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Shelby Cnty Judge of Probate, AL  
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(This Space for Recording Use Only)

**THIS DOCUMENT SHOULD BE RETURNED TO AFTER RECORDING:**

**WALGREEN CO.**  
104 Wilmot Road, MS 1420  
Deerfield, Illinois 60015  
Attn: Jenny Mitchell  
Real Estate Law Department  
Store # 11651

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

**THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT** made in multiple copies as of the 5<sup>th</sup> day of February, 2009, by and between PROTECTIVE LIFE INSURANCE COMPANY, a Tennessee corporation ("Mortgagee"), THE MANDALA PROJECT, LLC, an Alabama limited liability company ("Landlord") and **WALGREEN CO.**, an Illinois corporation ("Tenant");

**WITNESSETH:**

**WHEREAS**, Mortgagee is the holder of a Note in the original principal amount of \$6,775,000.00, secured by a Mortgage or Deed of Trust, dated December 29, 2004, recorded on December 30, 2004, Instrument No. 20041230000706760, as amended by that certain First Modification to Loan Documents, which increased the principal amount to \$7,600,000.00, dated February 5, 2009, recorded on Feb 13, 2009, Instrument No. 20090213000052590 (collectively the "Mortgage") recorded in the Official Records of Shelby County, State of Alabama, covering the property legally described on Exhibit "A" attached hereto and made a part hereof;

**WHEREAS**, by Lease dated September 10, 2007 ("Lease"), recorded by Memorandum of Lease of dated, October 12, 2007, Instrument No. 20071012000476330, recorded in the Official Records of Shelby County, State of Alabama, Landlord, as landlord, leased to Tenant, as tenant, the property, of the southwest corner of Highway 280 and Inverness Parkway in the City of Hoover, State of Alabama, legally described on Exhibit "A" ("Leased Premises");

**WHEREAS**, Mortgagee, Tenant and Landlord desire to confirm their understanding with respect to said Lease and said Mortgage;

**NOW, THEREFORE,** in consideration of the premises and the mutual covenants and promises contained herein and other good and valuable consideration, the parties agree as follows:

1. Subject to the covenants, terms and conditions of this Agreement, in the event of a default under the Note, the lien of said Lease is hereby subordinated to the lien of said Mortgage. If there shall be a conflict between the terms of said Lease and the terms of said Mortgage, the terms of said Lease shall prevail.
2. In the event Mortgagee or any other party (collectively "Successor Landlord") acquires title or right of possession of the Leased Premises under said Mortgage through foreclosure, or other procedure related to a default under the Note, said Lease shall remain in full force and effect and Tenant shall continue occupancy of the Leased Premises in accordance with the terms and provisions of said Lease. In such event, during the period that it holds title to or possession of the Leased Premises, Successor Landlord shall be in all respects bound by said Lease as Landlord and by all of Tenant's rights thereunder. Successor Landlord's remedies pursuant to the Lease will be in full force and effect once Successor Landlord succeeds to the interest of Landlord under the Lease and once Successor Landlord is bound by all of the terms and conditions of said Lease.
3. So long as Successor Landlord shall be bound by the terms and conditions of said Lease, Tenant shall attorn to Successor Landlord when Successor Landlord is in possession of the Leased Premises, whether such possession is pursuant to Mortgagee's rights under said Mortgage (which such attornment shall be effective and self operative without the execution of any further instrument on the part of any of the parties hereto), or other procedure related to a default under the Note and will continue occupancy of the Leased Premises under the same terms and conditions of said Lease.
4. Mortgagee shall not include Tenant in any foreclosure proceeding involving the Leased Premises, unless required by applicable state law for Mortgagee to accomplish the foreclosure and then not to interfere with or diminish Tenant's rights under said Lease or disturb Tenant's possession.
5. In the event that Successor Landlord succeeds to the interest of Landlord under such Lease, Successor Landlord shall not be:





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a) Liable for any act or omission of any prior landlord (including Landlord) or subject to any offsets or defenses which Tenant might have against any prior landlord (including Landlord), except for any defaults or remedies of which Tenant has notified Mortgagee prior to Successor Landlord becoming bound by the Lease in accordance with paragraph 2. Successor Landlord will not be held liable for any consequential damages for defaults of any prior Landlord; or

b) Bound by any payment of any rent or additional rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord); or

c) Bound by any amendment or modification of the Lease made without Mortgagee's written consent.

