


STATE OF ALABAMA

COUNTY OF SHELBY


20041230000706800 Pg 1/8 32.00
Shelby Cnty Judge of Probate, AL
12/30/2004 08:00:00 FILED/CERTIFIED

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT ("Agreement") is made as of the 17th day of December, 2004, among The Fresh Market, Inc. (Tenant), and Protective Life Insurance Company, a Tennessee Corporation (Lender), and The Mandala Project, L.L.C., an Alabama Limited Liability Company (Landlord).

WITNESSETH:

WHEREAS, Landlord owns certain real property and the improvements thereon in Inverness Village, Inverness Hwy 280 & Inverness Center Drive, Hoover, Alabama, more particularly described in Exhibit A attached hereto and incorporated herein by reference ("the Shopping Center");

WHEREAS, Tenant is the lessee under that written lease with Landlord dated July 16, 2003 as thereafter amended from time to time ("Lease") for a portion of the Shopping Center more particularly described in said Lease and in Exhibit B attached hereto and incorporated herein by reference (the Premises); and

WHEREAS, Lender has made or committed to make a loan to Landlord in the principal amount of ~~Six Million Seven Hundred~~ Seventy-Five Thousand dollars (\$ 6,775,000) secured or to be secured by a mortgage or deed of trust on the Shopping Center and/or Premises, which instrument(s) along with any Assignment of rents and profits, financing statements or other documents and instruments in favor of Lender which encumber all or any portion of the Shopping Center and/or Premises are individually and collectively referred to herein as the "Mortgage Instruments").

NOW, THEREFORE, for and in consideration of the premises herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1. Subordination. Subject to the other provisions hereof, Tenant hereby agrees that the Lease is subordinate to the Mortgage Instruments including any future Mortgage Instruments on the Premises in favor of Lender to the extent of all advances heretofore and hereafter made pursuant thereto. Notwithstanding the foregoing, however, Tenant's subordination of its Lease does not constitute acceptance of any terms or conditions of the Mortgage Instruments or any other documents or instruments which are inconsistent with the terms of the Lease or which purport to amend or modify the Lease in any manner and the Lease shall govern in the event of any inconsistency.

2. Nondisturbance. Lender hereby recognizes and consents to the Lease. So long as no event of default on the part of Tenant under the Lease shall exist which shall entitle Lender or any Successor Landlord (as defined below) to terminate the Lease, or if such an event of default shall exist, so long as Tenant's time to cure the default shall not have expired, the term of the Lease shall not be terminated or modified in any respect whatsoever by Lender or any Successor Landlord, and Tenant's right of possession of the Premises and its other rights arising out of the Lease will all be fully recognized and protected by Lender or any Successor Landlord, and Tenant and Tenant's rights under the Lease shall not be disturbed, cancelled, terminated or

otherwise affected for any reason including, without limitation, by reason of the Mortgage Instruments or any of them or any action or proceeding instituted by Lender or any Successor Landlord to foreclose the Mortgage Instruments or any of them or any extensions, renewals, consolidations or replacements of same, and Tenant shall not be joined in any action or proceeding on the Mortgage Instruments or any of them unless required by applicable law. If such joinder is required by applicable law, Lender or any Successor Landlord shall pay Tenant's reasonable attorneys' fees and expenses and other costs and expenses incurred as a result thereof. As used in this Agreement, the term "Successor Landlord" means any person or entity (or such person or entity's successors or assigns) that becomes an owner of the Premises and/or Shopping Center and/or Landlord's interest in the Lease as a result of (a) foreclosure under the Mortgage Instruments; (b) any other exercise by Lender or its successors or assigns of rights and remedies whether under the Mortgage Instruments or under applicable law, including bankruptcy law or otherwise; or (c) delivery by Landlord to Lender or its successors or assigns or its designee or nominee of a deed or other conveyance of Landlord's interest in the Premises and/or Shopping Center and/or Lease in lieu of any of the foregoing.

