New Borrower and the Property in accordance with their terms. This Agreement and the execution of other documents contemplated hereby do not constitute the creation of a new debt or the extinguishment of the debt evidenced by the Loan Documents, nor will they in any way affect or impair the liens and security interests created by the Loan Documents, which New Borrower acknowledges to be valid and existing liens and security interests in the Property. New Borrower agrees that the lien and security interests created by the Loan Documents continue to be in full force and effect, unaffected and unimpaired by this Agreement or by the transfer of the Property or any collateral described in financing statements filed in connection with the Loan Documents and that said liens and security interests shall so continue in their perfection and priority until the debt secured by the Loan Documents is fully discharged. New Borrower has no defenses, affirmative defenses, setoffs, claims, counterclaims, crossclaims or causes of action of any kind or nature whatsoever against the Lender Parties with respect to (i) the Loans, (ii) the Loan Documents, or (iii) the Property. To the extent New Borrower would be deemed to have any such defenses, affirmative defenses, setoffs, claims, counterclaims, crossclaims or causes of action as of the date hereof, New Borrower knowingly waives and relinquishes them. New Borrower acknowledges that it has received copies of all of the Loan Documents.

(g) Leases. To New Borrower's knowledge, all occupied premises at Victoria Plaza and Shelby Med Plaza are occupied by tenants pursuant to the Leases and there are no existing defaults under any of the Leases. All of the Leases are being assigned by Original Borrower to New Borrower simultaneously herewith. New Borrower agrees to provide Lender with complete and accurate copies of the Leases within thirty (30) days from the date of this Agreement.

(h) No Default. To New Borrower's actual knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of

time, giving of notice or both, could constitute a default or Event of Default under the Loan Documents.

(i) Reaffirmation. To New Borrower's actual knowledge, New Borrower affirms and confirms the truth and accuracy of all representations and warranties set forth in the Loan Documents, in all material respects, as if made on the date hereof.

ARTICLE 2

ACKNOWLEDGEMENTS AND COVENANTS OF BORROWER PARTIES

As a material inducement to Lender to enter into this Agreement and to consent to Requested Actions each of Borrower Parties, as to itself only, acknowledges, warrants, represents, covenants and agrees to and with Lender as follows:

2.1 Assumption of Loan. New Borrower hereby assumes the indebtedness due under the Notes, the Loans and all of Original Borrower's other obligations, as grantor, mortgagor, borrower, assignor, trustor, indemnitor, guarantor, or maker, as the case may be, under the Loan Documents to the same extent as if New Borrower had signed such instruments. New Borrower agrees to comply with and be bound by all the terms, covenants and agreements, conditions and provisions set forth in the Loan Documents.

2.2 Indebtedness. As of November 4, 2011, the total outstanding principal balances of the Loans were as follows: Victoria Loan \$573,250.79; Shelby Med Loan I \$157,094.01; and Shelby Med Loan II \$53,861.30, for an aggregate outstanding principal balance under the Loans of \$784,206.10. By its execution hereof, Lender represents and warrants to New Borrower that to Lender's actual knowledge (i) the amounts set forth above are correct, (ii) Lender has not issued any written notices of default to Original Borrower which have not been cured, and (iii) there are no existing material defaults under the Loan Documents.

2.3 Assumption Fee. Simultaneously with or prior to the execution hereof, any or both of Borrower Parties shall pay to or has paid Lender an assumption fee of \$1,000.00.

2.4 Payment of Transaction Costs and Expenses. Any or both of Borrower Parties shall pay at the time of execution of this Agreement by Lender: (a) the legal fees and disbursements of Lender's counsel, Maynard, Cooper & Gale, P.C., in connection with the preparation of this Agreement and the transactions contemplated in this Agreement in the amount of \$1,600.00; and (b) all recording costs and documentary stamps, or other taxes if any, due upon the recording of this Agreement.

