


**SBA Loan No. 47626440-04**

STATE OF ALABAMA )  
COUNTY OF SHELBY )

  
20090527000199320 1/7 \$29.00  
Shelby Cnty Judge of Probate, AL  
05/27/2009 10:22:26 AM FILED/CERT

**SUBORDINATION**

WHEREAS, **DOTRY ENTERPRISES, LLC** and **EDGAR'S OLD STYLE BAKERY, INC.**, jointly, severally and collectively hereinafter referred to as "Borrowers", are presently indebted to the U.S. Small Business Administration, an agency of the Government of the United States of America, hereinafter referred to as "SBA", as evidenced by that certain promissory Note executed by said "Borrowers" in favor of SBA dated October 10, 2002, in the original principal amount of \$671,000.00; and

WHEREAS, the Note is secured by, among other things, a Mortgage executed by **DOTRY ENTERPRISES, LLC** and **EDGAR'S OLD STYLE BAKERY, INC.**, in favor of the Administrator of the SBA dated October 10, 2002, and recorded in the Office of the Judge of Probate of Shelby County, Alabama, as Instrument No. 20021014000501070, and by that Assignment of Rents and Leases recorded as Instrument No. 2002101400501080, (collectively the "SBA Mortgage"), and assigned to the SBA by that Assignment of Note and Security recorded as Instrument No. 20021014000501100 in said probate office, and

WHEREAS, said Borrowers are desirous of obtaining an additional loan in the amount of \$755,889.87 from COLONIAL BANK, hereinafter referred to as "Lender", for the purpose of refinancing and paying off the existing obligations to FIRST COMMERCIAL BANK evidenced by that promissory note and loan in the original principal amount of \$878,000.00 and secured by a mortgage on the real estate described herein below, which is superior to the SBA Mortgage; and

WHEREAS, the Lender requires the Borrowers to secure the loan with a Mortgage on the real estate, which is the subject property of the aforesaid mortgages, described herein below, to wit:

A parcel of land located in Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the Northwest corner of the Southeast quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, and run in an Easterly direction along the North line of said quarter section a distance of 329.55 feet to a point, said point lying on the Southwesterly boundary line of Cahaba Valley Park North, as recorded in Map Book 13, pages 140a and 140b, in the Office of the Judge of Probate of Shelby County, Alabama; thence turn a deflection angle of 60 degrees 17 minutes 38 seconds to the right and run in a Southeasterly direction along said boundary line of Cahaba Valley Park North a distance of 841.35 feet to a point; thence turn a deflection angle of 88 degrees 06 minutes 12 seconds and run to the right in a Southwesterly direction a distance of 577.12 feet to a point, said point being on the Westerly right of way line of Southgate Drive, as recorded in Map Book 22, page 91, in the Probate Office of Shelby County; thence turn an deflection angle of 91 degrees 53 minutes 48 seconds and run to the right in a Northwesterly direction along the Westerly right of way line of said Southgate Drive a distance of 385.48 feet to the POINT OF BEGINNING of the parcel herein described; thence continue in the same direction as the last described course, in a Northwesterly direction, along said right of way a distance of



47.60 feet to a point and the beginning of a curve to the left; thence continue along said right of way in a Northwesterly direction, and along the arc of said curve, having a radius of 220.00 feet and a central angle of 79 degrees 07 minutes 16 seconds, a arc distance of 303.80 feet to a point; thence continue along said right of way, tangent to last described curve, in a Westerly direction a distance of 181.50 feet to a point and the beginning of a curve to the left; thence, leaving said right of way, run in a Southwesterly to Southeasterly direction, along the arc of said curve, having a radius of 35.00 feet and a central angle of 105 degrees 34 minutes 59 seconds an arc distance of 64.50 feet to a point; thence continue in a Southeasterly direction, tangent to last described curve, a distance of 42.63 feet to a point; thence turn an interior angle of 183 degrees 06 minutes 00 seconds and run to the right in a Southeasterly direction a distance of 201.40 feet to a point; thence turn an interior angle of 183 degrees 14 minutes 59 seconds an run to the right in a Southeasterly direction a distance of 29.77 feet to a point; thence turn an interior angle of 86 degrees 27 minutes 28 seconds and run to the left in a Northeasterly direction a distance of 390.14 feet to the point of beginning.

**SUBJECT TO:** i) taxes dues and payable October 1, 2009; ii) 25 foot drainage easement along the southwesterly side of property, 5 foot utility easement along easterly side, and 20 foot drainage easement along the northerly side as shown on the survey; and iii) mineral and mining rights not owned by Mortgagor.

and further requests that SBA subordinate its Mortgage to that Mortgage having been taken or to be taken by said Lender.