3. Attornment. Upon Successor Landlord's succeeding to Landlord's interest in the Premises and/or Lease, either as the result of foreclosure of the Mortgage Instruments or any of them or as the result of accepting a deed to the Premises in lieu of foreclosure, or otherwise, Tenant shall attorn to Successor Landlord and recognize Successor Landlord as its landlord under the Lease, and Successor Landlord will recognize and accept Tenant as its tenant thereunder, whereupon, the Lease shall continue in full force and effect as a direct lease between Successor Landlord and Tenant for the full term thereof, together with all extensions and renewals thereof, and Successor Landlord shall thereafter assume and perform all of the Landlord's obligations under the Lease with the same force and effect as if Successor Landlord were originally named therein as Landlord. Notwithstanding the foregoing, (a) Tenant shall have no obligation to pay rent to Successor Landlord or take any other action pursuant to this Section 3 prior to the receipt of written notice from Successor Landlord directing such attornment, and Tenant may rely on such notice from Successor Landlord alone without further inquiry and (b) Successor Landlord shall not be liable in damages to Tenant for any defaults of Landlord prior to Successor Landlord either taking possession of the Premises or otherwise succeeding to the interest of Landlord therein and/or in the Lease; provided, however, Successor Landlord shall be responsible for curing defaults of a continuing nature and Tenant shall retain Tenant's offset and other rights and remedies available under the Lease, at law or in equity.

4. Notice. All notices under this Agreement shall be deemed properly given if in writing and hand delivered or mailed by first class, United States mail, postage pre-paid, registered or certified with return, receipt requested, as follows:

If to Lender or its successors or assigns:

Protective Life Insurance Company
P.O. Box 2606
Birmingham, AL 35202
Attn: Investment Department

If to Tenant:

628 Green Valley Road, Suite 500
Greensboro, N.C. 27408
Attn: Real Estate Director

With Copy To:
Eric Hardin, Esquire
P. O. Box 2888
Greensboro, N.C. 27402

If to Landlord:

The Mandala Project, L.L.C.
200 Union Hill Drive, Suite 200
Birmingham, AL 35209
Attn: Gary Pharo

Any of the foregoing may change their address for notices hereunder by written notice to the other parties hereto in the manner set forth in this Section 4.

5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. Miscellaneous. Without limiting Tenant's other rights and remedies, the holder of the Mortgage Instruments shall permit proceeds received by Landlord or Tenant from insurance, eminent domain, condemnation and the like to be used as required or permitted by the provisions of the Lease. Landlord and Lender warrant and represent to Tenant that all prior lenders of Landlord (and/or Landlord's predecessor in interest) have been paid in full and any deeds of trust, mortgages and prior liens in their favor encumbering all or any portion of the Shopping Center have been paid in full and cancelled. This Agreement contains the entire agreement of the parties with respect to the matters addressed herein. This Agreement shall be construed under and governed by the laws of the State in which the Premises are located. This Agreement may be executed in several counterparts, each of which shall be deemed an original instrument and all of which shall constitute a single agreement.

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

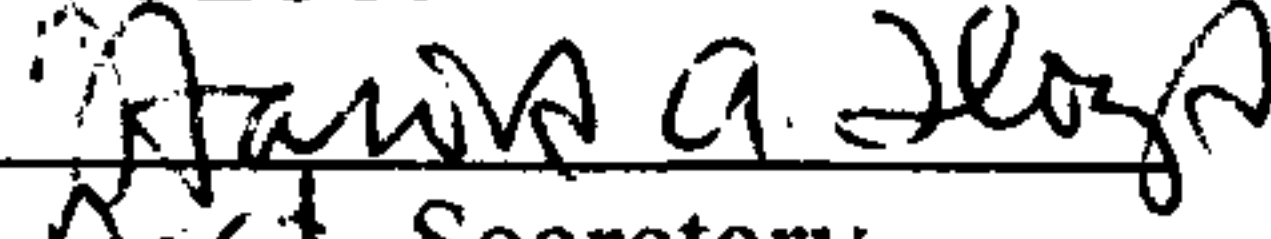
TENANT:

The Fresh Market, Inc.