6. During the continuance of said Mortgage, Tenant shall use reasonable efforts to give written notice to Mortgagee of all defaults by Landlord of those obligations under said Lease which are of a nature as to give Tenant a right to terminate said Lease, reduce rent, or to credit or offset any amounts against future rents, and Mortgagee shall have the same opportunity as provided to Landlord in said Lease (but shall not be required) to cure the same. In any event (except as otherwise provided in the next sentence of this paragraph), Tenant's failure to provide Mortgagee such written notice shall not impair any rights granted or derived by Tenant under said Lease and/or this Agreement. In no event shall Tenant terminate the Lease as a result of any breach or default of the Lease unless Tenant has provided Mortgagee notice and afforded the Mortgagee the same opportunity to cure such breach or default as provided to Landlord in said Lease; provided, however, that Mortgagee shall not be obligated to remedy or cure any default of Landlord under the Lease.

7. Tenant hereby agrees that upon receipt of written notice from Mortgagee of a default by Landlord under said Mortgage, all checks for rent and other sums payable by Tenant under said Lease to Landlord shall, from the date of Tenant's receipt of such written notice, be delivered to and drawn to the exclusive order of Mortgagee until Mortgagee or a court of competent jurisdiction shall direct otherwise. Such an assignment of rent shall not relieve Landlord of any of its obligations under said Lease and shall not modify or diminish any rights granted to Tenant by said Lease or this Agreement, including but not limited to, any rights contained in said Lease which allow Tenant the right of so-called self help, offsets or deductions in the event of default or otherwise. Landlord hereby consents and agrees to the provisions of this paragraph and

  
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hereby authorizes Tenant to direct all rental and other payments under said Lease as provided by this paragraph. Landlord hereby relieves Tenant from any liability by reason of Tenant's payment of any sums under said Lease as required by this paragraph. Tenant shall have no obligation to verify the existence of any such default stated in the notice from Mortgagee under this paragraph.

8. (a) Subject to the terms of (b) below, Tenant agrees that the covenants of Landlord in Article 8 of the Lease shall not be binding upon land owned by Successor Landlord that acquires the interest of Landlord in the Leased Premises through foreclosure of the Mortgage or a deed in lieu thereof, (provided that Successor Landlord owned or mortgaged such land prior to the date that it acquires the interest of Landlord in the Leased Premises), but shall apply to any subsequent purchaser or transferee that is not an affiliate or subsidiary of Successor Landlord.

(b) Upon Successor Landlord's acquisition of Landlord's interest, during the period that it holds title to the Leased Premises, Successor Landlord will not execute any agreement that violates the restrictions set forth in Article 8 of the Lease or agree to any modification of a then existing agreement which extends the right of any third party to operate in a manner inconsistent with the restrictions set forth in Article 8 of the Lease.

9. In the event Successor Landlord acquires title or right of possession of the Leased Premises, Tenant acknowledges and agrees that the liability of such Successor Landlord under the Lease shall be limited to its interest in the property described on Exhibit "A" and the rents, income and profits therefrom. Notwithstanding anything herein to the contrary, Tenant shall have all of its equitable remedies against Successor Landlord. Nothing contained herein shall otherwise limit Tenant's rights or remedies as provided in the Lease.

10. All notices under this Agreement shall be deemed to have been duly given if made in writing and sent by United States certified or registered mail, postage prepaid, or by overnight delivery service providing proof of receipt, and addressed as follows:

If to Mortgagee:      Protective Life Insurance Company  
                                 2801 Highway 280 South  
                                 Birmingham, AL 35223  
                                 Attn: Investment Department



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If to Tenant: 104 Wilmot Road, MS 1420  
Deerfield, Illinois 60015

If to Landlord: The Mandala Project, LLC  
200 Union Hill Drive, Suite 200  
Birmingham, AL 35209

provided that each party by like notice may designate any future or different addresses to which subsequent notices shall be sent. Notices shall be deemed given upon receipt or upon refusal to accept delivery.

