

This instrument prepared by
and to be returned to:

Matthew D. Evans, Esq.
Marks & Associates, P.C.
400 Century Park South
Suite 100
Birmingham, Alabama 35226

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11/12/2015 08:33:14 AM
SUBAGREM 1/9

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of November 10, 2015, by and among **SERVISFIRST BANK**, an Alabama banking corporation (the "Bank"), **JEREMY MURPHY**, an individual of the State of Alabama (the "Tenant"), and **MMA ENTERPRISES LLC**, an Alabama limited liability company (the "Owner").

WHEREAS, Owner is the owner of the property described in Exhibit A attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Bank has made a loan (the "Loan") to Owner and such Loan is secured by a Mortgage, Security Agreement and Fixture Filing on the Property (as amended from time to time, hereinafter referred to as the "Mortgage"); and

WHEREAS, pursuant to that certain Lease dated as of September 30, 2015 (together with any and all modifications or amendments at any time thereto, hereinafter referred to as the "Lease") between Owner and Tenant, which lease was assigned to Bank by Owner, Owner is now leasing to Tenant all or a portion of the Property or the improvements located thereon (the "Leased Premises") for an initial term set to expire on September 30, 2016 at the rental and upon the terms and conditions set forth in the Lease; and

WHEREAS, Bank desires to assure the Tenant possession of the Leased Premises upon the terms and conditions set forth in the Lease for the entire original term and any optional renewal term therein provided without regard to any default under the terms of the Mortgage; and

WHEREAS, Tenant desires to assure Bank that the Tenant will attorn to the Bank under the circumstances set forth in this Agreement and under the Lease; and

WHEREAS, Bank desires to assure Tenant that its possession of the Leased Premises and rights under the Lease will not be disturbed so long as Tenant is not in default under the Lease or the terms of this Agreement; and

WHEREAS, Tenant has agreed to subordinate the Lease and its interest therein to the Mortgage.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by each of the parties herein to the other, of other good and valuable consideration, and of the mutual promises contained herein, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the Bank, Tenant and Owner covenant and agree as follows:

1. **SUBORDINATION**. Anything to the contrary in the Lease notwithstanding, the Lease, and all rights of Tenant thereunder, are and shall be subject and subordinate in all respects to the Mortgage, to each and every advance made or hereafter to be made under the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage. Notwithstanding any provisions of the Lease to the contrary, and for so long as the Mortgage and any modification or extensions thereof shall remain unsatisfied, the Mortgage, the Lease and the rights of the Tenant under the Lease shall be superior to any subsequent financing or other encumbrances with a party other than Bank, its successors or assigns, with respect to the Leased Premises, and Tenant and Owner agree that each will not at any time prior to satisfaction of the Mortgage voluntarily subordinate the Lease to any mortgage or encumbrance to a party other than Bank, its successors or assigns, respecting the Leased Premises which is junior in priority to the Mortgage.

2. **RIGHT OF BANK TO CURE DEFAULTS**. If any default shall occur under the Lease on the part of the Owner, which would give Tenant the right (or under which Tenant might claim the right) to cancel or terminate the Lease, Tenant shall promptly give notice thereof to Bank, and Bank shall have thirty (30) days from the date of such notice to cure any such default, or if such default is not reasonably capable of being cured in such period of time, Bank shall have the right within such time to commence remedying such default and shall proceed diligently to complete the same. In the event any such default is so cured, the Lease shall not be deemed to be in default, and Tenant's duties thereunder shall continue unabated. Nothing herein shall be deemed to be a duty on the part of Bank to cure any such default, but only a right on its behalf.

3. **TENANT TO ATTORN TO BANK**

(A) In the event that the Bank shall succeed to the interest of Owner under the Lease, the Lease shall continue with the same force and effect as if the Bank, as Lessor, and the Tenant had entered into a Lease for a term equal to the then unexpired term of the Lease, containing the same terms, conditions and covenants as those contained in the Lease, including, but not limited to, any rights of renewal therein, and the Tenant shall be bound to the Bank under all of the provisions of the Lease for the remaining term thereof with the same force and effect as if the Bank were the Lessor under the Lease, and the Tenant hereby attorns and agrees to attorn to the Bank as its landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of either of the parties hereto immediately upon the succession of Bank to the interest of Owner under the Lease. The Tenant shall be under no obligation to pay rent to the Bank until the Tenant receives written notice from the Bank that an event of default under any of the loan documents relating to the Loan has occurred, or that it has succeeded to the interest of the Owner under the Lease. The Owner and Tenant agree that, upon receiving such notice from Bank, Tenant shall pay all rents directly to Bank

without any duty to inquire as to the validity of such notice and without any liability therefor to Owner. Nothing contained herein shall in any manner limit or restrict the right of Bank to have a receiver appointed or to seek any other appropriate relief or remedy under any one or more of the loan documents relating to the Loan. The respective rights and obligations of the Tenant and the Bank upon such attornment and their relationship shall be as tenant and landlord respectively, for the remaining term of the Lease, including any renewal periods set forth in the Lease;