2.5 Release and Covenant Not To Sue. Each of Borrower Parties, as to itself and all of its heirs, successors and assigns only, remises, releases, acquits, satisfies and forever discharges Lender Parties from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities, obligations, expenses, damages, judgments, executions, actions, inactions, claims, demands and causes of action of any nature whatsoever, at law or in equity, known or unknown, either now accrued or subsequently maturing, which any of Borrower Parties now has or hereafter can, shall

or may have by reason of any matter, cause or thing, from the beginning of the world to and including the date of completion of the Requested Actions ("**Acquisition Date**"), including, without limitation, matters arising out of or relating to (a) the Loans (b) the Loan Documents, and (c) the Property. Each of Borrower Parties, as to itself and all of its respective heirs, successors and assigns only, covenants and agrees never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against any of Lender Parties by reason of or in connection with any of the foregoing matters, claims or causes of action.

2.6 **Further Assurances.** Borrower Parties shall execute and deliver to Lender such agreements, instruments, documents, financing statements and other writings as may be requested from time to time by Lender to perfect and to maintain the perfection of Lender's security interests in and to the Property, and to consummate the transactions contemplated by or in the Loan Documents and this Agreement.

ARTICLE 3

ADDITIONAL PROVISIONS

3.1 **Consent of Lender.** Subject to the terms of this Agreement, Lender hereby consents to the Requested Actions. Borrower Parties agree that this Agreement shall not be deemed an agreement by Lender to consent to any other transfer or conveyance of the Property or assumption of the Loans, or a consent to any secondary financing or secondary encumbrance on the Property or New Borrower or any interests in New Borrower.

3.2 **Release of Original Borrower.** By its execution hereof, Lender hereby releases Original Borrower for any acts or events occurring or obligations arising under the Loan Documents after the Acquisition Date with the exception of any liability of Original Borrower based upon (a) any material misrepresentation of Original Borrower in this Agreement or any other document executed in connection herewith and/or (b) its obligations under the environmental indemnity provisions contained in the Mortgages ("**Environmental Indemnity Obligations**") that are caused by Original Borrower or any of its agents or result from the existence of conditions existing prior to the Acquisition Date or migrating to or from any portion of the Property prior to the Acquisition Date, or result from a violation of Environmental Law (as defined in the Mortgages) prior to the Acquisition Date. Original Borrower shall bear the burden of proving when Hazardous Materials (as defined in the Mortgages) first existed upon, about or beneath the Property or began migrating to or from the Property and when a violation of Environmental Law first occurred; provided, however, the foregoing burden of proof is for the benefit of the Lender, its successors and assigns, and is not for the benefit of any other party.

3.3 **UCC Filings.** New Borrower hereby grants and confirms unto Lender a first lien priority interest in all of New Borrower's personal property and all of the fixtures located at the Property to the maximum extent permitted by the Uniform Commercial Code ("**UCC**"). Borrower Parties hereby consents to the filing of any financing statements or UCC forms required to be filed in the applicable states or any other applicable filing office (collectively "**Filings**") in order to perfect or continue the perfection of said interest and, notwithstanding anything contained in any of the Loan Documents to the contrary, in accordance with the UCC,

as amended subsequent to the making of the Loans, said Filings may be made by Lender without the consent or signature of either of the Borrower Parties.

3.4 **References to Loan Documents.** All references to any one or more of the Loan Documents in any other Loan Documents shall hereinafter be modified to include this Agreement and all documents executed and/or required in connection with the Requested Actions.

ARTICLE 4

MISCELLANEOUS PROVISIONS

4.1 **No Limitation of Remedies.** No right, power or remedy conferred upon or reserved to or by Lender in this Agreement is intended to be exclusive of any other right, power or remedy conferred upon or reserved to or by Lender under this Agreement, the Loan Documents or at law, but each and every remedy shall be cumulative and concurrent, and shall be in addition to each and every other right, power and remedy given under this Agreement, the Loan Documents or now or subsequently existing at law.

4.2 **No Waivers.** Except as otherwise expressly set forth in this Agreement, nothing contained in this Agreement shall constitute a waiver of any rights or remedies of Lender under the Loan Documents or at law. No delay or failure on the part of any party hereto in the exercise of any right or remedy under this Agreement shall operate as a waiver, and no single or partial exercise of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action or forbearance by any party hereto contrary to the provisions of this Agreement shall be construed to constitute a waiver of any of the express provisions. Any party hereto may in writing expressly waive any of such party's rights under this Agreement without invalidating this Agreement.

