

STATE OF ALABAMA                    )  
  :  
COUNTY OF SHELBY                )

**LENDER**  
**SUBORDINATION AGREEMENT**

THIS SUBORDINATION AGREEMENT is made as of the 29<sup>th</sup> day of December, 2004, by the Junior Lender described below in favor of and to and for the benefit of the Senior Lender described below, and is consented to and agreed to by the Borrower and Senior Lender described below:

IDENTIFICATION OF PARTIES AND INSTRUMENTS:

THE FOLLOWING meanings are hereby adopted by the undersigned for the following capitalized terms for purposes of this Agreement:

Junior Lender:	First Commercial Bank 800 Shades Creek Parkway Birmingham, Alabama 35209 Attn: President
Senior Lender:	Protective Life Insurance Company 2801 Highway 280 South Birmingham, Alabama 35223 Attention: Investment Department
Borrower:	THE MANDALA PROJECT, LLC, an Alabama limited liability company c/o The Shopping Center Group 200 Union Hill Drive, Suite 200 Birmingham, Alabama 35209
Junior Note:	\$1,725,000.00 Amended and Restated Promissory Note from Borrower to Junior Lender dated of even date herewith, and any and all extensions, renewals, replacements, amendments and restatements thereof and any and all amounts now or hereafter advanced by Junior Lender thereunder.
Senior Note:	\$6,775,000.00 promissory note from Borrower to Senior Lender dated December <u>29</u> , 2004, and any and all

extensions, renewals, replacements, amendments and restatements thereof and any and all amounts now or hereafter advanced by Senior Lender thereunder.

Senior Indenture: Mortgage and Security Agreement from Borrower to Senior Lender dated December 29, 2004, relating to the Property and any and all extensions, renewals, replacements, amendments and restatements thereof.

Property: The real estate legally described in Exhibit A attached hereto and by this reference made a part hereof.

Junior Loan Documents: The Junior Note, that certain mortgage (which was recorded as Instrument 20030618000380540, and First Amendment thereto recorded as Instrument 20031106000740590, in the Probate Office of Shelby County, Alabama) and any and all other documents and instruments therewith now or hereafter held by Junior Lender relating to the Property.

Senior Loan Documents: The Senior Note, Senior Indenture and any and all other documents and instruments therewith now or hereafter held by Senior Lender relating to the Property.

## 1. RECITALS.

1.1 Junior Lender is the holder of the Junior Loan Documents executed by Borrower. The purpose of this instrument is to cause each and every lien created by such document and instrument comprising the Junior Loan Documents to be subordinated in all respects to the lien of the Senior Loan Documents.

1.2 Borrower has executed and delivered the Senior Note made payable to the order of Senior Lender. The Senior Note is secured by the Senior Indenture encumbering the Property, and by the other Senior Loan Documents.

1.3 Without the execution and delivery of this Agreement, the existence of Junior Loan Documents would constitute a default under the Senior Loan Documents, and Senior Lender will consent to the existence of Junior Loan Documents only upon execution and delivery of this Agreement by Junior Lender.

1.4 The terms defined in the foregoing Identification of Parties and Instruments, as such terms may be modified herein, are incorporated herein by reference.

2. SUBORDINATION BY JUNIOR LENDER. To induce Senior Lender to consent to the Junior Loan Documents and for other good and valuable consideration, Junior Lender hereby agrees that until the Senior Loan Documents have been paid and satisfied in full:



2.1 Instruments and Payments. Any and all of the Junior Loan Documents and all indebtedness, liabilities, obligations, liens and security interests evidenced thereby or otherwise existing or hereafter arising from Borrower to Junior Lender and relating to the Property are in all respects subject and subordinate to any and all of the Senior Loan Documents and all indebtedness, liabilities and obligations evidenced thereby, including without limitation, prepayments and indemnifications contained therein, and to any and all modifications, extensions, renewals, replacements, amendments and restatements thereof.