By: 

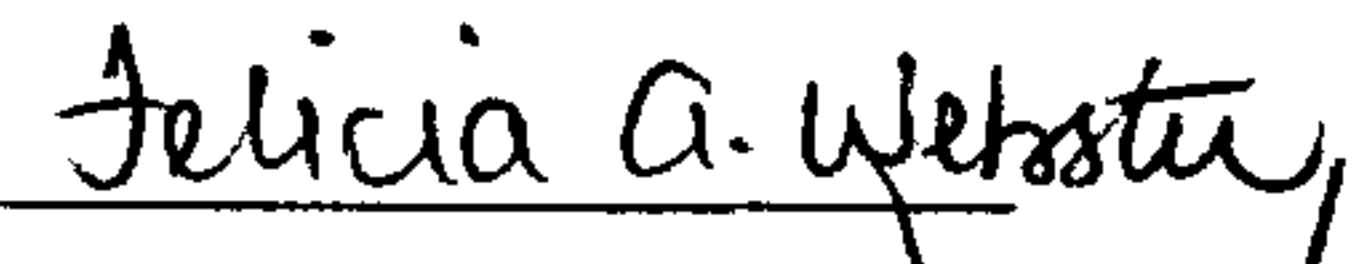
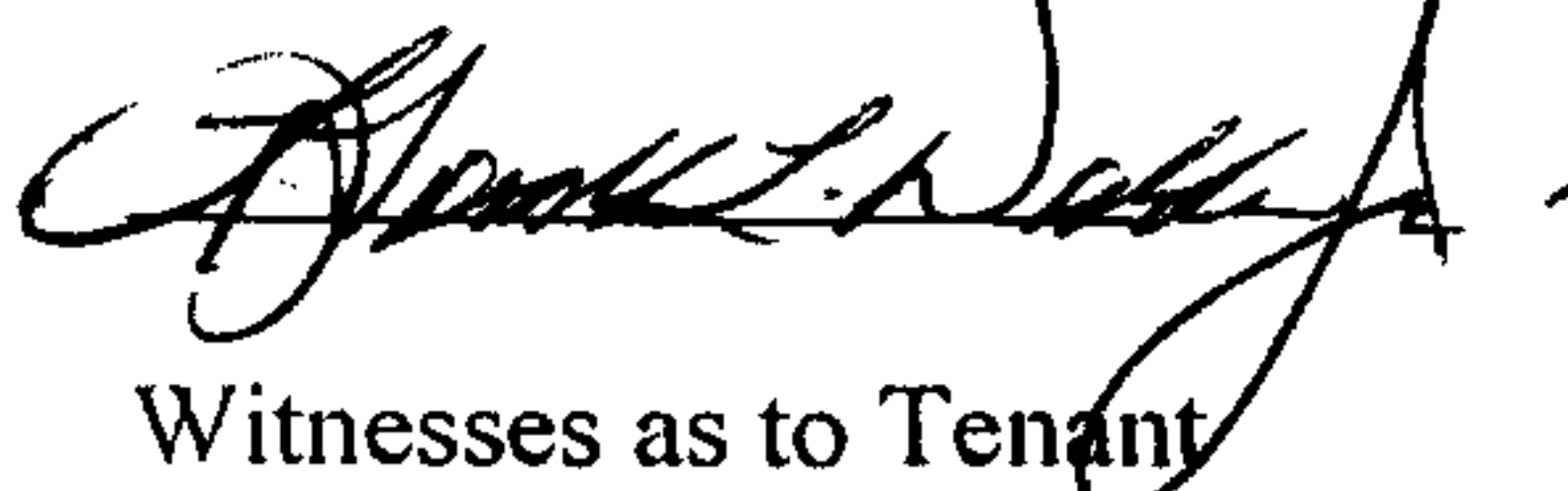
Vice President

ATTEST:


Asst. Secretary
(CORPORATE SEAL)

Witnesses:

Signed, Sealed and delivered
in the presence of:



Witnesses as to Tenant

ATTEST:

Crystal B. Reid
Crystal Secretary
(CORPORATE SEAL)

Witnesses:

Signed, Sealed and delivered
in the presence of:

Rebecca T. Carter
Paul C. Clark
Witnesses as to Lender

LENDER:

Protective Life Insurance Company, a Tennessee
corporation

By: *Charles M. P.*
Vice President, Investments

LANDLORD:

The Mandala Project, L.L.C., an Alabama
limited liability company (SEAL)

By: *Sam Pharo*
Title: *Managing member*

Witnesses:

Signed, Sealed and delivered
in the presence of:

Chris Miller
Wendy Vickroy
Witnesses as to Landlord

STATE OF NORTH CAROLINA)
)
COUNTY OF GUILFORD)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public of said County and State, hereby certify that Sean Craue, as Vice President of THE FRESH MARKET, INC., on behalf of the Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal/stamp, this 17th day of December, 2004.

Eric A. Adair (SEAL)
Notary Public for North Carolina
My Commission Expires: 6-22-08

STATE OF Alabama)
)
COUNTY OF Jefferson)

ACKNOWLEDGMENT

I, the undersigned, a Notary Public of said County and State, hereby certify that Charles M. Prior, as V.P. Investments of PROTECTIVE LIFE INSURANCE COMPANY, on behalf of the Corporation, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal/stamp, this 16th day of December, 2004.

Linda C. Gerstein (SEAL)
Notary Public for Alabama
My Commission Expires: MY COMMISSION EXPIRES APRIL 2, 2008

STATE OF Alabama)
)
COUNTY OF Jefferson)

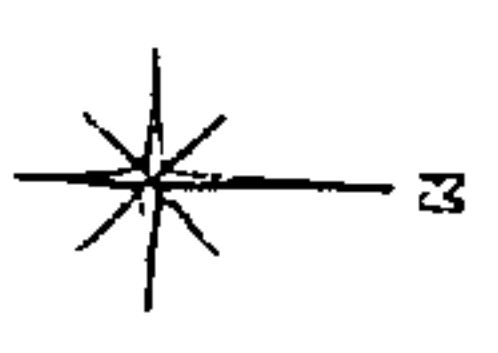
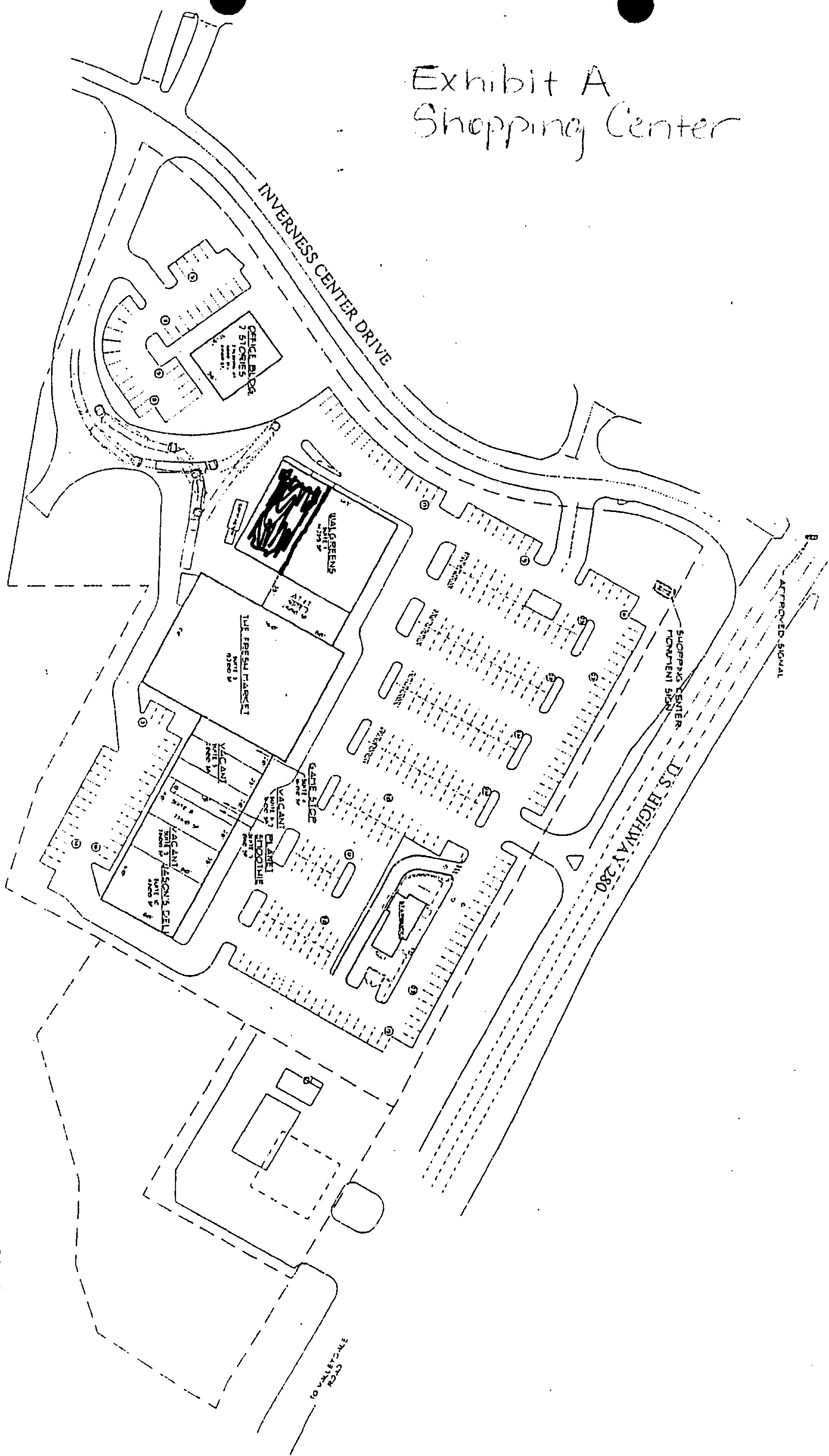
ACKNOWLEDGMENT

