


STATE OF ALABAMA)
COUNTY OF SHELBY)


20120423000139910 1/9 \$38.00
Shelby Cnty Judge of Probate, AL
04/23/2012 03:46:01 PM 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" dated October 10, 2002, in the original principal amount of \$671,000.00 in favor of BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY, hereinafter referred to as "CDC", and assigned by CDC to SBA; and

WHEREAS, the Note is secured by, among other things, a Mortgage executed by **DOTRY ENTERPRISES, LLC and EDGAR'S OLD STYLE BAKERY, INC.,** hereinafter collectively referred to as "Owner", in favor of CDC dated October 10, 2002, 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 by CDC to SBA in accordance with the terms of an Assignment of Note and Security dated October 12, 2002 and recorded in the Office of the Judge of Probate of Shelby County, Alabama, as Instrument No. 20021014000501100;

WHEREAS, said Borrowers are desirous of obtaining an additional loan in the amount of \$671,000.00 from **FIRST COMMERCIAL BANK,** hereinafter referred to as "Lender", for the purpose of refinancing and paying off the existing obligations to **BRANCH BANKING AND TRUST COMPANY** (as successor in interest to **COLONIAL BANK**), evidenced by that promissory note and loan in the original principal amount of \$755,889.87 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 described on Exhibit "A" attached hereto, 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** its 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 Owner, Lender, SBA, the Borrowers and all Guarantors of the Borrowers.
- (4) Compliance With 504 Loan Program Requirements. Lender confirms that the note evidencing Lender's loan, any lien instruments securing Lender's loan, and all other documents executed in connection with Lender's 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's 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's 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's 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's 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's loan, in whole or in part, prior to the stated maturity; any late fees or charges due in connection with the Lender's 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's loan. Lender hereby subordinates the collection of any Default Charges to the collection by CDC and/or SBA of the loan made by the CDC to Borrowers, hereinafter referred to as 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's loan current or to purchase Lender's note, provided that the amount to bring the Lender's 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 its collateral without giving CDC and the SBA such notice. A default in the obligation secured by the mortgage to Lender 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 BIRMINGHAM CITY WIDE LOCAL DEVELOPMENT COMPANY (CDC) at 1500 1st Avenue North, Suite 108B, Birmingham, Alabama 35203, 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's 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's 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's 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, Borrowers. This Agreement also does not grant any right, benefit, priority, or interest to any third parties, including but not limited to, Borrowers.
- (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's 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.


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IN WITNESS WHEREOF, the Administrator has caused this Subordination Agreement to be executed on this the 3 day of ~~March~~, 2012.

April

U.S. SMALL BUSINESS ADMINISTRATION

By: Hollis Carter

Name: Hollis Carter

Title: Supervisory Loan officer

STATE OF ARKANSAS
COUNTY OF PULASKI

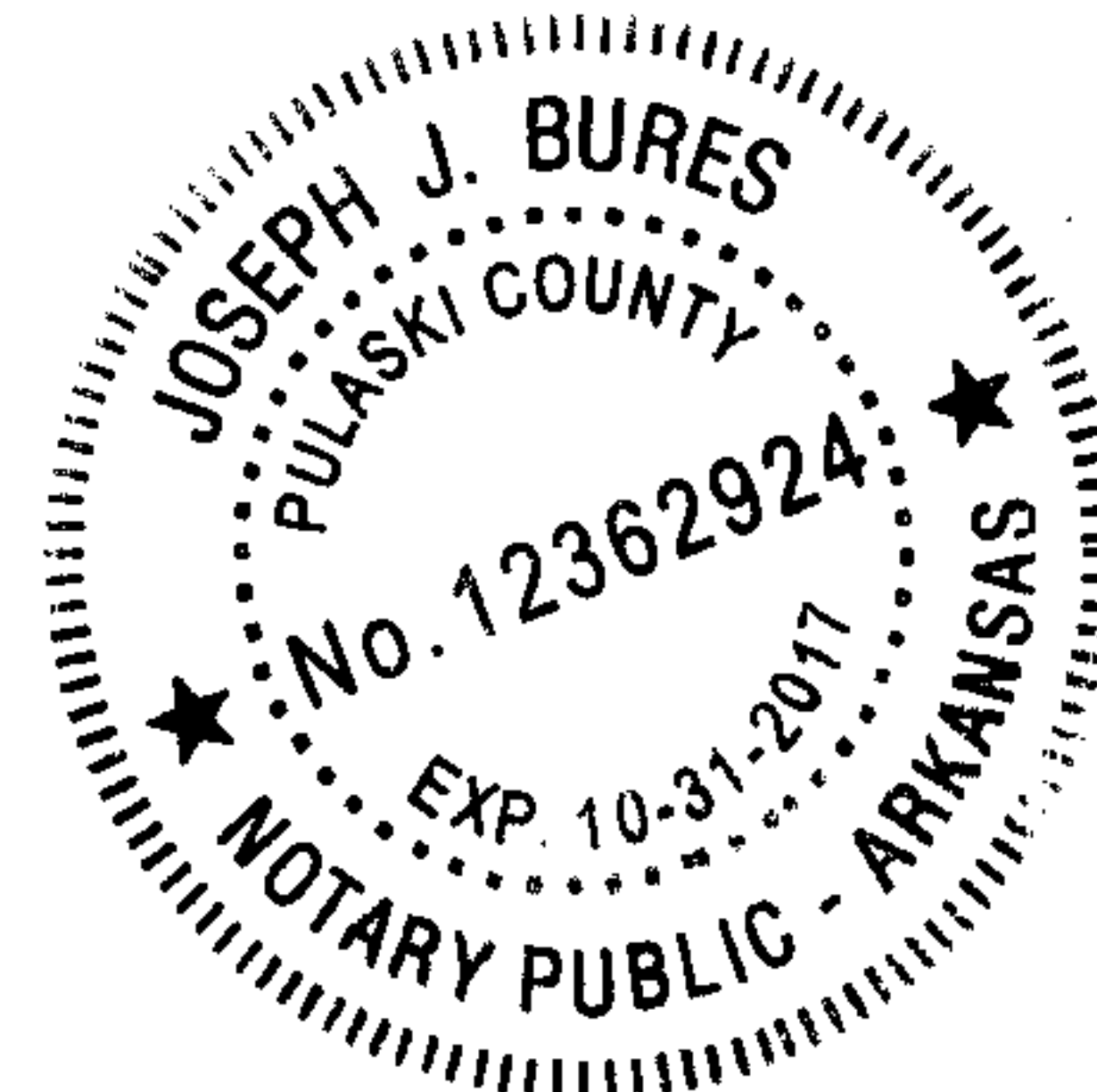
I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Hollis Carter whose name as SLC of the U.S. Small Business Administration, an agency of the U.S. Government, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such agent/officer, and with full authority, executed the same voluntarily, as an act of said agency, acting in its capacity as such agent/officer as aforesaid.