(B) Tenant agrees that it shall not, without the express consent of Bank, prepay any minimum rental under the Lease to Owner in excess of one (1) month's advance minimum rental; and

(C) In the event that the Bank shall succeed to the interest of the Owner under the Lease, the Bank agrees to be bound to the Tenant under all of the terms, covenants and conditions of the Lease; provided, however, that Bank shall not be:

- (1) liable for any act or omission of any prior landlord (including the Owner); or
- (2) subject to any offsets which the Tenant might have or thereafter have against any prior landlord (including the Owner); or
- (3) bound by any prepayment of more than one (1) month's minimum rental under the Lease to any prior landlord (including the Owner); or
- (4) bound by an amendment, modification or surrender of the Lease made without its consent.

4. **BANK'S RIGHT TO PROCEED AGAINST TENANT.** In the event the Bank shall succeed to the interest of the Owner under the Lease, the Bank will have the same remedies by entry, action or otherwise for the nonperformance of any agreement contained in the Lease, for the recovery of rent, for the doing of any waste or for any other default, as Owner had or would have had if the succession not taken place, and this right shall exist whether or not the Lease is formally terminated; in any such action, Tenant waives the necessity of Owner being made a party to such proceeding.

5. **NON-DISTURBANCE PROVISIONS.** In the event the Mortgage shall be foreclosed, or in the event Bank otherwise succeeds to the interest of the Owner under the Lease, and provided that Tenant is not then in default under the Lease, the Lease shall not terminate on account of such foreclosure or other such succession, by operation of law or otherwise, so long as the Tenant continues to pay the rents reserved in the Lease and otherwise does not become in default under the Lease.

6. **BANK'S APPROVAL OR CONSENT.** Wherever Bank's consent or approval under the Lease is required, Bank agrees to not unreasonably withhold such consent, and it is understood and agreed that Bank shall not be deemed to have unreasonably withheld such consent or approval, wherein Bank's reasonable discretion to give such approval or consent

would reduce the value, decrease the size or impair the structural integrity of the Leased Premises and/or the Property or otherwise impair the security granted under the Mortgage.

7. **OWNER'S AND TENANT'S CERTIFICATION.** Owner and Tenant hereby confirm and certify to Bank the following:

(A) That the Lease is in full force and effect and has not been modified, altered or amended and constitutes a complete statement of the agreement between Owner and Tenant with respect to the leasing of the Leased Premises.

(B) That Tenant has accepted possession of and is occupying the Leased Premises.

(C) That the Leased Premises have been completed in all respects and that the Owner has complied with all obligations on its part with respect to the construction, fixturing and equipping of the same.

(D) That monthly rentals are payable monthly in advance under the Lease.

(E) That we have no notice of a prior assignment, hypothecation or pledge of rents or the Lease.

(F) That, as of the date hereof, Tenant has no charge, lien or claim of offset or credit against rentals or other charges coming due under the Lease, nor have rentals been prepaid except as expressly provided by the terms of the Lease.

(G) That Tenant has been notified that the Lease has been or will be assigned to Bank as security for the Loan, and Tenant has no notice of a prior assignment, hypothecation or pledge of rents or the Lease.

(H) That there are no actions, either voluntary or involuntary, pending against the Tenant under the bankruptcy laws of the United States, or under the bankruptcy laws of any state.

(I) That to the knowledge of Owner and Tenant, no party to the Lease is in default thereunder.

(J) That all rentals due or coming due under the Lease are currently paid or due to be paid to the Owner.

(K) That this certification is made with the knowledge that Bank is relying on this certification in making the Loan to the Owner.

8. **SURVIVAL.** This instrument shall survive any foreclosure of the Leased Premises, or any other succession by Bank to the interest of the Owner with respect to the Leased Premises, and shall remain in full force and effect until the end of the Lease term and all exercised optional extension periods, or until satisfaction of the Mortgage and all renewals,

modifications, consolidations, replacements, and extensions of the Mortgage, whichever shall first occur.