2.2 Future Advances. The Junior Loan Documents and the lien created thereby shall be subject and subordinate to any and all advances, made specifically for the protection of the collateral secured by the Senior Indenture, with interest thereon, made by Senior Lender to Borrower and secured by the Senior Loan Documents above the original indebtedness secured by the Senior Loan Documents.

2.3 Leases. The Junior Loan Documents and the lien created thereby shall be subject and subordinate to any and all existing and future leases upon all or any part of the Property; provided the same are executed in the normal course of business and contain terms negotiated at arms-length.

2.4 Modification of Documents. The Junior Loan Documents and every amendment, modification, renewal, restatement and extension of the Junior Loan Documents shall be subject and subordinate to every amendment, modification, renewal, restatement and extension of the Senior Loan Documents.

2.5 Rents and Profits. The Junior Loan Documents and the lien created thereby shall be subject and subordinate to Senior Lender's interest in the rents, issues and profits from the Property and such rents, issues and profits, if collected through a receiver or by the Junior Lender shall be applied first to the obligations secured by the Senior Loan Documents, including without limitation, principal and interest due and payable on or to become due and payable on the Senior Loan Documents, and then to the payment of maintenance, operating charges, taxes, assessments, and disbursements and expenses incurred in connection with the ownership, operation and maintenance of the Property, and then to the obligations secured by the Junior Loan Documents.

2.6 Insurance Proceeds and Condemnation Awards. Any and all payments of insurance proceeds and condemnation, eminent domain or similar awards to be paid to or for the benefit of Junior Lender under the terms of any of the Junior Loan Documents shall be subject and subordinate to any and all such payments to be paid to or for the benefit of Senior Lender under the terms of any of the Senior Loan Documents.

### 3. DEFAULTS BY BORROWER UNDER JUNIOR LOAN DOCUMENTS AND SENIOR LOAN DOCUMENTS.

3.1 Notice to Senior Lender and Right to Cure. Junior Lender shall not, without giving Senior Lender thirty (30) day's prior written notice and an opportunity to cure (within thirty (30) days after receipt by Senior Lender of such notice) the default of Borrower specified



in such notice, take any action of any kind (including, without limitation, the initiation of any judicial or non-judicial proceeding seeking or contemplating foreclosure, the power of sale, or deed in lieu of foreclosure or a collection of rents or the appointment of a receiver or of a trustee in bankruptcy) to enforce any right or remedy against Borrower, nor will Junior Lender, without the prior written consent of Senior Lender, take any such action and name therein as a party defendant any tenant of any portion of the Property or in any manner institute or effectuate the termination of any occupancy or tenancy of any tenant of any portion of the Property. Nothing in the foregoing is intended to impose on Senior Lender any obligation whatsoever to cure the noticed default or to take any other action with respect thereto, or to impede Junior Lender's exercise of any other right or remedy in respect of such default so long as such exercise does not involve the Property or any interest therein.

3.2 Effect of Default on Senior Loan Documents. Junior Lender and Borrower agree that it shall be an "Event of Default" (as defined in the Senior Loan Documents), at the option of Senior Lender, under the Senior Loan Documents without notice or further time to cure thereunder, if any default contemplated by Section 3.1 above shall not be cured by Borrower within the thirty (30) day period provided therein.

3.3 Notice to Junior Lender and Right to Cure. Senior Lender shall not, without giving Junior Lender thirty (30) day's prior written notice and an opportunity to cure (within thirty (30) days after receipt by Junior Lender of such notice) the default of Borrower specified in such notice, take any action of any kind (including, without limitation, the initiation of any judicial or non-judicial proceeding seeking or contemplating foreclosure, the power of sale, or deed in lieu of foreclosure or a collection of rents or the appointment of a receiver or of a trustee in bankruptcy) to enforce any right or remedy against Borrower, nor will Senior Lender, without the prior written consent of Junior Lender, take any such action and name therein as a party defendant any tenant of any portion of the Property or in any manner institute or effectuate the termination of any occupancy or tenancy of any tenant of any portion of the Property. Nothing in the foregoing is intended to impose on Junior Lender any obligation whatsoever to cure the noticed default or to take any other action with respect thereto, or to impede Senior Lender's exercise of any other right or remedy in respect of such default so long as such exercise does not involve the Property or any interest therein.