11. Tenant agrees that the right of first refusal shall not apply to Successor Landlord through a foreclosure, deed-in-lieu of foreclosure or any other enforcement action under the Mortgage; provided, however, such right of first refusal shall apply to subsequent purchasers of the Leased Premises. It is the express intention of Landlord and Tenant that the acquisition by either party of the right, title, interest and estate of the other party in and to the Leased Premises shall not result in termination or cancellation of the Lease by operation of the principle of merger of estates or otherwise, notwithstanding any applicable law to the contrary.

12. To facilitate execution, this Agreement may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

13. This Agreement shall also bind and benefit the heirs, legal representatives, successors and assigns of the respective parties hereto, and all covenants, conditions and agreements herein contained shall be construed as running with the land.

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


**TENANT:**

**WALGREEN CO.**

*JMM*  
  
\_\_\_\_\_  
Robert M. Silverman  
Divisional Vice President


**MORTGAGEE:**

PROTECTIVE LIFE  
INSURANCE COMPANY

x   
\_\_\_\_\_  
By: CHARLES M PRIER  
Title: SR VP

**LANDLORD:**

**THE MANDALA PROJECT, LLC**

  
\_\_\_\_\_  
By: Gary Tharo  
Title: Managing Member

**ACKNOWLEDGEMENT**

STATE OF ILLINOIS §  
COUNTY OF LAKE §

On this 5th day of February, 2009, before me appeared Robert M. Silverman, to me personally known, who, being by me duly sworn, did say that he is the Divisional Vice President of Walgreen Co., an Illinois corporation, and that said instrument was signed in behalf of said corporation by authority of its board of directors, and said Divisional Vice President acknowledged said instrument to be the free act and deed of said corporation.

(Seal)

Janet Rubenstein  
Notary Public

My term expires: 9-22-2012



STATE OF § Alabama  
COUNTY OF § Jefferson

On this 10th day of February, 2009, before me appeared Gary Pharo, to me personally known, who, being by me duly sworn, did say that he is the Managing Member of \_\_\_\_\_, a(n) \_\_\_\_\_, and that said instrument was signed in behalf of said corporation by authority of its board of directors, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said \_\_\_\_\_

Amanda Rhodes  
Notary Public

My term expires:

(Seal)

AMANDA LEIGH RHODES  
NOTARY PUBLIC  
STATE OF ALABAMA  
MY COMMISSION EXPIRES NOV. 6, 2012



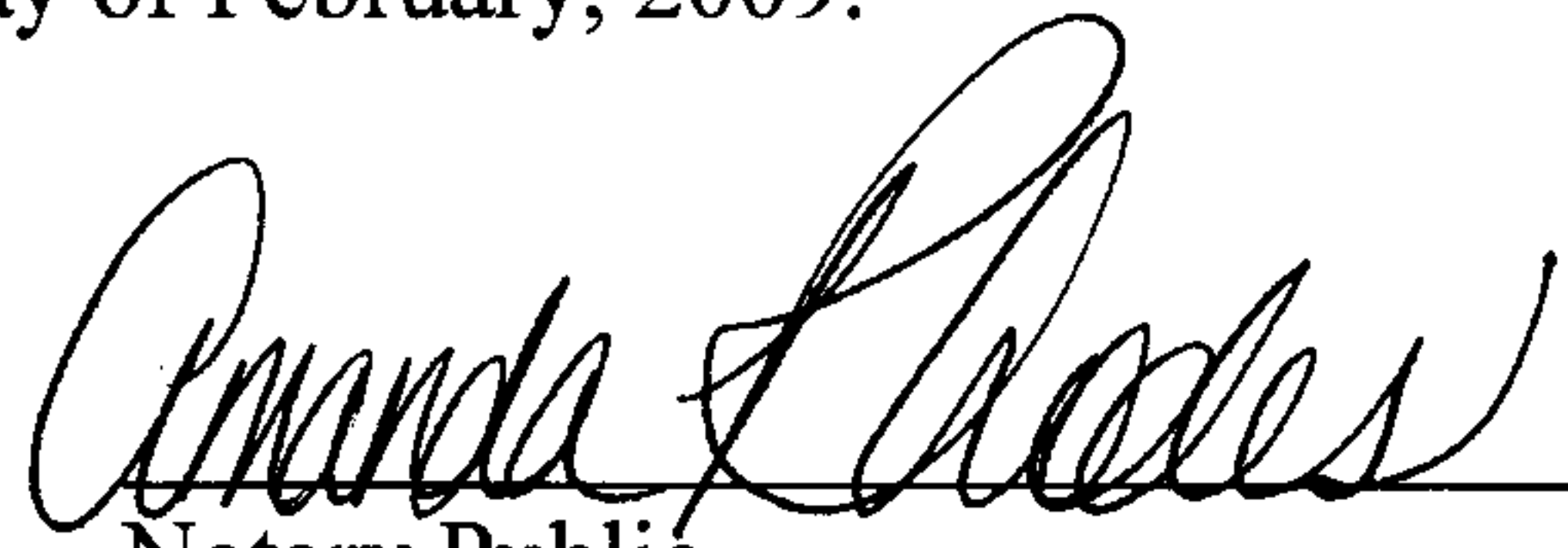
STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