I, the undersigned, a Notary Public of said County and State, hereby certify that Gary Pharo, as Managing Partner of THE MANDALA PROJECT, L.L.C., on behalf of the Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal/stamp, this 16th day of December, 2004.

Clark (SEAL)
Notary Public for Alabama State at Large
My Commission Expires: 7-17-07

Exhibit A Shopping Center



INVERNESS RETAIL CE

Exhibit A (contd)

(Legal Description for Shopping Center Property)

A parcel of land situated in the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest Corner of the Northwest Quarter of the Southeast Quarter of Section 36, Township 18 South, Range 2 West; thence run North 00°01'03" West along the West line of said Quarter-Quarter for a distance of 518.01 feet to the Point of Beginning; thence leaving said Quarter line run North 80°00'58" West for a distance of 187.24 feet; thence run North 73°17'13" West for a distance of 258.79 feet to the Southeasterly right-of-way of Inverness Center Drive (R.O.W. varies); said Point also being the Point of Curvature of a curve to the right, having a radius of 386.00 feet, a central angle of 22° 19' 05", a chord length of 149.41 feet and a chord bearing of North 39° 33' 18" East; thence continue along the arc of said curve and along said right-of-way for a distance of 150.36 feet to the Point of Tangency of said curve; thence run North 54°35'51" East along said right-of-way for a distance of 173.20 feet; to the Point of Curvature of a curve to the left, having a radius of 289.00 feet, a central angle of 49°11'49", a chord length of 240.60 feet and a chord bearing of North 30°12'19" East; thence continue along the arc of said curve and along said right-of-way for a distance of 248.15 feet to the Point of Tangency of said curve; thence run North 05°36'24" East along said right-of-way for a distance of 52.15 feet to the Point of Curvature of a curve to the right, having a radius of 166.00 feet, a central angle of 33°07'51", a chord length of 94.66 feet and a chord bearing of North 21°59'22" East; thence continue along the arc of said curve and along said right-of-way for a distance of 95.99 feet to the Southwesterly right-of-way of U.S. Highway 280 (R.O.W. varies); thence run South 60°53'29" East along said Southwesterly right-of-way for a distance of 608.78 feet; thence leaving said right-of-way run South 29°08'00" West for a distance of 430.11 feet; thence run North 72°07'15" West for a distance of 102.38 feet; thence run North 60°54'30" West for a distance of 218.18 feet to the West line of the Northwest Quarter of the Southeast Quarter of Section 36, Township 18 South, Range 2 West; thence run South 00°01'03" East along said Quarter line for a distance of 135.69 feet to the Point of Beginning.