3.4 Effect of Default on Junior Loan Documents. Senior Lender and Borrower agree that it shall be an "Event of Default" (as defined in the Junior Loan Documents) under the Junior Loan Documents, at the option of Junior Lender, without notice or further time to cure thereunder, if any default contemplated by Section 3.3 above shall not be cured by Borrower within the thirty (30) day period provided therein.

#### 4. COVENANTS OF JUNIOR LENDER.

4.1 Amendments to Junior Loan Documents. Junior Lender shall not amend or modify any of the Junior Loan Documents so as to increase the face amount thereof or the amount secured by the Property without the prior written consent of Senior Lender.



4.2 Junior Payments made after Default. In the event Junior Lender receives any payment from Borrower under the Junior Loan Documents after Senior Lender provides written notice to Junior Lender that an "Event of Default" (as defined in the Senior Loan Documents) under the Senior Loan Documents has occurred, Junior Lender shall hold such payments in trust for Senior Lender and immediately pay such amounts to Senior Lender upon notification by Senior Lender of an Event of Default.

4.3 Insurance Proceeds and Condemnation Awards. Junior Lender hereby assigns and agrees to release to Senior Lender all of Junior Lender's right, title, interest or claim, if any, in and to insurance proceeds and all awards or compensation made for any taking, by condemnation or otherwise and Junior Lender shall, upon the request and at the direction of Senior Lender, endorse in favor of Senior Lender any and all checks payable to Junior Lender which represent insurance proceeds or condemnation awards relating to the Property. Junior Lender hereby appoints Senior Lender as its attorney-in-fact in its place and stead to settle all insurance claims or condemnation proceedings relating to the Property and to receive all payments and endorse all checks with regard thereto to the full extent of all amounts secured by the Senior Loan Documents.

4.4 Commencement of Bankruptcy Proceedings. Junior Lender shall not commence, or join with any other creditor in commencing, any bankruptcy, reorganization, or insolvency proceedings with respect to Borrower (or Borrower's beneficiary or any party comprising Borrower or its beneficiary), without first obtaining Senior Lender's prior written consent.

4.5 Execution of Additional Documents. Junior Lender shall execute such further documents and instruments and take such further actions as Senior Lender may reasonably request from time to time to carry out the intent of this Agreement; provided, however, the failure or refusal of Junior Lender to execute any such document shall not in any manner render any of the provisions of Section 4.6(iv) hereof ineffective.

4.6 Waiver of Notices, Defenses, etc. Junior Lender waives: (i) notice of acceptance by Senior Lender of this Agreement; (ii) notice of the non-payment of any or all payments under the Senior Loan Documents; (iii) all diligence by Senior Lender in collection or protection of or realization upon the Senior Loan Documents; (iv) any protest, defense, claim or objection to or in any way relating to any amendment, modification, renewal, restatement or extension of the terms and provisions of any of the Senior Loan Documents, including, without limitation, any increase in or extension of time for payment under the Senior Loan Documents as evidenced or secured thereby; and (v) notice of assignment by Senior Lender of any or all of the Senior Loan Documents, or any interest therein, and notwithstanding any such assignment, the Senior Loan Documents shall be and remain Senior Loan Documents for the purposes of this Agreement.

4.7 Payment of Taxes, etc. Junior Lender shall not acquire by subrogation or otherwise any lien upon the estate, right or interest in the Property, arising with respect to payment of real estate taxes, assessments, or other governmental charges, which is or may be prior in right to the Senior Loan Documents, unless within thirty (30) days after receipt by Senior Lender of written notice from Junior Lender of such intention to pay such assessments, Senior Lender fails or refuses to purchase or acquire by subrogation such prior lien.



