

This Instrument Prepared By:

Scott Frederick  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
420 20<sup>th</sup> Street North  
Suite 1400  
Birmingham, AL 35203



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## SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") executed by and between CGP BIRMINGHAM (VALLEYDALE RD) TB, LLC, a Delaware limited liability company ("Landlord"), TACALA, LLC, a Delaware limited liability company ("Tenant") and M1 BANK ("Lender")

### WITNESSETH:

WHEREAS, Tenant has entered into a certain lease ("Lease") with Landlord dated of even date herewith, relating to certain premises located in Shelby County, Alabama (the "Premises"), said Premises being more particularly described in said Lease and being situated on the real property described in EXHIBIT A attached hereto and made a part hereof; and

WHEREAS, Lender has made a loan to Landlord, secured by a mortgage or similar security instrument dated on or around the date hereof (the "Mortgage"), covering the Premises, which Mortgage was recorded in the real property records of Shelby County, Alabama contemporaneously with this Agreement; and

WHEREAS, Tenant and Lender desire to establish certain rights, safeguards, obligations, and priorities with regard to their respective interests by means of this Agreement;

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, for itself and its successors and assigns, and Tenant hereby agree as follows:

1. To the extent that Tenant's rights and entitlements under the Lease are not diminished or otherwise affected, and except as provided in this Agreement, the Lease is and shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage.

2. Lender hereby acknowledges and consents to Tenant's rights under the Lease to obtain a leasehold mortgage (the "Leasehold Mortgage"), and the liens and security interests evidenced by the same and encumbering (among other things) Tenant's leasehold interest under the Lease. In no event shall the Mortgage cover or encumber (and shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's fixtures, business, equipment, furniture, signs, or other personal property at any time placed on or about the Premises, Lender and Tenant acknowledging that such property shall be pledged to the leasehold mortgagee as



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further security for the obligations of Tenant under the Leasehold Mortgage. Likewise, in no event shall the Leasehold Mortgage cover or encumber any of the Improvements as defined in the Lease. Lender acknowledges that upon any exercise by the leasehold mortgagee of any of its rights and remedies under the Leasehold Mortgage and related loan documents, all such property, together with Tenant's rights under the Lease, may be transferred to the leasehold mortgagee.

3. In the event of foreclosure of the Mortgage or should Lender obtain title by deed in lieu thereof, or otherwise, Lender, for itself and its successors and assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure), agrees that the Lease shall not terminate on account of such foreclosure or other such succession, by operation of law or otherwise, and Tenant shall not be disturbed in its quiet use, possession and occupancy of the Premises in accordance with the terms and provisions of the Lease, so long as Tenant is not in material default under the Lease beyond any applicable notice and cure period. Lender agrees not to name Tenant as a party defendant in any foreclosure action.

4. Subject to the foregoing provisions, Tenant agrees to attorn to: (a) Lender when in possession of the Premises; (b) a receiver appointed in an action or proceeding to foreclose the Mortgage or otherwise; or (c) to any party acquiring title to the Premises as a result of foreclosure of the Mortgage or deed in lieu thereof. Tenant further covenants and agrees to execute and deliver, upon request of Lender, or its assigns, an appropriate agreement of attornment, in form and content reasonably acceptable to Tenant and Lender (but which shall not amend the terms of the Lease or otherwise diminish Tenant's rights thereunder) with any subsequent titleholder of the Premises.

5. So long as the Mortgage remains outstanding and unsatisfied, Tenant will deliver to Lender a copy of all notices of default given to Landlord by Tenant. At any time before the rights of Landlord shall have been forfeited or adversely affected because of any default under the Lease as therein provided, Lender shall have the right (but not the obligation) to cure such default within the same period of time as is allowed Landlord under the Lease.

6. If Lender shall succeed to the interest of Landlord under the Lease, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interest of Landlord under the Lease, have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), except those of a continuing nature; or

(b) subject to any offsets, defenses or abatement which Tenant might have against any prior landlord (including Landlord), except (i) offsets specifically provided for in the Lease, or (ii) those which arose out of such Landlord's default under the Lease and accrued after Tenant has notified Lender and given Lender an opportunity to cure as provided in Paragraph 5 above; or



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(c) bound by any rent or Additional Rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord).