9. **LIMITATION OF BANK'S LIABILITY.** Tenant shall look solely to the Property for recovery of any judgment or damages from Bank, its successors and assigns, and neither Bank nor its successors or assigns shall have any personal liability, directly or indirectly, under or in connection with the Lease or this Agreement or any amendment or amendments to either thereof made at any time or times, heretofore or hereafter, and Tenant hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation on liability applicable to Bank, its successors and assigns, provided by law or by any other contract, agreement or instrument.

10. **APPROVALS.** The Owner has joined in this Agreement for the purpose of expressing its consent and agreement to be bound by the provisions hereof.

11. **NOTICES.** All notices or demands hereunder shall be sufficient if sent by United States registered or certified mail, postage prepaid, addressed as follows:

If to Bank: ServisFirst Bank
850 Shades Creek Parkway, Suite 200
Birmingham, AL 35209
Attention: Mr. Cameron Bishop

If to Tenant: Jeremy Murphy
1889 17th Street
Calera, AL 35040

If to Owner: MMA ENTERPRISES LLC
1910 16th Street
Calera, AL 35040
Attention: Mark L. Anderson

or such other address as any party may hereafter designate in writing to the other.

12. **BINDING EFFECT.** This Agreement and all of the covenants, terms, conditions and obligations herein contained are covenants running with the land (the Property and the Leased Premises) and binding thereon and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and successors in title to the Leased Premises and successors in title to the Property.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective on the day and year first above written.

OWNER:

MMA ENTERPRISES LLC,
a Alabama limited liability company

By: Mark L. Anderson
Mark L. Anderson, its Member

STATE OF ALABAMA
COUNTY OF St. Clair

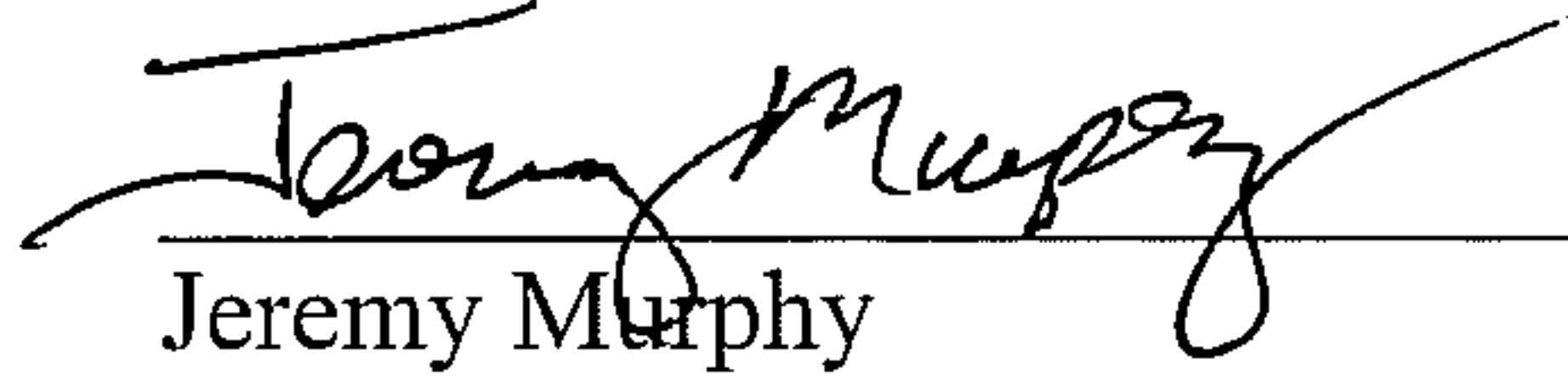
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Mark L. Anderson, whose name as Member of MMA Enterprises LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed of the contents of such instrument, he, as such Member and with full authority, executed the same voluntarily for and as the act of such limited liability company.

Given under my hand and official seal, this the 10th day of November, 2015.