NOW THEREFORE, in and for good and valuable consideration, and in order to induce said Lender to make said loan to said Borrowers, SBA does herewith **subordinate** the SBA Mortgage, to that Mortgage taken or to be taken by the Lender, which secures said loan, subject to the following:

(1) Except as expressly provided herein, this agreement shall not operate or be construed to alter the priority of the SBA Mortgage with regard to any legal or equitable interest in the property. Owner and Lender shall hold SBA harmless from any impairment of its lien (with regard to any third party) which is occasioned by this subordination.

(2) Use of Proceeds. All proceeds of Lender's loan, if a refinance, shall be applied to satisfy debt secured by a lien(s) presently superior to the lien of the SBA Mortgage, plus customary closing costs. Any other use of proceeds not described herein shall void this agreement.

(3) This subordination agreement is void if not duly executed by Lender, SBA, the SBA Borrower(s) and all Guarantors of the SBA loan.

(4) Compliance With 504 Loan Program Requirements. Lender confirms that the note evidencing the Lender Loan, any lien instruments securing the Lender Loan, and all other documents executed in connection with the Lender Loan ("Lender's Loan Documents") (a) have no open-ended features and allow reasonable future advances only for the costs of collection the obligor is liable for under the Lender's Loan Documents, maintaining collateral, and/or protecting the lien(s) securing the Lender Loan, (b) are not cross-collateralized with any other financing now or hereafter to be provided by Lender, (c) have no early call features, (d) are not payable on demand unless the Lender Loan is in default, (e) have a term that at least equals, and do not require a balloon payment prior to, the term of the previous Third Party Lender Loan unless SBA has approved a shorter term, (f) have a reasonable interest rate that does not, and will not, exceed the maximum interest rate for a Third Party Loan as published by SBA and in effect as of the date of this Agreement, and (g) do not establish a preference in favor of



Lender, as compared to CDC and SBA, related to making, servicing, or liquidating the Lender Loan (including but not limited to, with respect to repayment, collateral, guarantees, control, maintenance of a compensating balance, purchase of a certificate of deposit, or acceptance of a separate or companion loan) other than Lender's senior lien position(s) on the Collateral. Lender agrees that if Lender's Loan Documents or any provision therein does not comply with these requirements, then Lender waives its right to enforce any such non-complying document or provision unless Lender has obtained the prior written consent of CDC and/or SBA permitting such enforcement.

(5) Subordination of Default Charges. "Default Charges" mean any prepayment penalties, fees, or charges incurred in prepaying the Lender Loan, in whole or in part, prior to the stated maturity; any late fees or charges due in connection with the Lender Loan; any escalated, increased, or default interest charged in excess of the rate of interest in Lender's note absent a default, event of default, or other delinquency; and any other default charges, penalties, or fees of any nature whatsoever due because of a default, event of default, or other delinquency in connection with the Lender Loan. Lender hereby subordinates the collection of any Default Charges to the collection by CDC and/or SBA of the 504 Loan and, to the extent that Lender's Loan Documents secure any Default Charges, Lender hereby subordinates such lien(s) to the lien(s) securing the 504 Loan.

(6) Notice of Default Under the Lender Loan. If any default, event of default or delinquency, upon which Lender intends to take action, occurs under the Lender's Loan Documents, then Lender agrees to give CDC and SBA written notice of such default, event of default or delinquency and the opportunity to cure the default, event of default, or delinquency and bring the Lender Loan current or to purchase Lender's note, provided that the amount to bring the Lender Loan current or to purchase Lender's note will be net of all amounts attributable to Default Charges. Lender further agrees that if Lender receives from CDC or SBA any amounts attributable to Default Charges, then Lender will immediately remit such amounts to SBA. Notice hereunder must be given within thirty (30) days after the default, event of default or delinquency upon which Lender intends to take action and at least sixty (60) days prior to the date of any proposed sale of Collateral and Lender will not sell all or any portion of the Collateral without giving CDC and the SBA such notice. A default in the obligation secured by the Lender's Mortgage may be cured (including purchase of the property at foreclosure sale) by the SBA via cash, certified funds, or a United States Treasury check, at the option of the SBA. Notice under this Agreement shall be deemed to have been given when sent by certified or registered mail, return receipt requested, addressed, as the case may be, to (CDC) at , Attention: Servicing, and also to the SBA at 2120 Riverfront Drive, Suite 100, Little Rock, Arkansas 72202.

(7) Collection and Liquidation. In the event that either the Lender Loan or the 504 Loan is declared in default; Lender, CDC and SBA agree to cooperate in liquidating and/or selling the Collateral. Lender agrees (a) to accept cash, certified funds or a U.S. Treasury check(s) in connection with any purchase of Lender's note or any foreclosure or liquidation bid by CDC or SBA; (b) to provide CDC and SBA with the loan payment status, loan payment history, and an itemized payoff statement of the Lender Loan; (c) to provide CDC and SBA with copies of any appraisals, environmental investigations, or title examinations or searches of the Collateral conducted by or for Lender; and (d) to provide any other information about Borrower or the Lender Loan requested by CDC and/or SBA in writing.