7. Lender consents to the application and disposition of casualty proceeds and condemnation awards in accordance with the Lease.

8. The Tenant and Landlord shall not agree to any alteration, modification, amendment, waiver or termination of the Lease without first obtaining the Bank's prior written consent.

9. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure) of each of the parties.

10. Any notices under this Agreement may be delivered by hand or sent by commercial delivery services or United States Postal Service express mail, in either case for overnight delivery with proof of service, or sent by certified mail, return receipt requested, to the following addresses:

To Landlord: CGP Birmingham (Valleydale Rd) TB, LLC  
361 Summit Boulevard, Suite 110  
Birmingham, Alabama 35243  
Attn: Mr. Chad Post

With a Copy to: Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
420 20<sup>th</sup> Street North, Suite 1400  
Birmingham, Alabama 35203  
Attn: Scott Frederick

To Tenant: Tacala, LLC  
Attn: Lease Administration  
3750 Corporate Woods Drive  
Birmingham, Alabama 35242

To Lender: M1 Bank  
112 S. Hanley, Suite 120  
Clayton, MO 63105

The notice shall be deemed to have been given, in the case of hand delivery, on the date of delivery, and in the case of delivery by commercial delivery service or United States Postal Service, on the date of receipt or refusal as evidenced by the carrier's or courier's receipt.

11. This Agreement may be executed and delivered in counterparts for the convenience of the parties.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Premises are located, except to the extent that the



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applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.

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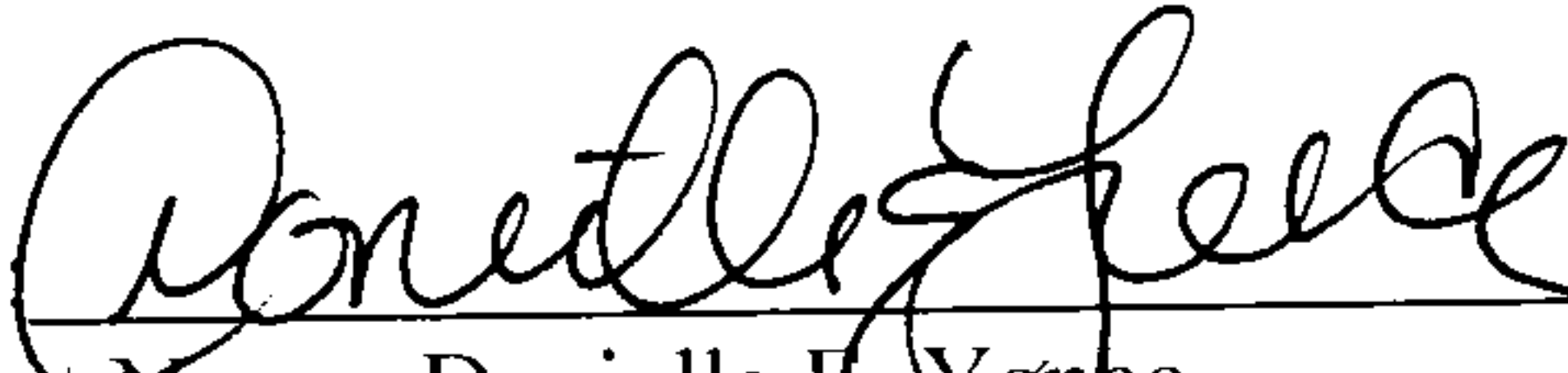


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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below their respective signatures.