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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 an as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this 10 day of February, 2009.

[Notarial Seal]

  
Notary Public  
My Commission Expires: 11-6-2012

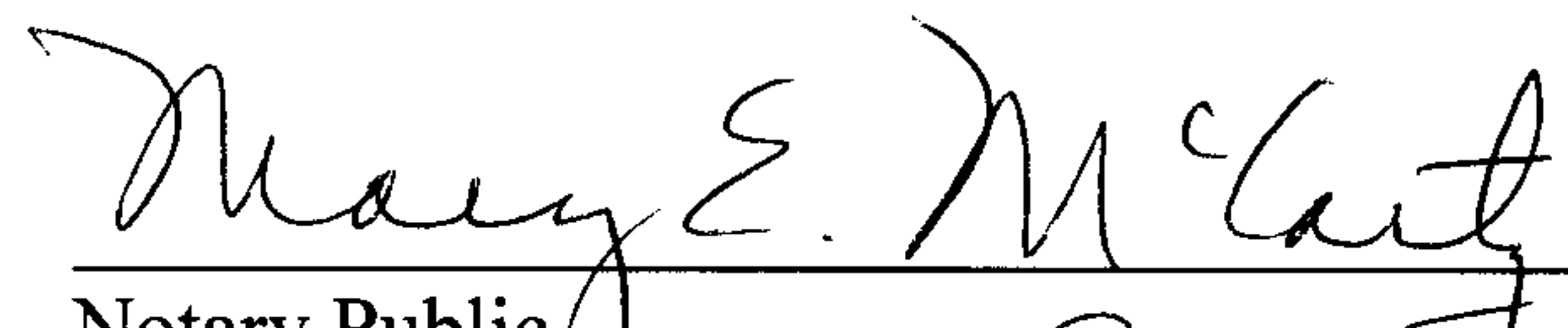
AMANDA LEIGH RHODES  
NOTARY PUBLIC  
STATE OF ALABAMA  
MY COMMISSION EXPIRES NOV. 6, 2012