5. **PAYMENTS FOLLOWING BANKRUPTCY.** In the event of any dissolution, winding up, liquidation, readjustment, reorganization or other similar proceedings relating to Borrower (or Borrower's beneficiary or any party comprising Borrower or its beneficiary), whether voluntary or involuntary, partial or complete, and whether in bankruptcy, insolvency or receivership, or upon an assignment for the benefit of creditors, or any other marshalling of its assets and liabilities, or any sale of all or substantially all of its assets, or otherwise, the indebtedness and all other liabilities under the Senior Loan Documents shall first be paid in full before Junior Lender shall be entitled to receive and to retain any payments under the Junior Loan Documents which are submitted after the filing of any such proceeding against Borrower.

6. **DEED IN LIEU OF FORECLOSURE.** Upon the occurrence of a default under the Senior Loan Documents, Senior Lender may, in its sole discretion, without notice to Junior Lender: (i) with or without releasing and extinguishing the Senior Indenture or the liens or security interests created by the Senior Loan Documents, cause title in and to all or any portion of the Property (or any interest of any kind therein, including, without limitation, a beneficial interest in a land trust) to be transferred, assigned or conveyed to a nominee for Senior Lender, subject to the lien of the Junior Loan Documents; and/or (ii) take possession of the Property and take all actions necessary to operate and maintain the Property, including without limitation, the right to complete construction of any improvements located on the Property and the right to lease or sell all or any portion of the Property or any interest in the Property, without Senior Lender having any obligation to commence a foreclosure proceeding or have a receiver appointed. Junior Lender hereby waives the right to assert any and all claims and defenses against Senior Lender relating to or arising from any action taken by Senior Lender pursuant to the preceding sentence, including without limitation, the right to assert that the Senior Indenture was merged into any deed or instrument of conveyance to a nominee for Senior Lender. Junior Lender hereby waives any right to have a receiver appointed in connection with any foreclosure action filed by Senior Lender against the Property.

7. **NOTICES.** Any notices which may be given hereunder shall be deemed given upon being personally delivered or if mailed, upon the expiration of two (2) days from the deposit of the same in the United States mail, postage prepaid and marked certified or registered mail, return receipt requested, properly addressed to the appropriate address set forth on the first page of this Agreement.

8. **GOVERNING LAW, PARTIAL INVALIDITY AND CAPTIONS.** This Agreement shall be construed in accordance with and governed by the laws of the State in which the Property is located. Wherever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. The captions herein are for purposes of convenience only.

9. **BINDING EFFECT.** This Agreement shall be binding upon Junior Lender and its heirs, legatees, legal representatives, successors and assigns, including any owner or holder of any of

the Junior Loan Documents, and shall inure to the benefit of Senior Lender and its successors and assigns, including any subsequent owner or holder of any of the Senior Loan Documents.

10. **JURY TRIAL WAIVER.** RECOGNIZING THAT ANY DISPUTE ARISING OUT OF THE TRANSACTION REFERRED TO HEREIN WILL BE COMMERCIAL IN NATURE AND COMPLEX, THE UNDERSIGNED DESIRES TO MINIMIZE THE COSTS INVOLVED IN THE DISPUTE RESOLUTION PROCESS AND, THEREFOR, HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the undersigned under seal on the day and year first above written.

**“JUNIOR LENDER”:**

FIRST COMMERCIAL BANK

By: *John A. Marks* [SEAL]  
Its: *Vice President*

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that *John Marks*, whose name as *Vice President* of First Commercial Bank, a corporation 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 as such officer 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 *29th* day of *December*, 2004.

(NOTARIAL SEAL)

*Deatra A. Gentry*  
Notary Public

My Commission Expires: *2-21-06*  
NOTARY PUBLIC STATE OF ALABAMA ACT LARGE  
MY COMMISSION EXPIRES: Feb 21, 2006  
FOR THE FULL TEXT OF THE NOTARY PUBLIC ACTS



**"BORROWER"**

THE MANDALA PROJECT, LLC, an Alabama  
limited liability company

By: Gary Pharo, Managing Member [SEAL]  
Gary Pharo, Managing Member

STATE OF ALABAMA )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Gary Pharo, whose name as Managing Member of The Mandala Project, LLC, 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 as such managing 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 20th day of December, 2004.