**LANDLORD:**

**CGP Birmingham (Valleydale Rd) TB, LLC,**  
a Delaware limited liability company

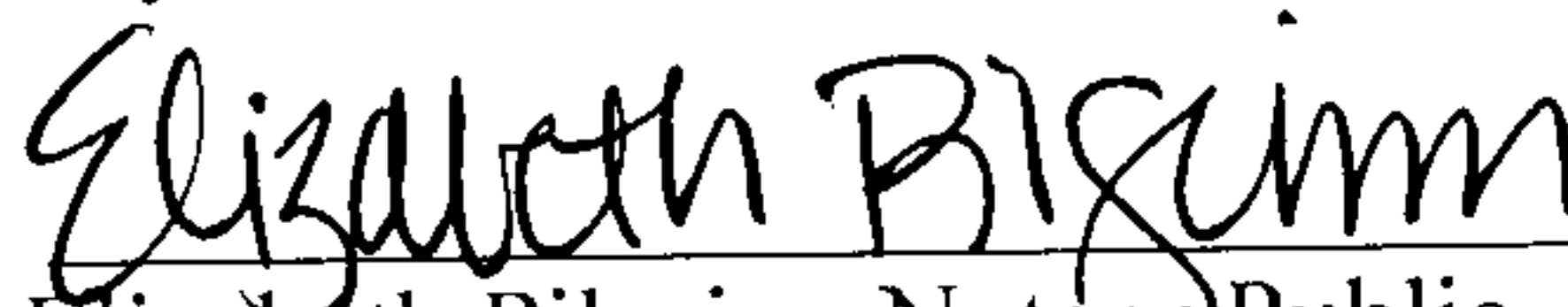
By   
Print Name: Danielle E. Yance  
Title: Authorized Agent

STATE OF ALABAMA       )  
COUNTY OF JEFFERSON   )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Danielle E. Yance whose name as Authorized Agent of CGP BIRMINGHAM (VALLEYDALE RD) TB, LLC, a Delaware 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/she, in his/her capacity as such Authorized Agent and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this the 18<sup>th</sup> day of November, 2022.

[SEAL]

  
Elizabeth Pilgrim; Notary Public

My Commission Expires: \_\_\_\_\_

|                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------|
| <p><b>ELIZABETH PILGRIM</b><br/><b>NOTARY PUBLIC, ALABAMA STATE AT LARGE</b><br/><b>MY COMMISSION EXPIRES NOV. 12, 2024</b></p> |
|---------------------------------------------------------------------------------------------------------------------------------|

*[Landlord's Signature Page to Subordination, Non-Disturbance and Attornment Agreement]*