4.3 **Successors or Assigns.** Whenever any party is named or referred to in this Agreement, the heirs, executors, legal representatives, successors, successors-in-title and assigns of such party shall be included. All covenants and agreements in this Agreement shall bind and inure to the benefit of the heirs, executors, legal representatives, successors, successors-in-title and assigns of the parties, whether so expressed or not.

4.4 **Construction of Agreement.** Each party hereto acknowledges that it has participated in the negotiation of this Agreement and no provision shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Borrower Parties at all times have had access to an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement and have had the opportunity to review and analyze this Agreement for a sufficient period of time prior to execution and delivery. No representations or warranties have been made by or on behalf of Lender, or relied upon by Borrower Parties, pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. All prior statements, representations and warranties, if any, are totally superseded and merged into this Agreement, which represent the final and sole agreement of the parties with respect to the subject matters. All of the terms of this Agreement were negotiated at

arm's length, and this Agreement was prepared and executed without fraud, duress, undue influence or coercion of any kind exerted by any of the parties upon the others. The execution and delivery of this Agreement is the free and voluntary act of Borrower Parties.

4.5 **Invalid Provision to Affect No Others.** If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any related transaction at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. If any clause or provision operates or would prospectively operate to invalidate this Agreement, in whole or in part, then such clause or provision only shall be deemed deleted, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

4.6 **Notices.** Except as otherwise specifically provided to the contrary, any and all notices, elections, approvals, consents, demands, requests and responses (“**Communications**”) permitted or required to be given under this Agreement and the Loan Documents shall not be effective unless in writing, signed by or on behalf of the party giving the same, and sent by certified or registered mail, postage prepaid, return receipt requested, or by hand delivery or overnight courier service (such as FedEx), to the party to be notified at the address of such party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance with this Section. Any Communications shall be effective upon the earlier of their receipt or three days after mailing in the manner indicated in this Section. Receipt of Communications shall occur upon actual delivery but if attempted delivery is refused or rejected, the date of refusal or rejection shall be deemed the date of receipt. Any Communication, if given to Lender, must be addressed as follows, subject to change as provided above:

Regions Bank
1901 Sixth Avenue North, 19th Floor
Birmingham, Alabama 35203
Attn: Frank E. Meigs III

With a copy to:

Maynard, Cooper & Gale, P.C.
1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, Alabama 35203-2618
Attn: Christine Keifer Borton

and, if given to Original Borrower, must be addressed as follows, notwithstanding any other address set forth in the Loan Documents to the contrary, subject to change as provided above:

T & T Investments, L.L.C.
850 Corporate Parkway
Birmingham, Alabama 35242



20111215000379570 9/21 \$73.00
Shelby Cnty Judge of Probate, AL
12/15/2011 11:11:59 AM FILED/CERT

With a copy to:

Bruce L. Gordon
Gordon, Dana, Knight & Gilmore, LLC
600 University Park Place, Suite 100
Birmingham, Alabama 35209

and, if given to New Borrower, must be addressed as follows, subject to change as provided above:

Ponder Properties, L.L.C.
850 Corporate Parkway
Birmingham, Alabama 35242

With a copy to:

Bruce L. Gordon
Gordon, Dana, Knight & Gilmore, LLC
600 University Park Place, Suite 100
Birmingham, Alabama 35209

4.7 **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Alabama.

4.8 **Headings; Exhibits.** The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part of this Agreement and shall not be used to construe, limit or otherwise affect this Agreement.

4.9 **Modifications.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the Party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted. Lender's consent to the Requested Actions shall not be deemed to constitute Lender's consent to any provisions of the organizational documents that would be in violation of the terms and conditions of any of the Loan Documents.

4.10 **Time of Essence; Consents.** Time is of the essence of this Agreement and the Loan Documents. Any provisions for consents or approvals in this Agreement shall mean that such consents or approvals shall not be effective unless in writing and executed by Lender.