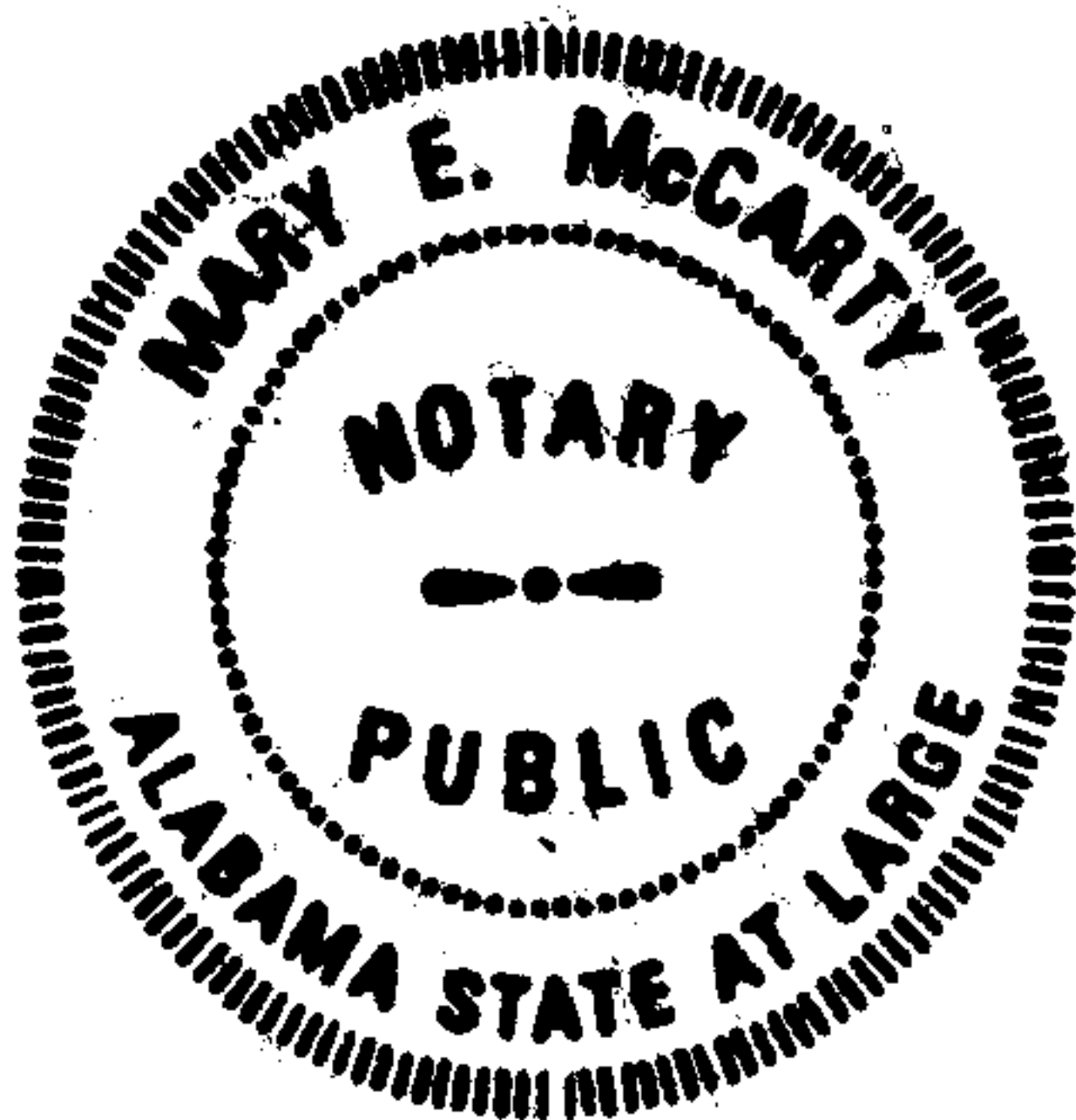
STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Charles M. Prior, whose name as ST. VP of the Protective Life Insurance Company, a(n) TN Corp, 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 an as the act of said company on the day the same bears date.


Given under my hand and official seal this \_\_\_\_ day of February, 2009.

[Notarial Seal]

  
Notary Public  
My Commission Expires: 9-6-09





  
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**EXHIBIT "A"**

**LEGAL DESCRIPTION (STORE #11651)**

A Lease Lot situated in 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 Southeast corner of the Northwest  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of said Section 36; thence run North  $00^{\circ} 01' 03''$  East along the East line of said quarter-quarter section for a distance of 799.77 feet to appoint on the Southeast line of the Lease Lot herein described and this being the Point of Beginning; thence run South  $29^{\circ} 07' 39''$  West for a distance of 107.48 feet; thence run North  $60^{\circ} 52' 21''$  West for a distance of 68.42 feet; thence run North  $15^{\circ} 51' 39''$  West for a distance of 41.84 feet; thence run North  $29^{\circ} 07' 39''$  East for a distance of 15.04 feet; thence run North  $60^{\circ} 52' 21''$  West for a distance of 9.00 feet; thence run North  $29^{\circ} 07' 39''$  East for a distance of 16.00 feet; thence run South  $60^{\circ} 52' 21''$  East for a distance of 9.00 feet; thence run North  $29^{\circ} 07' 39''$  East for a distance of 109.37 feet; thence a distance of 98.00 feet; thence run South  $29^{\circ} 07' 39''$  West for a distance of 62.52 feet back to the Point of Beginning. Said described Lease Lot containing 16,367 Square Feet (0.38) Acres more or less.