(NOTARIAL SEAL)

[Signature]  
Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE  
MY COMMISSION EXPIRES: OCTOBER 12, 2008



**"SENIOR LENDER:"**

PROTECTIVE LIFE INSURANCE COMPANY, a  
Tennessee corporation

By: [Signature] [SEAL]  
Its: Vice President, Investments

STATE OF Alabama

COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Philip L. Passafiume, whose name as Vice President, Investments of Protective Life Insurance Company, a Tennessee corporation 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 as such officer 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 29th day of December, 2004.

(NOTARIAL SEAL)

Linda C. Gerstein  
Notary Public

My Commission Expires:

MY COMMISSION EXPIRES APRIL 2, 2008

EXHIBIT A

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

Commence at the Southwest corner of the Northwest Quarter of the Southeast Quarter, Section 36, Township 18 South, Range 2 West, thence run North  $00^{\circ}01'03''$  East along the West line of said Quarter-Quarter for a distance of 518.01 feet to the POINT OF BEGINNING; thence leaving said Quarter-Quarter line run North  $80^{\circ}00'58''$  West for a distance of 187.24 feet; thence run North  $73^{\circ}17'13''$  West for a distance of 258.79 feet to a point on the Eastern right-of-way of Inverness Center Drive, also being the point of curvature of a curve to the right having a radius of 386.00 feet; a central angle of  $10^{\circ}59'07''$ ; a chord length of 73.89 feet and a chord bearing of North  $33^{\circ}53'19''$  East; thence continue along the arc of said curve for a distance of 74.01 feet to the point of tangency of said curve; thence leaving said right-of-way run South  $25^{\circ}12'42''$  East for a distance of 23.66 feet; thence run South  $69^{\circ}07'06''$  East for a distance of 124.42 feet to the point of curvature of a curve to the left, having a radius of 138.50 feet; a central angle of  $39^{\circ}06'15''$ ; a chord length of 92.70 feet and a chord bearing of North  $89^{\circ}20'07''$  East; thence continue along the arc of said curve for a distance of 94.53 feet to the point of curvature of a curve to the left having a radius of 38.50 feet; a central angle of  $67^{\circ}56'01''$ ; a chord length of 43.02 feet and a chord bearing of North  $35^{\circ}48'58''$  East; thence continue along the arc of said curve for a distance of 45.65 feet to the point of tangency of said curve; thence run North  $01^{\circ}50'57''$  East for a distance of 64.26 feet to the point of curvature of a curve to the left having a radius of 75.00 feet; a central angle of  $36^{\circ}10'59''$ ; a chord length of 46.58 feet and a chord bearing of North  $16^{\circ}14'32''$  West; thence continue along the arc of said curve for a distance of 47.36 feet to the point of tangency of said curve; thence run North  $34^{\circ}20'01''$  West for a distance of 83.26 feet to a point on the Eastern right-of-way of said Inverness Center Drive; thence run North  $54^{\circ}35'51''$  East along said right-of-way for a distance of 10.85 feet to the point of curvature of a curve to the left having a radius of 289.00 feet; a central angle of  $49^{\circ}11'49''$ ; a chord length of 240.60 feet and a chord bearing of North  $30^{\circ}12'19''$  East; thence continue along said right-of-way and the arc of said curve for a distance of 248.15 feet to the point of tangency of said curve; thence run North  $05^{\circ}36'24''$  East continuing 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  $33^{\circ}07'51''$ ; a chord length of 94.66 feet and a chord bearing of North  $21^{\circ}59'22''$  East; thence continue along the arc of said curve and said right-of-way for a distance of 95.99 feet to the point of tangency of said curve; thence leaving said right-of-way run South  $60^{\circ}53'29''$  East for a distance of 608.78 feet; thence run South  $29^{\circ}08'00''$  West for a distance of 430.11 feet; thence run North  $72^{\circ}07'15''$  West for a distance of 102.38 feet; thence run North  $60^{\circ}54'30''$  West for a distance of 218.18 feet; thence run South  $00^{\circ}01'03''$  West for a distance of 135.69 feet to the point of beginning.