GIVEN UNDER MY HAND and seal of office this, the 3 day of ~~March~~, 2012.

April

[Signature]
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 Agreement, this ____ day of March, 2012

OWNERS:

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., an Alabama 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 18th day of April, 2012.

Sandra Kay Norris
NOTARY PUBLIC

My Commission Expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Sept 21, 2014
BONDED THRU NOTARY PUBLIC UNDERWRITERS

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 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 18th day of April, 2012.

Sandra Kay Norris
NOTARY PUBLIC

My Commission Expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Sept 21, 2014
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LENDER:

FIRST COMMERCIAL BANK

BY: Wesley Turner
Name: Wesley Turner
Title: Business Banking Officer

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Wesley Turner, whose name as Business Banking Officer of FIRST COMMERCIAL 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 18th day of April, 2012.

Sandra Kay Norris
NOTARY PUBLIC
My Commission Expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Sept 21, 2014
BONDED THRU NOTARY PUBLIC UNDERWRITERS

THIS INSTRUMENT PREPARED BY AND AFTER
RECORDATION SHOULD BE RETURNED TO
Heather E. Ward
ENGEL HAIRSTON & JOHANSON, P.C.
4th Floor 109 North 20th Street
P.O. Box 11405
Birmingham, Alabama 35202
(205) 328-4600

Following recordation the CDC should retain a copy of this agreement and the original should be mailed to the SBA as follows:

Little Rock Commercial Loan Servicing Center
Attn: Collateral Cashier
2120 Riverfront Drive, Suite 100
Little Rock, Arkansas 72202

The undersigned Guarantor(s)/Borrower(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.

BORROWERS

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)

GUARANTORS

Dorothy Freeman Smith
Dorothy Freeman Smith (Individually)

Terry Eugene Smith
Terry Eugene Smith (Individually)

**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 18th day of April, 2012.

Sandra Kay Norris
NOTARY PUBLIC
My Commission Expires: _____

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
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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 Terry Eugene Smith and Dorothy Freeman Smith whose namse 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 ^{April}~~18th~~ day of ~~March~~, 2012.

Dandra Kay Norris
NOTARY PUBLIC

My Commission Expires: ~~NOTARY PUBLIC STATE OF ALABAMA AT LARGE~~
~~MY COMMISSION EXPIRES: Sept 21, 2014~~
~~BONDED THRU NOTARY PUBLIC UNDERWRITERS~~

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 ^{April}~~18th~~ day of ~~March~~, 2012.

Dandra Kay Norris
NOTARY PUBLIC

My Commission Expires: ~~NOTARY PUBLIC STATE OF ALABAMA AT LARGE~~
~~MY COMMISSION EXPIRES: Sept 21, 2014~~
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EXHIBIT "A"

BORROWER: DOTRY ENTERPRISES, LLC and EDGAR'S OLD STYLE BAKERY, INC.
LENDER: FIRST COMMERCIAL BANK

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 and assessments for the year 2012 constituting a lien which not yet due and payable; 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) vii) coal, oil, gas and any other mineral and mining rights not owned by Mortgagor/Borrower..


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