


STATE OF ALABAMA)
:
SHELBY COUNTY)


20050722000368880 1/4 \$192.50
Shelby Cnty Judge of Probate, AL
07/22/2005 03:15:22PM FILED/CERT

FIRST MODIFICATION TO LOAN DOCUMENTS

THIS AGREEMENT made as of the 29th day of June, 2005, by and between MICHAEL WAYNE MOONEY, a married person ("Borrower") and ALAMERICA BANK ("Lender").

RECITALS:

A. Lender is the holder of a Promissory Note in the face amount of \$400,000.00, made by Borrower, dated (such note, as amended and restated this day, is referred to the "Note"). The Note is secured by various documents and instruments all dated September 24, 2003, unless otherwise indicated, including (*inter alia*) the following, all as modified by this agreement:

1. Mortgage and Security Agreement recorded as Instrument #20031001000659470, Pages 1/15, in the Probate Office of Shelby County, Alabama (the "Indenture").
2. Assignment of Rents and Leases recorded as Instrument #20031001000659480, Pages 1/7, in the Probate Office of Shelby County, Alabama.
3. UCC Financing Statements filed as Instrument #20020031001000659490, Pages 1/3, in the Probate Office of Shelby County, Alabama, and filed as Instrument #B03-0856651FS, in the Secretary of States' Office for the State of Alabama.
4. Construction Loan Agreement; and
5. Borrower's Affidavit.

B. The Borrower has requested an additional advance of \$115,000.00 (the "Advance"). The Advance is evidenced by an Amended and Restated Promissory Note made by Borrower in favor of Lender on this date in the face amount of \$515,000.00 (referred to as the "Note", as stated herein).

C. All the documents and instruments referred to or described in the foregoing paragraphs, and all other documents and instruments further securing the Note as amended and restated herein, is referred to as the "Loan Documents." The real and personal properties pledged and mortgaged under the Loan Documents are referred to as the "Project".

D. The purpose of this document is to provide record notice of the agreement of the parties that the Note is secured by the Loan Documents as the same may be modified from time to time hereafter, and of the other matters specified herein.

If not defined herein, capitalized terms used herein shall have the meanings given to them in the Loan Documents.

WITNESSETH:

NOW THEREFORE, in consideration of the premises and of other due, good, and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Note.** All references to the Note, Secured Indebtedness, or Secured Obligations appearing in the Loan Documents shall also include the Note as amended and restated this day and the indebtedness and obligations

evidenced by such Note. The Note (as amended and restated as described herein), together with any extensions, renewals, amendments or modifications thereof, are secured by the Loan Documents, whether now existing or hereafter executed.

2. **Representations and Warranties.** Borrower represents and warrants to Lender that the following are true, correct and complete as of the date of this agreement:

2.1 **Due Organization, Authority.** Borrower which is a not-for-profit corporation represents that such Borrower is duly organized and validly existing under the state in which such Borrower is stated as being organized herein and in good standing under the laws of such state and has power adequate to carry on its businesses in each such State as presently conducted, to own and/or lease the Properties, to make and enter into those Loan Documents executed by Borrower and to carry out the transactions contemplated therein.

2.2 **Execution, Delivery and Effect of Loan Documents.** Borrower represents (as to its own entity and on its own behalf) that the Loan Documents have each been duly authorized, executed and delivered by Borrower, as the case may be, that each is a legal, valid and binding obligation of Borrower, enforceable in accordance with its terms, that there are no defenses, counterclaims, or set-offs to any of the Loan Documents, and that upon default Lender shall be entitled to exercise any one or more remedies under any one or more of the Loan Documents including without limitation suit, receivership, foreclosure, and/or other remedies available under law or equity.