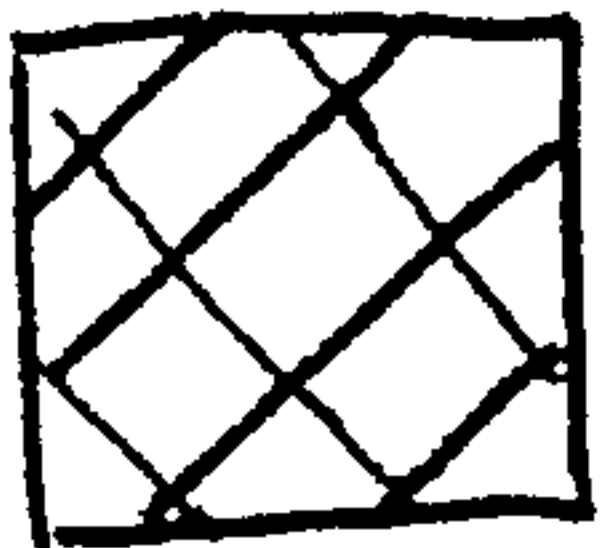
AND

A parcel of land situated in the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the Northwest Quarter of the Southeast Quarter of Section 36, Township 18 South, Range 2 West; thence run North 00 degrees 01 minutes 03 seconds West along the West line of said Quarter for a distance of 518.01 feet to the Point of Beginning; thence leaving said Quarter line run North 89 degrees 00 minutes 80 seconds West for a distance of 187.24 feet; thence run north 67 degrees 32 minutes 26 seconds West for a distance of 253.90 feet to the Southeasterly right-of-way of Inverness Center Drive: (R.O.W. varies) said Point being a Point of Curvature of a curve to the right, having a radius of 386.00 feet, a central angle of 18 degrees 26 minutes 04 seconds, a chord length of 123.66 feet and a chord bearing of North 41 degrees 29 minutes 48 seconds East; thence continue along the arc of said curve and along said right-of-way for a distance of 124.19 feet to the Point of Tangency of said curve; thence run North 54 degrees 35 minutes 51 seconds East along said right-of-way for a distance of 173.20 feet; to the Point of Curvature of a curve to the left, having a radius of 289.00 feet, a central angle of 49 degrees 11 minutes 49 seconds, a chord length of 240.60 feet and a chord bearing of North 30 degrees 12 minutes 19 seconds East; thence continue along the arc of said curve and along said right-of-way for a distance of 248.15 feet to the Point of Tangency of said curve; thence run North 05 degrees 36 minutes 24 seconds East along said right-of-way for a distance of 52.15 feet to the Point of curvature of a curve to the right, having a radius of 166.00 feet, a central angle of 33 degrees 07 minutes 51 seconds a chord length of 94.66 feet and a chord bearing of North 21 degrees 59 minutes 22 seconds East; thence continue along the arc of said curve and along said right-of-way for a distance of 95.99 feet to the Southwesterly right-of-way of U.S. Highway 280: (R.O.W. varies) thence run South 60 degrees 53 minutes 29 seconds East along said Southwesterly right-of-way for a distance of 608.78 feet; thence leaving said right-of-way run South 29 degrees 08 minutes 00 seconds West for a distance of 430.11 feet; thence run North 72 degrees 07 minutes 15 seconds West for a distance of 102.38 feet; thence run North 60 degrees 54 minutes 30 seconds West for a distance of 218.18 feet to the West line of the Northwest Quarter of the Southeast Quarter of Section 36, Township 18 South, Range 2 West; thence run South 00 degrees 01 minutes 03 seconds East along said Quarter line for a distance of 135.69 feet to the Point of Beginning.

Exhibit B Premises

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 Shelby Cnty Judge of Probate, AL
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= PREMISES

