


STATE OF ALABAMA)
 :
SHELBY COUNTY)


20090213000052610 1/8 \$2487.35
Shelby Cnty Judge of Probate, AL
02/13/2009 03:34:22PM FILED/CERT

FIRST MODIFICATION TO LOAN DOCUMENTS

THIS AGREEMENT made this the 10th day of February, 2009, by and between **THE MANDALA PROJECT, LLC**, an Alabama limited liability ("Borrower"); **GARY PHARO, GREG HESS and MARVIN PHARO** ("Guarantors") (Borrower and Guarantors are sometimes collectively referred to as the "Obligors"), and **PROTECTIVE LIFE INSURANCE COMPANY**, a Tennessee corporation ("Lender").

RECITALS:

A. Lender is the holder of a Promissory Note in the face amount of \$6,775,000, made by Borrower, dated December 29, 2004 (the "2004 Note"). The 2004 Note is secured by various documents and instruments all dated December 29, 2004, unless otherwise indicated, including (*inter alia*) the following, all as modified by this agreement:

1. Mortgage and Security Agreement recorded as Instrument 20041230000706760 in the Probate Office of Shelby County, Alabama (the "Indenture").
2. Assignment of Rents and Leases recorded as Instrument 20041230000706770 in said records.
3. Guaranty of Recourse Obligations of Borrower executed by Guarantors (and others) in favor of Lender (the "Guaranty").

All the documents and instruments referred to or described in this Paragraph , and all other documents and instruments further securing the 2004 Note, as modified herein, are referred to as the "Loan Documents." The real and personal properties pledged and mortgaged under the Loan Documents are referred to as the "Project." The outstanding principal balance of the 2004 Note is \$5,963,123.21.

B. The Borrower has requested an additional advance of \$1,636,876.79 (the "Advance") under the Loan Documents. The Advance is evidenced by an Amended and Restated Promissory Note in the face amount of \$7,600,000.00 (being the sum of the outstanding balance of the 2004 Note and the Advance), which note consolidates, amends and restates the 2004 Note (such note, which evidences the Advance, and consolidates, amends and restates the 2004 Note, is referred to hereafter as the "Note"). The Note does not extend the Maturity Date of the 2004 Note.

C. 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.

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

2. **References in Loan Documents.** All references in the Loan Documents to the term "Loan Documents" shall refer to and include this instrument, the Note and the other Loan Documents as modified by this instrument, together with all other loan documents and instruments further securing the Note whether now existing or hereafter executed.

3. **Representations and Warranties.** Borrower and Guarantors represent and warrant to Lender that the following are true, correct and complete as of the date of this agreement:

3.1 **Due Organization, Authority.** 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 Project, to make and enter into the Loan Documents executed by Borrower and to carry out the transactions contemplated therein.

3.2 **Execution, Delivery and Effect of Combined loan Documents.** Borrower represents 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.

3.3 **Other Obligations.** Borrower is not 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 Borrower of portions of (or space in) the Project 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 against Borrower or Guarantors relating to any lease or 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 Borrower is a party or by which Borrower may be bound or affected, and do not and will not violate or contravene any laws to which Borrower is subject; nor do any such instruments impose or contemplate any obligations which are or will be materially inconsistent with the Loan Documents.

3.4 **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 Borrower's knowledge and belief, threatened, against or affecting 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 Borrower's knowledge and belief, threatened against or affecting Borrower, 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 Borrower or the Collateral. Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority affecting Borrower or the Collateral.

3.5 Financial Statements. All statements, financial or otherwise, submitted to Lender in connection with the loan ("Loan") evidenced by the Note are true, correct and complete in all material respects, and all such financial statements have been prepared on an income tax basis, in which full, true and correct entries have been promptly made as to all operations of the Property. Since the date thereof, Borrower and Guarantors have not experienced any material, adverse change in their respective finances, business, operations, affairs or prospects. Notwithstanding the foregoing, the representations in this Paragraph 3.5 with respect to the Guarantors are made only with respect to any of the foregoing financial statements which have been submitted by such Guarantor.

3.6 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 policy heretofore delivered to and approved by Lender ("Permitted Encumbrances").

3.7 Compliance with Laws and Private Covenants. The Collateral complies in all material respects with all laws. Borrower has examined and is familiar with the Permitted Encumbrances and there now exists no material violation thereof. Except as may be shown on the ALTA survey heretofore delivered to and approved by Lender, Borrower has no notice that any of the Improvements are inconsistent with any easement over the Collateral or encroach upon adjacent property.

3.8 Hazardous Waste. To the best knowledge and belief of Borrower, and except as may be set forth in that certain environmental site assessment delivered to Lender in connection with the Loan, 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 Borrower received any notice from any governmental agency or from any other person with respect to any such hazardous waste or substance.

4. Ratification. Except as expressly modified herein, all of the terms, covenants, conditions, and stipulations of the Loan Documents shall remain in full force and effect and are hereby ratified and confirmed by the Borrower and Guarantors.

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

IN WITNESS WHEREOF, the parties have executed this instrument effective as of the date referenced above.