Stephen D. L. Newton [SEAL]
Notary Public
My Commission Expires: _____ MY COMMISSION EXPIRES:
October 2, 2018

TENANT:

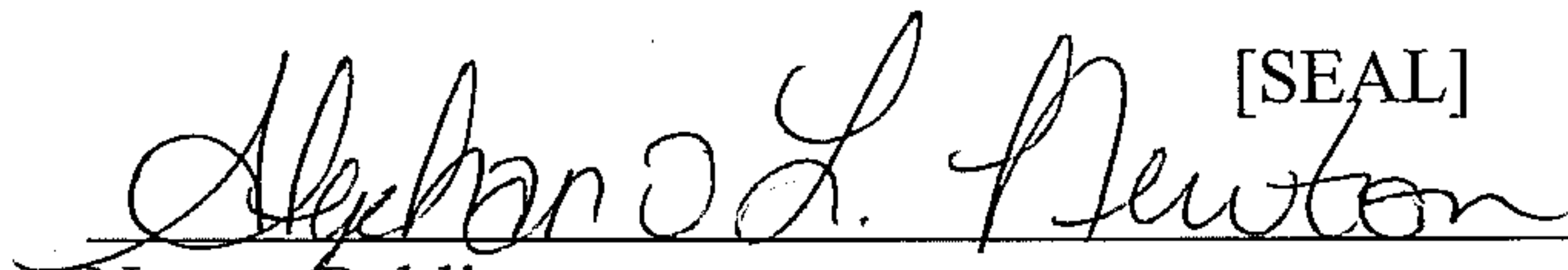
JEREMY MURPHY,
an individual of the State of Alabama


Jeremy Murphy

STATE OF ALABAMA
COUNTY OF St. Clair

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Jeremy Murphy, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 10th day of November, 2015.


Notary Public
My Commission Expires: _____

[SEAL]

MY COMMISSION EXPIRES:
October 2, 2018

BANK:

SERVISFIRST BANK,
an Alabama banking corporation

By: Cameron Bishop
Its: Private Banking Officer

STATE OF ALABAMA

COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Cameron Bishop, whose name as Private Banking Officer of ServisFirst Bank, an Alabama banking corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me that, being informed of the contents of such instrument, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of such banking corporation.

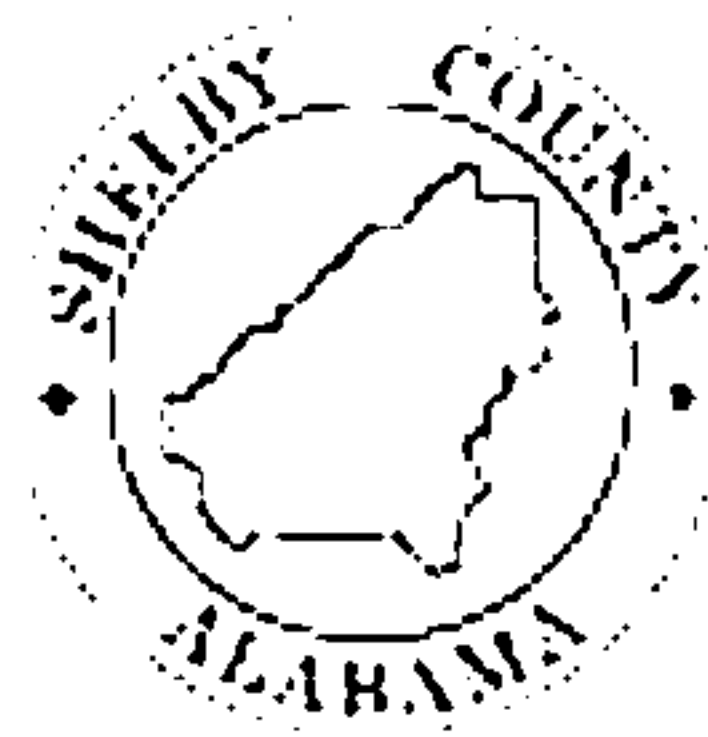
Given under my hand and official seal, this the 10 day of November, 2015.

Shawn Stephens [SEAL]
Notary Public
My Commission Expires: MY COMMISSION EXPIRES: March 20, 2018

EXHIBIT A

DESCRIPTION OF PROPERTY

Lot 13, according to Map of J.P. Word, in the W 1/2 of Fractional SW 1/4 of Section 21, Township 22, Range 2 West, in the Town of Calera, Alabama and which map is recorded in the Probate Office of Shelby County, Alabama in Map Book 3, Page 13.



Filed and Recorded
Official Public Records
Judge James W. Fuhrmeister, Probate Judge,
County Clerk
Shelby County, AL
11/12/2015 08:33:14 AM
\$38.00 DEBBIE
20151112000391150

A handwritten signature in black ink, appearing to read "J. W. Fuhrmeister", is written over the typed name of the Probate Judge.