(8) No Implied Third Party Beneficiaries. Except to the extent stated in this Agreement, this Agreement does not modify or affect otherwise any other agreement that either party may have with third parties, including but not limited to, Borrower. This Agreement also does not grant any right, benefit, priority, or interest to any third parties, including but not limited to, Borrower.





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(9) Successors and Assigns. This Agreement shall inure to the benefit of and bind the respective parties to this Agreement and their respective heirs, successors and assigns, including any party acquiring the Lender Loan or Lender's Loan Documents by sale, assignment, or other transfer.

(10) Federal Law. When SBA is the holder of the note evidencing the 504 Loan, this Agreement and all documents evidencing or securing the 504 Loan will be construed in accordance with federal law. CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax, or liability. No Borrower or guarantor of the 504 Loan may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to the 504 Loan.

(11) Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, the Administrator has caused this Subordination Agreement to be executed on behalf of the U.S. Small Business Administration on May \_\_\_\_, 2009.

U.S. SMALL BUSINESS ADMINISTRATION

BY: Don Schuneman  
 Name: Don Schuneman  
 Title: SLO

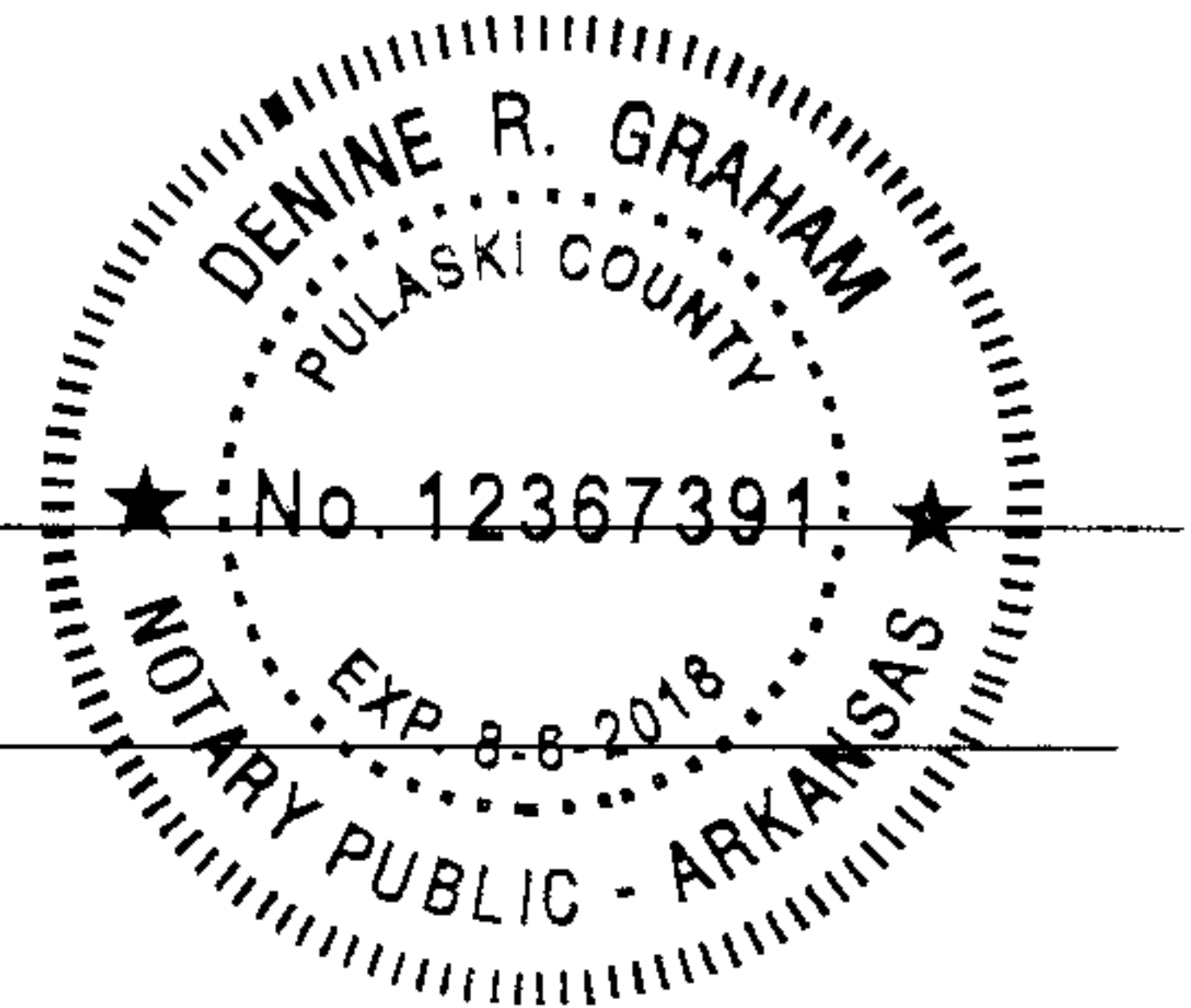
STATE OF ARKANSAS  
 COUNTY OF PULASKI

ACKNOWLEDGEMENT OF SBA

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that DON SCHUNEMAN, whose name as SLO of The U.S. Small Business Administration, an agency of the U.S. Government, 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, as an act of said agency, acting in his capacity as aforesaid.

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

Denine R. Graham  
 NOTARY PUBLIC  
 My Commission Expires: \_\_\_\_\_



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IN WITNESS WHEREOF, the undersigned parties have consented to the contents, terms and conditions of this Subordination, and further consent, acknowledge and accept that nothing in the foregoing Subordination shall amend, modify, change or supersede the respective terms of the documentation and agreements between either Borrower or Borrower's guarantor(s) and Lender and/or Borrower or Borrower's guarantor(s) and SBA on this the 15<sup>th</sup> day of ~~April~~ May 2009.

BORROWER(S):

**DOTRY ENTERPRISES, LLC**

By: Terry Eugene Smith  
Terry Eugene Smith (Its Member)