4.11 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

4.12 **WAIVER OF TRIAL BY JURY. BORROWER PARTIES AND LENDER HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT**

TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTY OR INDIRECTLY TO THE LOAN EVIDENCED BY THIS AGREEMENT, THE NOTE, THE APPLICATION FOR THE LOAN EVIDENCED BY NOTE, THE SECURITY INSTRUMENT, THE OTHER SECURITY DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

[signature pages to follow]

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

LENDER:

REGIONS BANK

By: Frank E. Meigs III
Name: Frank E. Meigs III
Title: Senior Vice President

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Frank E. Meigs III, whose name as Senior Vice President of REGIONS BANK, an Alabama banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, he, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal this the 14th day of November, 2011.

Shelby M. Wesson
Notary Public

AFFIX SEAL

MY COMMISSION EXPIRES 11/17/2012

My commission expires: _____



ORIGINAL BORROWER:

T & T INVESTMENTS, L.L.C.

By: [Signature]

Name: Terry Ponder

Its: Managing Member

STATE OF ALABAMA)

COUNTY OF Shelby)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Terry Ponder, whose name as Managing Member of T & T INVESTMENTS, 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, he/she, 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 the 7th day of November, 2011.

[Signature]
Notary Public

AFFIX SEAL

My commission expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Dec 1, 2014
BONDED THRU NOTARY PUBLIC UNDERWRITERS

NEW BORROWER:

PONDER PROPERTIES, L.L.C.

By: [Signature]

Name: Terry Ponder

Its: Managing Member

STATE OF ALABAMA)
COUNTY OF Shelby)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Terry Ponder, whose name as MANAGING MEMBER of PONDER PROPERTIES, 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, he/she, 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 the 7th day of November, 2011.

[Signature]

Notary Public

AFFIX SEAL

My commission expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES Dec 1, 2014
BONDED THRU NOTARY PUBLIC UNDERWRITERS

**CONSENT TO NOTE AND MORTGAGE ASSUMPTION AGREEMENT AND
ACKNOWLEDGMENT OF CONTINUING GUARANTY**

Richard T. Ponder ("Mr. Ponder") does hereby consent to the execution of the foregoing Note and Mortgage Assumption Agreement (the "Assumption Agreement") and to the provisions of the Assumption Agreement. Mr. Ponder previously executed that certain Commercial Guaranty dated November 27, 2007 (the "Guaranty") wherein he agreed to absolutely and unconditionally guarantee all existing and future indebtedness owed by Ponder Properties, L.L.C. to Regions Bank. Mr. Ponder hereby acknowledges that the Guaranty remains valid and enforceable and that it operates as a guaranty of, among other things, all of the indebtedness under the Loans that are being assumed by Ponder Properties, L.L.C. pursuant to the Assumption Agreement



RICHARD T. PONDER

STATE OF ALABAMA)
COUNTY OF Shelby)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Richard T. Ponder, whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that he executed the same voluntarily.

Given under my hand and official seal this the 7th day of November, 2011.



Notary Public

AFFIX SEAL

My commission expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Dec 1, 2014
BONDED THRU NOTARY PUBLIC UNDERWRITERS

EXHIBIT A
LEGAL DESCRIPTION
(Victoria Plaza)

A parcel of land located in the S 1/2 of the NE 1/4 of the NW 1/4 of Section 13, Township 20 South, Range 3 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northeast corner of S 1/2 of the said 1/4 - 1/4 Section, thence North 82°58'11" West a distance of 1276.95 feet; thence South 32°31'16" West a distance of 240.00 feet to the point of beginning which lies at the point of intersection of the Southwesterly right of way line of Canyon Park Drive (50 foot right of way) and the Easterly right of way line of U.S. Highway 31 (200 foot right of way); thence South 32°21'29" West along said U.S. Highway 31 right of way line a distance of 249.81 feet; thence South 84°12'24" East and leaving said right of way line a distance of 160.93 feet; thence North 05°04'18" East a distance of 18.96 feet; thence North 36°35'16" East along the centerline of a 20 foot Ingress/Egress and utility easement, a distance of 161.01 feet to a point on the Southwesterly right of way line of Canyon Park Drive; thence North 57°28'44" West along said right of way line a distance of 147.12 feet to the point of beginning; being situated in Shelby County, Alabama.