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**TENANT:**

**Tacala, LLC,**  
a Delaware limited liability company

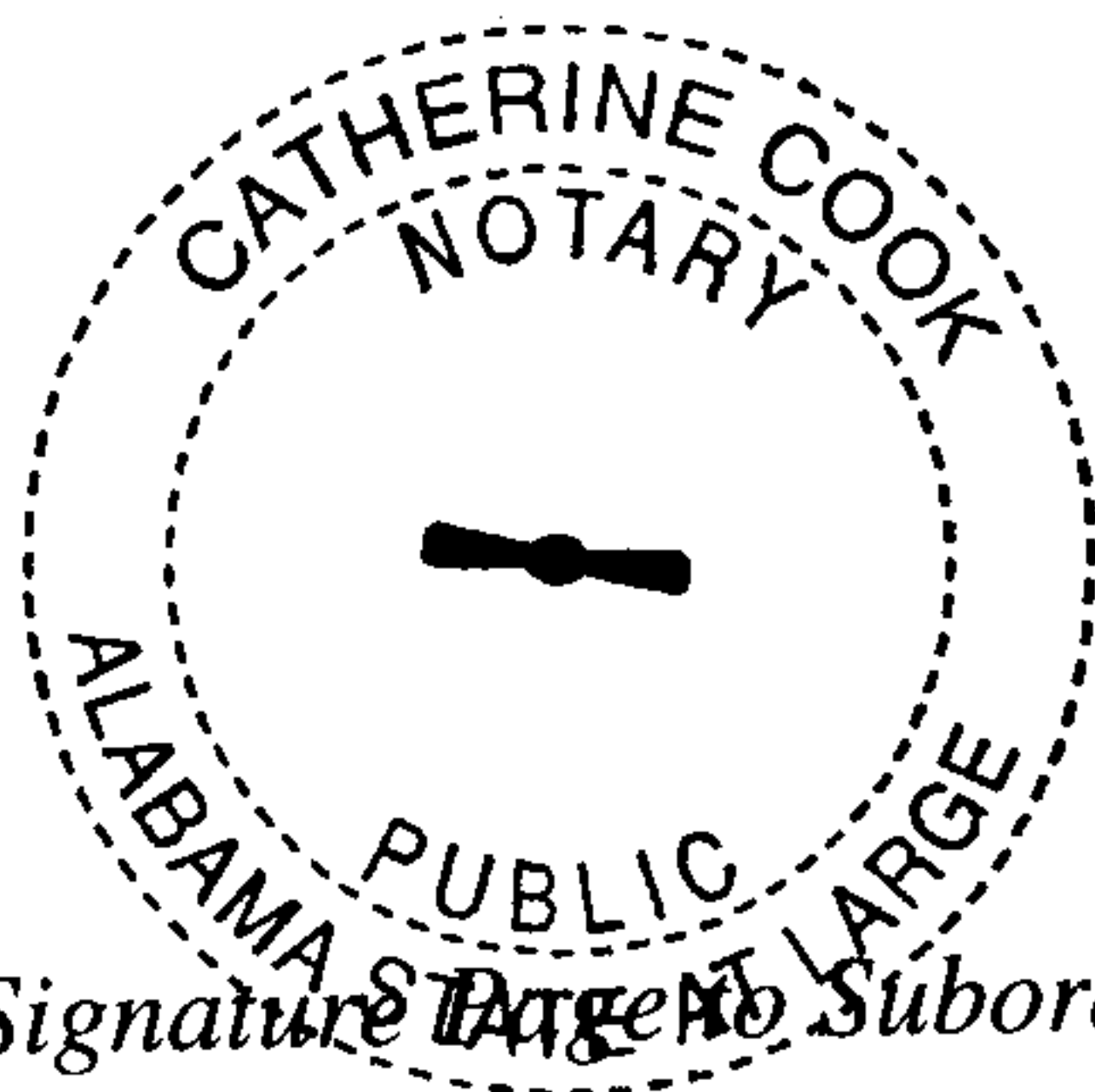
By:   
Print Name: Michael Border  
Title: Chief Development Officer

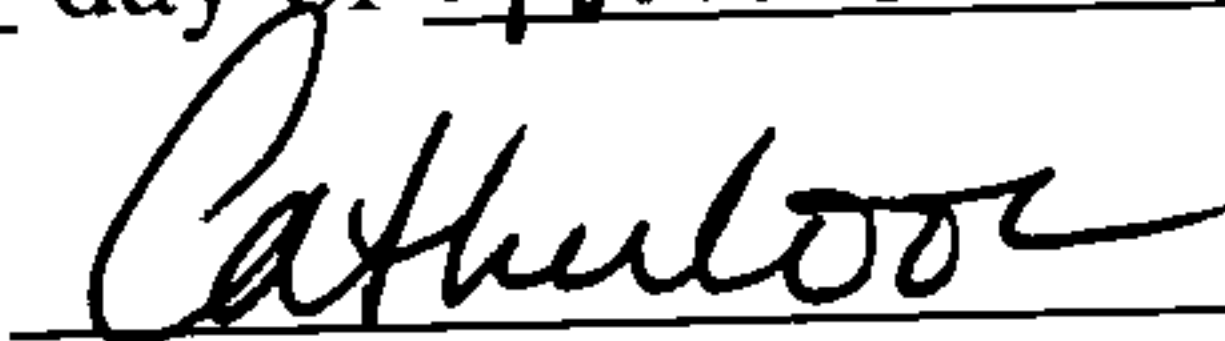
STATE OF ALABAMA     )  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Michael Border, whose name as Chief Development Officer of Tacala, LLC, a Delaware 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/she, in his/her capacity as such Chief Development Officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this the 18 day of November, 2022.