2.3 **Other Obligations.** No Borrower is in violation of any term or provision of any document governing its organization or existence or in default under any material instruments or obligations relating to the leases executed by any Borrower of portions of (or space in) the Properties or the personal or real property or other thing of value secured by the Loan Documents (the "Collateral"). No tenant or other party has asserted any claim or default relating to any such lease or to any of the Collateral. The execution and performance of the Loan Documents and the consummation of the transactions contemplated thereby will not result in any material breach of, or constitute a material default under, any contract, agreement, document or other instrument to which any Borrower is a party or by which any Borrower may be bound or affected, and do not and will not violate or contravene any laws to which any Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be materially inconsistent with the Loan Documents.

2.4 **Legal Actions.** There are no material actions, suits or proceedings including, without limitation, any condemnation, insolvency or bankruptcy proceedings, pending or, to the best of any Borrower's knowledge and belief, threatened, against or affecting any Borrower, its business or the Collateral, or investigations, at law or in equity, before or by any court or governmental authority, pending or, to the best of any Borrower's knowledge and belief, threatened against or affecting any Borrower, any Borrower's business or the Collateral, except actions, suits and proceedings fully covered by insurance and heretofore fully disclosed in writing to Lender or which if resolved adversely to Borrower would not have a material adverse effect on any Borrower or the Collateral. No Borrower is in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting any such Borrower or the Collateral.

2.5 **Financial Statements.** All statements, financial or otherwise, submitted to Lender in connection with the loan evidenced by the Note ("Loan") are true, correct and complete in all material respects, and all such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (or other basis of accounting practices permitted by Lender) and fairly present the financial condition of the parties or entities covered by such statement as of the date thereof. Since the date thereof, no Borrower has experienced any material, adverse change in its finances, business, operations, affairs or prospects.

2.6 **Title to Collateral.** Borrower represents that Borrower has good and clear record and marketable title to the Collateral, free of all liens, encumbrances or restrictions other than the exceptions reflected in the title policies heretofore delivered to and approved by Lender ("Permitted Encumbrances").

2.7 **Compliance with Laws and Private Covenants.** The Collateral complies in all material respects with all laws. Borrower has examined and are familiar with the Permitted Encumbrances and there now exists

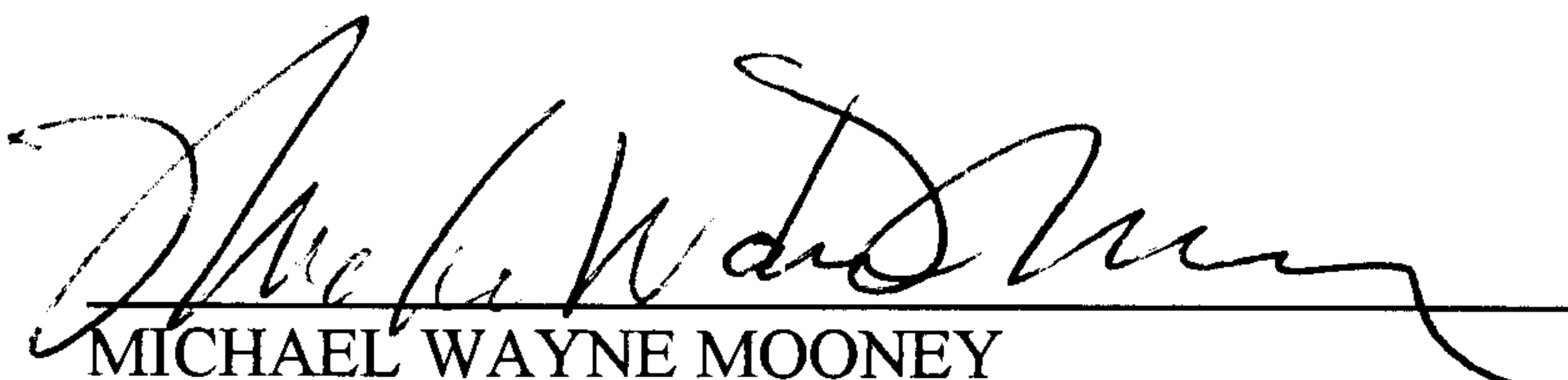
no material violation thereof. Borrower has no notice that any of the Improvements are inconsistent with any easement over the Collateral or encroach upon adjacent property.