"BORROWER:"

THE MANDALA PROJECT, LLC, an Alabama limited liability company

By: Gary Pharo [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 10 day of February, 2009.

Amanda L Rhodes
Notary Public

My Commission Expires: 11-6-2012



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GUARANTORS:

Gary Pharo [SEAL]
Gary Pharo

Greg Hess [SEAL]
Greg Hess

Marvin Pharo [SEAL]
Marvin Pharo


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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 Gary Pharo, 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 10 day of February, 2009.

Amanda Rhodes
Notary Public


My Commission Expires: 11-6-2012

STATE OF ALABAMA)
COUNTY OF Jefferson)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Greg Hess, 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 10 day of February, 2009.

Amanda Rhodes
Notary Public

My Commission Expires: 11-6-2012


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STATE OF ALABAMA)
 :
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Marvin Pharo, 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 10 day of February, 2009.



Notary Public

My Commission Expires: 11-16-2012



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"LENDER:"

PROTECTIVE LIFE INSURANCE COMPANY

By:

Name: CARL S. THIGPEN

Its: EXECUTIVE VP

STATE OF ALABAMA)

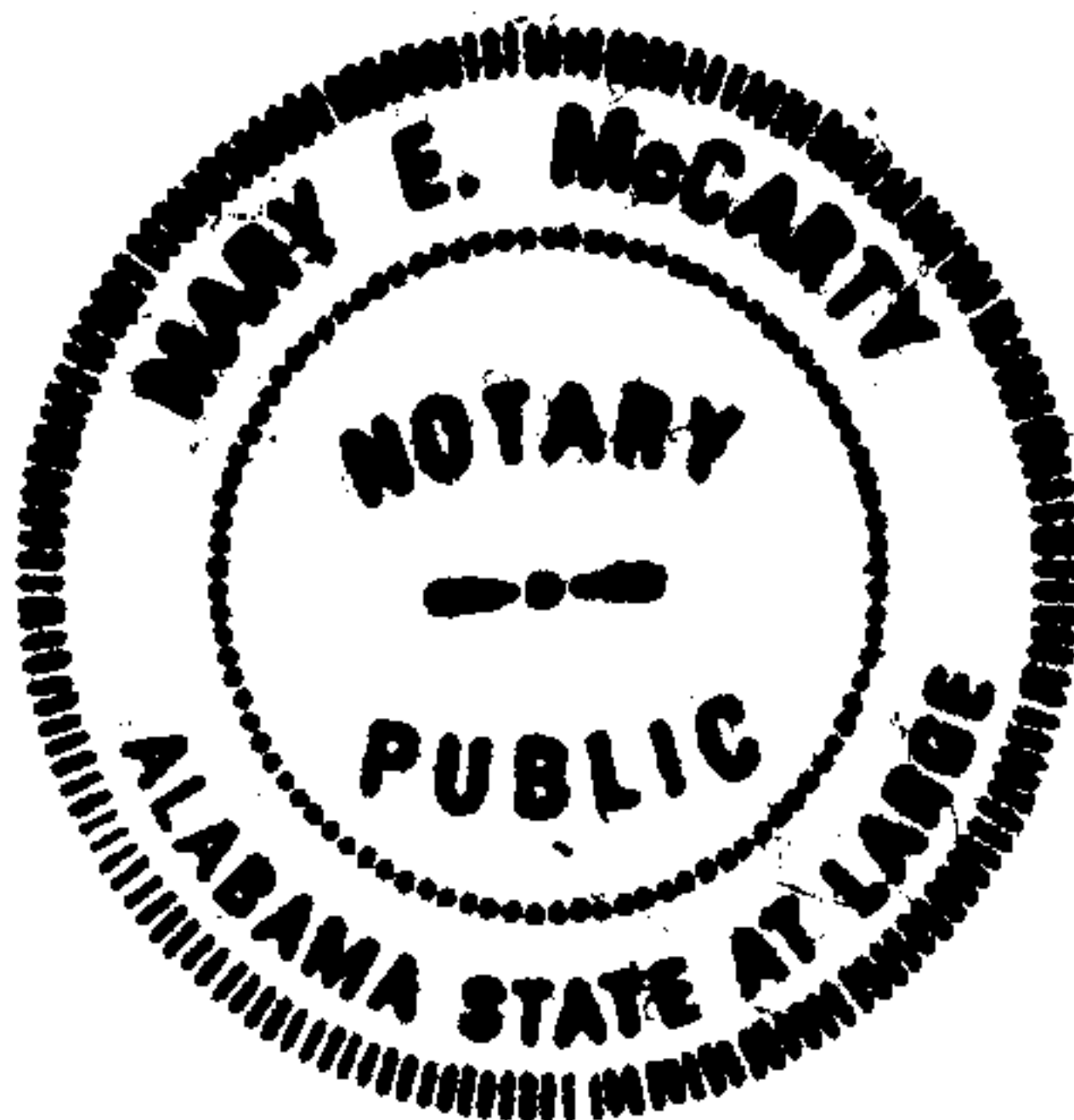
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Carl S. Thigpen, whose name as EX VP 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 10 day of FEB, 2009.

Mary E. McCarty
Notary Public

My Commission Expires: 9-6-09



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