[SEAL]



  
Notary Public  
My Commission Expires 03/04/2026  
My Commission Expires: \_\_\_\_\_

[Tenant's Signature] *Agent Subordination, Non-Disturbance and Attornment Agreement*



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**LENDER:**

**MI Bank**

*Hope Hillis*

By: \_\_\_\_\_

Print Name: Hope Hillis

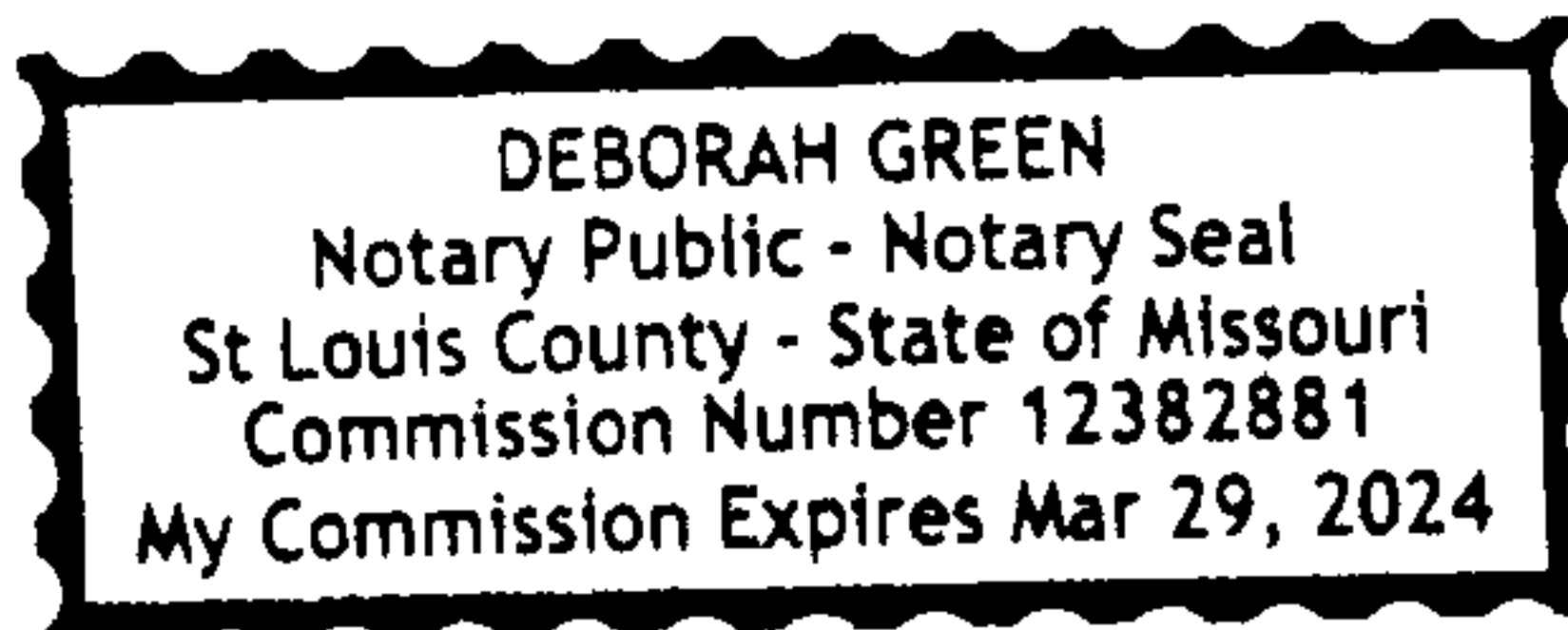
Its: Senior Vice-President

STATE OF MISSOURI  
COUNTY OF ST. LOUIS)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Hope Hillis, whose name as Senior Vice-President of M1 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/she, in his/her capacity as such officer and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand and seal this the 18<sup>th</sup> day of November 2022.

[SEAL]



*Deborah Green*  
\_\_\_\_\_  
Notary Public

My Commission Expires: March 29, 2024

*[Lender's Signature Page to Subordination, Non-Disturbance and Attornment Agreement]*



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Exhibit A  
Legal Description

The land referred to herein below is situated in the County of Shelby, State of Alabama, and is described as follows:

Lot 1 of the Tacala Valleydale subdivision according to the map or plat thereof, recorded in Map Book 55, Page 71, in the Office of the Judge of Probate of Shelby County, Alabama.