

SUBORDINATION AGREEMENT

THIS AGREEMENT is effective as of June 30, 2005 (hereinafter the "Agreement") and is by **SPAIN & GILLON, LLC** (hereinafter "Subordinate Creditor") and is in favor of **CAPITALPARTNERS LEASING, INC.** (hereinafter, along with its successors and assigns, "Superior Creditor").

WHEREAS, TACOA MINERALS, LLC (hereinafter "Debtor") are currently indebted to Subordinate Creditor, and such indebtedness is secured in part by the following (collectively the "Subordinate Creditor's Agreements")

1. a mortgage recorded as Instrument 2005-15083 in the Office of the Judge of Probate of Shelby County, Alabama;
2. UCC Financing Statement recorded as Instrument 2005-15084 in the Office of the Judge of Probate of Shelby County, Alabama;
3. UCC Financing Statement filed as [REDACTED] in the Office of the Secretary of State of Alabama; and
4. The documents and agreement evidencing the foregoing or executed in connection therewith.

WHEREAS TACOA MINERALS, LLC (hereinafter "Lessee") has requested Superior Creditor to lease to Lessee the property described in the Master Business Lease Agreement by and between Lessee and Superior Creditor (the "Leased Equipment") and Superior Creditor has agreed to make this lease provided, among other things, that

- i) Lessee gives and grant to Superior Creditor a mortgage (hereinafter "Superior Mortgage") of and concerning the property described therein;
- ii) That Subordinate Creditor subordinates its rights under the Subordinate Creditor's Agreements, to the rights of Superior Creditor under the Superior Mortgage;
- iii) That Subordinate Creditor consents to the conveyance to the Superior Creditor of the Leased Equipment; and
- iv) That Subordinate Creditor subordinates its rights as to the Leased Equipment to the rights of Superior Creditor thereto.

WHEREAS, the Superior Mortgage is being recorded contemporaneously herewith.

NOW THEREFORE in consideration of Superior Creditor leasing the Leased Equipment to Lessee, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Lien Priority: From and after the date hereof:

- (a) the Superior Mortgage shall have priority over the Subordinate Creditor's Agreements;
- (b) the Subordinate Creditor's Agreements shall be and at all times remain, subject, inferior, and subordinate to the Superior Mortgage;
- (c) The Subordinate Creditor consents to the conveyance to the Superior Creditor of the Leased Equipment;
- (d) Superior Creditor's rights as to the property described in the Superior Mortgage and the Leased Equipment shall have priority over Subordinate Creditor's rights thereto; and
- (e) Subordinate Creditor's rights as to the property described in the Superior Mortgage and the Leased Equipment shall be and at all times remain, subject, inferior, and subordinate to the Superior Creditor's rights thereto.

The priorities of the mortgages, interests, and security interest established, altered, or specified hereinabove shall be applicable, irrespective of the time or order of attachment, perfection, or recordation thereof, the method of perfection, the time or order of filing of mortgages or financing statements, or taking of possession, or the giving of or failure to give notice; provided, however, that the subordinations and relative priorities set forth herein are expressly conditioned upon the due and proper perfection, recordation, and the nonavoidability by a bankruptcy trustee, of any mortgage or security interest which have been accorded priority pursuant hereto; and provided, further, however, that if any mortgage or security interest to which any other interest has been subordinated pursuant hereto is not now perfected or recorded, or hereafter ceases to be perfected or recorded, or is avoidable by a bankruptcy trustee for any reason, then, the subordination specified herein with respect to such interests shall, to the extent not perfected, recorded, or avoidable, as the case may be, not be effective.

The relative priorities of any interests which are not established, altered, or specified herein shall exist and continue in accordance with the applicable provisions of law.

2. Debt Subordination: Subordinate Creditor does hereby subordinate the payment of any and all debts, obligations and liabilities of the Debtor owing to Subordinate Creditor (all hereinafter referred to as "Secondary Obligations") to the payment of any and all debts, obligations, and liabilities of the Lessee to Superior Creditor whether absolute or contingent, due or to become due, now existing or hereafter arising (all hereinafter referred to as "Primary Obligations") and Subordinate Creditor agrees not to ask, demand, sue for, take or receive payment of or security for all or any part of said Secondary Obligations until and unless all and every part of said Primary Obligations shall have been fully paid and discharged; except that Debtor may, under the terms of this Agreement, providing that Lessee is not in default in connection with any obligation Lessee or may have with Superior Creditor, make payments to Subordinate Creditor that will not exceed the earned interest on the Secondary Obligations, provided that such interest rate is reasonable.

Upon any distribution of the assets of the Debtor or Lessee by reason of reorganization, liquidation, dissolution, bankruptcy, receivership or assignment for the benefit of creditors,

Superior Creditor shall be entitled to receive payment in full of said Primary Obligations prior to the payment of all or any part of said Secondary Obligations, and to enable Superior Creditor to assert and enforce its rights hereunder in any such proceeding or upon the happening of any such event Subordinate Creditor hereby irrevocably authorized and empowered Superior Creditor to make and present on behalf of Subordinate Creditor such proofs of claim against the Debtor or Lessee on account of all or any of said Secondary Obligations as Superior Creditor may deem advisable and to receive and collect any and all dividends or other payments made thereon and to apply the same on account of said Primary Obligations. Subordinate Creditor will execute and deliver to Superior Creditor such instruments as may be required by Superior Creditor to present and enforce any and all such claims and to effect collection of any and all dividends or other payments which may be made at any time on account of said Secondary Obligations.

