

20080312000101580 1/8 \$227.25
Shelby Cnty Judge of Probate, AL
03/12/2008 11:01:09AM FILED/CERT

THIS INSTRUMENT PREPARED BY:
JULIE W. JORDAN, ESQUIRE
SIROTE & PERMUTT, P.C.
2311 HIGHLAND AVENUE SOUTH
BIRMINGHAM, ALABAMA 35205
(205) 930-5333

Note to Probate Court:

1. Mortgage tax on \$2,528,750 was paid to the Probate Court for Shelby County upon filing a Mortgage and Security Agreement at Instrument 20070101000050720. This Second Amendment and Addendum increases the total indebtedness by \$127,500, from \$2,528,750 to \$2,656,250. Accordingly, mortgage tax is due on the additional \$127,500.
2. There is no extension of the maturity date in this instrument.

STATE OF ALABAMA

COUNTY OF SHELBY

**SECOND AMENDMENT AND ADDENDUM TO LOAN AGREEMENT, PROMISSORY
NOTE, MORTGAGE AND SECURITY AGREEMENT
AND OTHER LOAN DOCUMENTS**

**THIS SECOND AMENDMENT AND ADDENDUM TO PROMISSORY NOTE,
MORTGAGE AND SECURITY AGREEMENT and OTHER LOAN DOCUMENTS** (this
“Amendment”) is entered into as of March 5, 2008 by and between **DMH Development,
L.L.C.**, an Alabama limited liability company (hereinafter sometimes referred to for
convenience as the “Mortgagor” or the “Borrower”), **Bobby E. Holcombe, Van E. Holcombe,
Shane McMillan, and Michael F. Donahoo** (hereinafter Bobby E. Holcombe, Van E.
Holcombe, Shane McMillan and Michael F. Donahoo are sometimes collectively referred to for
convenience as the “Guarantors” and individually as a “Guarantor”) and **BancorpSouth Bank**
(hereinafter sometimes referred to for convenience as the “Mortgagee” or the “Bank”).

WITNESSETH:

WHEREAS, the Borrower executed to the order of the Bank that certain Promissory
Note in the principal amount of \$2,528,750.00 dated January 31, 2007 (as amended, the “Note”);
and

WHEREAS, as security for the Note the Mortgagor executed in favor of the Mortgagee
(i) that certain Mortgage and Security Agreement (the “Mortgage”) dated January 31, 2007

covering the property described in Exhibit A attached hereto, which Mortgage is recorded in the Office of the Judge of Probate of Shelby County, Alabama in Instrument 20070101000050720, (ii) that certain Assignment of Rents and Leases (the "Assignment") dated January 31, 2007 covering the property described in Exhibit A attached hereto, which Assignment is recorded in the Office of the Judge of Probate of Shelby County, Alabama in Instrument No. 20070202000050730 and (iii) those certain UCC Financing Statements (the "UCC") recorded in the Office of the Judge of Probate of Shelby County, Alabama in Instrument No. 20070101000050740 and in the Office of the Secretary of State of the State of Alabama in Instrument No. B 07-0099715 FS; and

WHEREAS, at the time of execution of the Note, the Mortgage, the Assignment and the UCC, (i) the Borrower also executed a Construction Loan Agreement (as amended, the "Loan Agreement), a Hazardous Substances Indemnification and Warranty Agreement (the "Environmental Agreement") and various other agreements, documents, instruments and (ii) each of the Guarantors executed a Guaranty Agreement (for convenience the Note, the Mortgage, the Assignment, the UCC, the Loan Agreement, the Environmental Agreement, the Guaranty Agreement executed by each of the Guarantors, and the other agreements, documents and instruments executed in connection with the Loan are hereinafter referred to collectively as the "Loan Documents"); and

WHEREAS, Borrower and each of the Guarantors have requested that the Lender increase the maximum amount of the Loan (as defined in the Loan Agreement, the Note, the Mortgage, the Assignment, each Guaranty Agreement and the other Loan Documents) and the principal amount of the Note by \$127,500.00, and Lender has agreed to such request provided

the Borrower executes this Amendment and the other documents to be executed in connection herewith.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the parties hereto hereby amend the Loan Documents as follows:

1. The maximum amount of the Loan (as defined in the Note, the Mortgage, the Assignment, the Loan Agreement, the Environmental Agreement, the Guaranty Agreement executed by each of the Guarantors, and all of the other Loan Documents) and the principal amount of the Note are increased by \$127,500.00. Accordingly, the maximum principal amount of the Note and the maximum amount of the Loan (as defined in the Loan Agreement, the Mortgage, the Assignment, each Guaranty Agreement, the Environmental Agreement, and all of the other Loan Documents) are increased from \$2,528,750.00. to \$2,656,250.00. All references in all of the Loan Documents to \$2,528,750.00, whether in words or in numbers, are hereby amended to be \$2,656,250.00, and all other provisions of the Loan Documents are amended, mutatis mutandis.

2. Each of the Guarantors consents to this Amendment and the changes to the Loan Documents contemplated hereby. The Borrower and each of the guarantors hereby represent, warrant, covenant and agree that their joint and several obligations for repayment of the Note and all other amounts due under the Note and all other Loan Documents executed by the Borrower or the Guarantors are not diminished or in any way affected by the execution or performance of this Amendment or the transactions contemplated hereby.

3. It is the intention and agreement of the parties hereto that the \$127,500.00 increase in the Loan effectuated by this Amendment shall be secured by the Mortgaged Property (as defined in the Mortgage) and the liens and rights in favor of the Bank under the Mortgage

and all other Loan Documents, as fully and completely and with the same priority as the \$2,528,750.00 initially secured thereby.

4. The Borrower and each of the Guarantors hereby (i) ratifies and affirms the validity, effectiveness, and enforceability of each of the Loan Documents, as amended hereby, and (ii) confirms that neither the Borrower nor the Guarantors has any defenses or offsets to any of the Loan Documents or amounts due thereunder, as amended hereby.

5. The Borrower and the Guarantors agree to pay or reimburse Lender for all costs and expenses incurred in connection herewith, including, without limitation, recording fees, title insurance fees, and legal fees. Borrower and Guarantors agree that Lender may advance proceeds of the Loan to pay or reimburse all such costs and expenses.

-Remainder of page intentionally left blank-

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the date first written above.

BORROWER:

DMH Development, L.L.C.

By: [Signature]
Name: SHANE W. McMILLAN
Title: Member

GUARANTORS:

[Signature]
Bobby E. Holcombe

[Signature]
Van E. Holcombe

[Signature]
Shane McMillan

[Signature]
Michael F. Donahoo

LENDER:

BancorpSouth Bank

By: [Signature]
Name: Janet Brick
Title: Senior 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 Shane W McMillan whose name as a member of **DMH Development, 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, being informed of the contents of the instrument, he, as such member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 5th day of March, 2008.

Cynthia M Houelady
Notary Public
My Commission Expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Oct 28, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Bobby E. Holcombe** 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 the instrument, he, executed the same voluntarily.

Given under my hand this 5th day of March, 2008.

Cynthia M Houelady
Notary Public
My commission expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Oct 28, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Van E. Holcombe** 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 the instrument, he, executed the same voluntarily.

Given under my hand this 5th day of March, 2008.

Cynthia M Houelady
Notary Public
My commission expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Oct 28, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Shane McMillan** 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 the instrument, he, executed the same voluntarily.

Given under my hand this 5th day of March, 2008.

Cynthia M Houelady
Notary Public

My commission expires: _____

STATE OF ALABAMA)
JEFFERSON COUNTY)

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Oct 28, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Michael F. Donahoo** 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 the instrument, he, executed the same voluntarily.

Given under my hand this 5th day of March, 2008.

Cynthia M Houelady
Notary Public

My commission expires: _____

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Oct 28, 2008
BONDED THRU NOTARY PUBLIC UNDERWRITERS

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Janet Brock whose name as the Senior Vice President of **BancorpSouth 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 the instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 5th day of March, 2008.

Deborah Jo Pate Allen
Notary Public

My Commission Expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Oct 28, 2008
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EXHIBIT A

DESCRIPTION OF REAL PROPERTY

Lot 3B1, according to the Survey of Greystone Plaza, as recorded in Map Book 36 Page 106 in the Probate Office of Shelby County, Alabama; being situated in Shelby County, Alabama.