A 20 foot wide Ingress/Egress and utility easement lying 10 feet on each side of and parallel to the following described centerline:

Commence at the NE corner of the S 1/2 of said 1/4 - 1/4 section; thence North 82°58'11" West, a distance of 1,276.95 feet; thence South 32°31'16" West, a distance of 141.18 feet; thence South 05°24'10" West, distance of 111.02 feet; thence South 57°28'44" East, a distance of 71.56 feet to the point of beginning, said point lying on the Southwesterly ROW line of Canyon Park Drive (50' ROW); thence South 36°35'16" West a distance of 161.01 feet to the end of said easement.



20111215000379570 17/21 \$73.00
Shelby Cnty Judge of Probate, AL
12/15/2011 11:11:59 AM FILED/CERT

EXHIBIT B
LEGAL DESCRIPTION
(Shelby Med Plaza)

**Lot 1 and 2, Block 2, according to the Survey of Cedar Grove Estates, as recorded in Map Book 3, page 53,
in the Probate Office of Shelby County, Alabama.**

Less and Except any part of subject property lying Highway 31, right of way.



20111215000379570 19/21 \$73.00
Shelby Cnty Judge of Probate, AL
12/15/2011 11:11:59 AM FILED/CERT

EXHIBIT C

VICTORIA LOAN DOCUMENTS

1. Promissory Note dated as of June 12, 2008 in the principal amount of \$635,000.00 executed by Original Borrower in favor of Lender (the "**Victoria Note**").
2. Mortgage dated June 12, 2008 executed by Original Borrower in favor of Lender, and recorded in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office") as Instrument No. 20080724000298360 (the "**Victoria Mortgage**").
3. Assignment of Rents dated June 12, 2008 executed by Original Borrower in favor of the Lender and recorded in the Probate Office as Instrument No. 20080724000298370 (the "**Victoria Assignment of Rents**").
4. UCC Financing Statement reflecting Original Borrower, as debtor, and Lender, as secured party, and recorded in the Probate Office.
5. UCC Financing Statement reflecting Original Borrower, as debtor, and Lender, as secured party, and filed with the Secretary of State of Alabama as Instrument No. 09-0056847.
6. Commercial Guaranty dated as of June 12, 2008, executed by Patricia M. Ponder in favor of Lender.
7. Commercial Guaranty dated as of June 12, 2008, executed by Terry Ponder in favor of Lender.

EXHIBIT D

SHELBY MED LOAN DOCUMENTS

1. Promissory Note dated October 5, 2007 executed by Original Borrower in favor of Lender in the original principal amount of \$175,000.00 (the “**\$175,000 Note**”).
2. Promissory Note dated October 5, 2007 executed by Original Borrower in favor of Lender in the original principal amount of \$60,000.00 (the “**\$60,000 Note**”; and together with the \$175,000 Note, the “**Shelby Med Notes**”; and together with the Victoria Note, the “**Notes**”).
3. Mortgage dated October 5, 2007 executed by Original Borrower in favor of Lender and recorded in the Probate Office as Instrument No. 20090616000229610 (the “**First Mortgage**”).
4. Mortgage dated October 5, 2007 executed by Original Borrower in favor of Lender and recorded in the Probate Office as Instrument No. 20090721000279610 (the “**Second Mortgage**”; and together with the First Mortgage, the “**Shelby Med Mortgages**”).
5. Assignment of Rents dated October 5, 2007 executed by Original Borrower in favor of Lender and recorded in the Probate Office (the “**Shelby Med Assignment of Rents**”).
6. UCC Financing Statement reflecting Original Borrower, as debtor, and Lender, as secured party, and recorded in the Probate Office.
7. UCC Financing Statement reflecting Original Borrower, as debtor, and Lender, as secured party, and filed with the Secretary of State of Alabama as Instrument No. 07-0888943.
8. Commercial Guaranties dated as of October 5, 2007, executed by Patricia M. Ponder in favor of Lender.
9. Commercial Guaranties dated as of October 5, 2007, executed by Terry Ponder in favor of Lender.