Subordinate Creditor further warrants and represents that it has not given or executed any prior subordination in respect to the Secondary Obligations, and that it will cause the original of any promissory note evidencing the Secondary Obligations to be endorsed with the following:

"This note and payment hereof is subject to and governed by the terms of a certain Subordination Agreement by and among maker, holder and CAPITALPARTNERS LEASING, INC. pursuant to which holder has agreed to subordinate payment of this note to the full and final payment of all obligations now or hereafter owing by TACOA MINERALS, LLC to CAPITALPARTNERS LEASING, INC."

3. Contesting Ownership, Liens or Security Interest: Neither Superior Creditor nor Subordinate Creditor shall contest the validity, perfection, priority or enforceability of any ownership, lien or mortgage granted to the other. Superior Creditor and Subordinate Creditor agree to cooperate in the defense of any action contesting the validity, perfection, priority or enforceability of such ownership, liens or mortgage.

4. Modification of Agreements: Superior Creditor and Subordinate Creditor, at any time and from time to time, may enter into such agreement or agreements with Lessee and/or Debtor as it may deem proper, extending the time of payment of, or renewing or otherwise altering the terms of all or any of Lessee's and/or Debtor's obligations or debts to either Superior Creditor or Subordinate Creditor, or affecting the security or property underlying any or all of such obligations or debt, or may exchange, sell, release, surrender or otherwise deal with any such security or property, without in any way impairing or affecting this agreement thereby.

5. Notice upon Foreclosure or Default: In the event of a default in Debtor's and/or Lessee's obligations to Subordinate Creditor or to Superior Creditor, then the party suffering such default will endeavor to give to the other party, notice of such default within thirty (30) days from such default having occurred, if same has not been cured by the Debtor and/or Lessee during such period. In the event either Superior Creditor or Subordinate Creditor elects to foreclose the Superior Mortgage or the Subordinate Creditor's Agreement, then the foreclosing party shall give to the other party notice of such foreclosure sale thirty (30) days prior to its occurrence.

6. Credit Investigations: Neither Subordinate Creditor nor Superior Creditor, nor any of their respective directors, officers, agents or employees shall be responsible to the other or to any other

person, firm or corporation, for Debtor's or Lessee's solvency, financial condition or ability to repay their obligations to Subordinate Creditor or Superior Creditor, or for any statements of Debtor or Lessee, oral or written, or for the validity, sufficiency or enforceability of Debtor's or Lessee's obligations to Subordinate Creditor or Superior Creditor, or any liens or security interest granted by Debtor or Lessee to Subordinate Creditor or Superior Creditor in connection therewith. Subordinate Creditor and Superior Creditor have each entered into their respective financing agreement with Debtor or Lessee based upon their own independent investigation and make no warranty or representation to the other nor do they rely upon any representation of the other with respect to matters identified or referred to in this paragraph. Neither Subordinate Creditor nor Superior Creditor nor any of their respective directors, officers, agents or employees shall be responsible to the other or to any other person, firm or corporation for the furnishing or sharing of any statements of, or credit, financial or other materials or data receive from Lessee or Debtor.

7. **Waiver of Marshalling:** Subordinate Creditor and Superior Creditor waive all rights as to marshalling as to any property Subordinate Creditor or Superior Creditor now hold or hereafter hold a security or mortgage interest in.

8. **Duration:** This Agreement shall remain in full force and effect until (i) all obligations of Lessee to Superior Creditor on the one hand, or Debtor to Subordinate Creditor, on the other hand, have been paid and satisfied in full and Superior Creditor, on the one hand, or Subordinate Creditor on the other hand, have terminated and satisfied their agreements with Lessee and Debtor, or (ii) upon the mutual agreement in writing by Superior Creditor and Subordinate Creditor, whichever is the first to occur.

9. **Choice of Law:** This Agreement shall be construed and enforced in accordance with the laws of the State of Alabama.

10. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS THEREOF, Subordinate Creditor has executed this Agreement effective as of the date first above written for the benefit of Superior Creditor.

Subordinate Creditor:

SPAIN & GILLON, LLC

By: Alton B. Paul

(Its: Member)

DEBTOR'S and LESSEE'S ACCEPTANCE

Debtor and Lessee hereby acknowledges receipt of, notice of, consents to, and agrees to be bound by the terms and provisions of the within and foregoing Subordination Agreement as they relate to the relative rights and priorities of Subordinate Creditor and Superior Creditor; provided, however, that nothing in the foregoing Subordination Agreement shall amend, modify, change or supersede the respective terms of the documentation and agreements between Debtor and Subordinate Creditor or Lessee and Superior Creditor.

DEBTOR:

TACOA MINERALS, LLC

BY

(Member)

LESSEE:

TACOA MINERALS, LLC

BY

(Member)

STATE OF ALABAMA
CREDITOR
COUNTY OF JEFFERSON

ACKNOWLEDGMENT OF SUBORDINATE

I, the undersigned Notary Public in and for said County in said State, hereby certify that Alton Parker, whose name as Member of **SPAIN & GILLON, LLC** 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/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this 30 day of June, 2005.

Notary Public

My Commission Expires:

THIS INSTRUMENT PREPARED BY:
William B. Hairston III
Engel Hairston and Johanson P.C.
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