By: Dorothy Freeman Smith  
Dorothy Freeman Smith (Its Member)

**EDGAR'S OLD STYLE BAKERY, INC.**

By: Terry Eugene Smith  
Terry Eugene Smith (Its President)

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Terry Eugene Smith whose name as President of EDGAR'S OLD STYLE BAKERY, INC., a 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, as an act of said corporation, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 15<sup>th</sup> day of May, 2009.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 9-18-2012

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Terry Eugene Smith and Dorothy Freeman Smith whose name as Members of DOTRY ENTERPRISES, LLC, a limited liability company, are signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such members, and with full authority, executed the same voluntarily, as an act of said company, acting in its capacity as aforesaid.

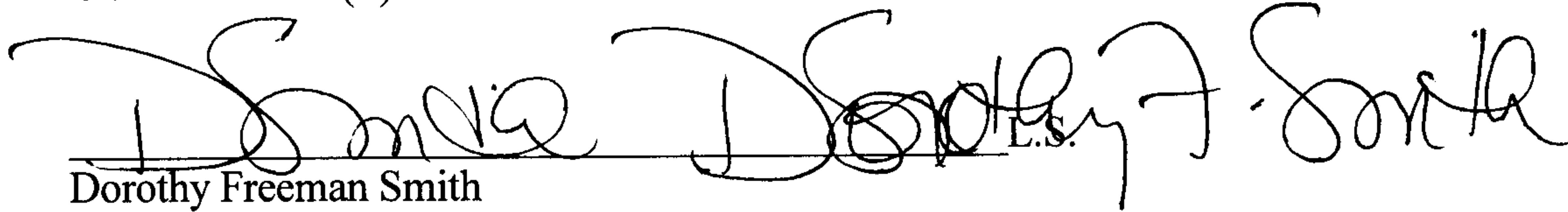
Given under my hand and official seal, this the 15<sup>th</sup> day of May, 2009.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 9-18-2012



The undersigned Guarantor(s) hereby consent to all terms above and acknowledge their liability for the above referenced SBA loan is in no manner diminished by this agreement.

GUARANTOR(S):

  
Dorothy Freeman Smith

  
Terry Eugene Smith

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Terry Eugene Smith and Dorothy Freeman Smith, whose names are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of this instrument, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 15<sup>th</sup> day of May, 2009

  
NOTARY PUBLIC

My Commission Expires: 9-18-2012


This Instrument Prepared By:

William C. Brown  
ENGEL HAIRSTON & JOHANSON, P.C.  
4th Floor 109 North 20th Street  
P.O. Box 11405  
Birmingham, Alabama, 35203  
(205) 328-4600

LENDER:

**COLONIAL BANK**

BY: Jerry Price  
Name: JERRY PRICE  
Title: VICE PRES

  
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STATE OF ALABAMA )  
JEFFERSON COUNTY )

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jerry Price, whose name as Vice President of COLONIAL BANK, a 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, as an act of said corporation, acting in his capacity as aforesaid.

Given under my hand and official seal, this the 15<sup>th</sup> day of May, 2009.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 9-18-2012

[ACKNOWLEDGMENT AND CONSENT OF GUARANTOR(S) CONTAINED ON  
FOLLOWING PAGE.]

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