2.8 Hazardous Waste. To the best knowledge and belief of Borrower, no release of any hazardous waste or hazardous substance (as defined under applicable laws) is present on, in, under, or at the Collateral, nor has any Borrower received any notice from any governmental agency or from any other person with respect to any such hazardous waste or substance.

3. Miscellaneous. Except as expressly modified herein, all of the terms, covenants, conditions, agreements and stipulations of the Security Documents shall remain in full force and effect and are hereby ratified and confirmed by each Obligor.


4. Counterparts. This agreement may be executed in counterparts, but all counterparts shall constitute but one and the same document.

"BORROWER:"

 [SEAL]
MICHAEL WAYNE MOONEY

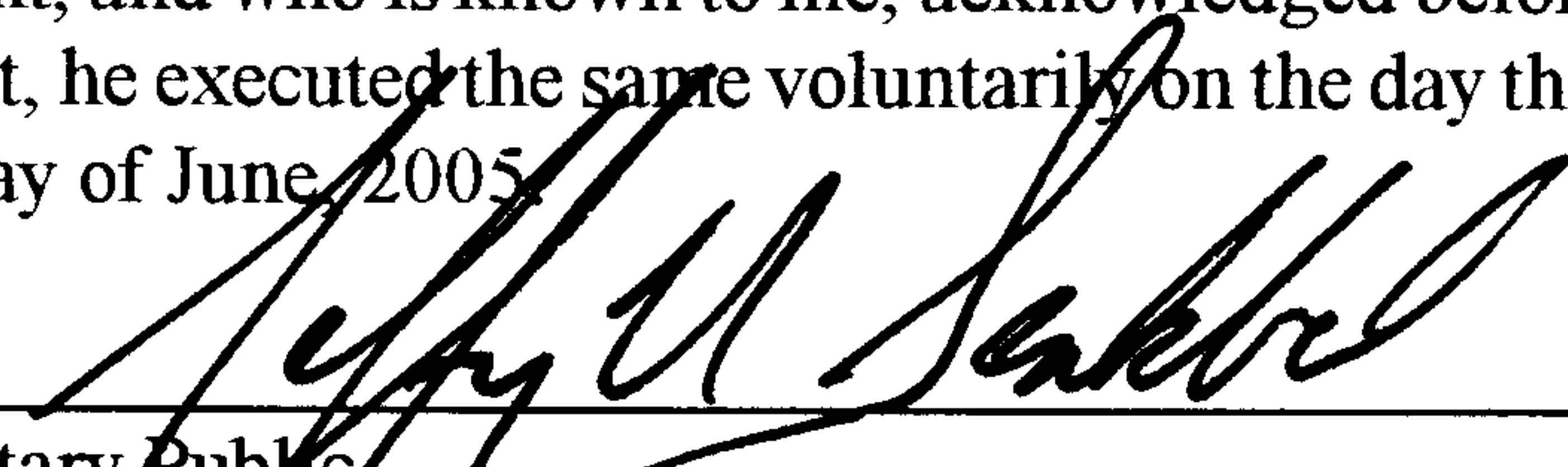
"LENDER:"


ALAMERICA BANK

By:  [SEAL]
Name: LAWRENCE R. TATE
Its: PRESIDENT / CEO

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Michael Wayne Mooney, whose name 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 executed the same voluntarily on the day the same bears date. Given under my hand and official seal this 29th day of June, 2005.


Notary Public
My Commission Expires: 5-1-09


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STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Lawrence R. Tate, whose name as President / CEO of Alamerica Bank, 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 executed the same voluntarily as said officer of said banking institution on the day the same bears date. Given under my hand and official seal this 29th day of June, 2005.



Notary Public

My Commission Expires: 5-1-09