

**WHEN RECORDED MAIL TO:**

KeyBank National Association  
OR-MM-Portland Metro Commercial Banking  
1211 SW Fifth Ave., Suite 505  
Portland, Oregon 97204  
Attn: Laurie Goodman-Farley

**PREPARED BY:**

KeyBank National Association  
OR-MM-Portland Metro Commercial Banking  
1211 SW Fifth Ave., Suite 505  
Portland, Oregon 97204  
Attn: Laurie Goodman-Farley



20160610000200820 1/7 \$32.00  
Shelby Cnty Judge of Probate, AL  
06/10/2016 08:34:51 AM FILED/CERT

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

**SUBORDINATION AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION AND ATTORNMENT AGREEMENT ("Agreement") is dated as of the 26th day of May, 2016, between HPSX Properties, LLC, an Oregon limited liability company ("Landlord"), whose address is 5445 NE 122nd Avenue, Portland, Oregon 97230, and Hydra-Power Systems, Inc., an Oregon corporation ("Tenant"), whose address is 5445 NE 122nd Avenue, Portland, Oregon 97230, in favor of KeyBank National Association ("Lender"), whose address is 1211 SW Fifth Ave., Suite 505, Portland, Oregon 97204.

**RECITALS**

A. Tenant is the tenant under a certain Lease (the "Lease") dated January 1, 2016, with Landlord, of premises described in the Lease (the "Premises") located at 150 Business Center Drive, Birmingham, Alabama 35244, on real property more particularly described in Exhibit "A" attached hereto and made a part hereof (being hereinafter referred to as the "Property").

B. This Agreement is being entered into in connection with a loan (the "Loan") being made by Lender to Landlord, to be secured by, in addition to other collateral a first Deed of Trust encumbering the Property (the "Deed of Trust") to be recorded in the real estate records below.

**AGREEMENT**

For mutual consideration, including the mutual covenants and agreements set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Landlord and Tenant represent to Lender that (a) the Lease (i) has been duly executed and accepted by Landlord and Tenant, (ii) is in full force and effect, and (iii) has not been modified or changed, either in writing or orally, except as reflected in the copy of the Lease provided to Lender; (b) as of the date of this Agreement, (i) all conditions and obligations to be performed by either Landlord or Tenant under the Lease, to the date hereof, have been satisfied; (ii) there exists no breach, default, or event or condition which, with the giving of notice or the passage of time, or both, would constitute such a breach or default under the Lease; and (iii) there are no existing claims, defenses or offsets against obligations of either Landlord or Tenant under the Lease, including any against rents due or to become due under the terms of the Lease; (c) the Lease constitutes the entire agreement between Landlord and Tenant with respect to the Lease of the Property; (d) no deposits or prepayments of rent have been made in connection with the Lease, except as may be described in the Lease provided to Lender.



2. Landlord hereby assigns to Lender all of its rights and interests in the Lease as additional security for the Loan.

3. Tenant agrees that the Lease is and shall be subject and subordinate to the Deed of Trust and to all present and future advances under the obligations secured thereby and all renewals, amendments, modifications, consolidations, replacements and extensions of the secured obligations and the Deed of Trust, to the full extent of all amounts secured by the Deed of Trust from time to time. Said subordination is to have the same force and effect as if the Deed of Trust and such renewals, modifications, consolidations, replacements and extensions thereof had been executed, acknowledged, delivered and recorded prior to the Lease, any amendments or modifications thereof and any notice thereof.

4. Tenant agrees that, in the event of a foreclosure of the Deed of Trust by Lender or the acceptance of a deed in lieu of foreclosure by Lender or any other succession of Lender to fee ownership, Tenant, at Landlord's option, shall attorn to and recognize Lender as its landlord under the Lease for the remainder of the term of the Lease (including all extension periods which have been or are hereafter exercised) upon the same terms and conditions as are set forth in the Lease, and Tenant hereby agrees to pay and perform in favor of Lender all of the obligations of Tenant under the Lease as if Lender were the original lessor under the Lease. Tenant further acknowledges and agrees that upon an Event of Default under the Loan, Lender may, at its option, terminate the Lease, evict Tenant from the Property, and/or include Tenant in any foreclosure proceedings, as well as pursue all other remedies available under applicable law.

5. Tenant agrees that, in the event Lender succeeds to the interest of Landlord under the Lease, Lender shall not be:

a. liable for any act or omission of any prior Landlord (including, without limitation, the then defaulting Landlord); or

b. subject to any defense or offsets which Tenant may have against any prior Landlord (including, without limitation, the then defaulting Landlord); or

c. bound by any payment of rent or additional rent which Tenant might have paid for more than one (1) month in advance of the due date under the Lease to any prior Landlord (including, without limitation, the then defaulting Landlord); or

d. bound by any obligation to make any payment to Tenant which was required to be made prior to the time Lender succeeded to any prior Landlord's interest; or

e. accountable for any monies deposited with any prior Landlord (including security deposits), except to the extent such monies are actually received by Lender in segregated cash amounts identified to Lender in writing as such at the time received; or

f. bound by any termination, amendment or modification of the Lease made without the consent of Lender; or

g. obligated to complete any improvements or construction on the Property or to pay or reimburse Tenant for any tenant improvement allowance or construction allowance; or

h. be required after a fire, casualty or condemnation of the Property or Premises to repair or rebuild the same to the extent that such repair or rebuilding requires funds in excess of the insurance or condemnation proceeds specifically allocable to the Premises and arising out of such fire, casualty or condemnation which have actually been received by Lender, and then only to the extent required by the terms of the Lease; or



i. be responsible to provide any additional space at the Property or elsewhere for which Tenant has any option or right under the Lease, or otherwise, unless Lender at its option elects to provide the same, and Tenant hereby releases Lender from any obligation to provide the same, and agrees that Tenant shall have no right to cancel the Lease and shall possess no right to any claim against Lender as a result of the failure to provide any such additional space; or

j. be liable for or incur any obligation with respect to any representations or warranties of any nature set forth in the Lease or otherwise, including, but not limited to, representations or warranties relating to any latent or patent defects in construction with respect to the Property or the Premises, Landlord's title or compliance of the Property or Premises with applicable environmental, building, zoning or other laws, including, but not limited to, the Americans with Disabilities Act and any regulations pursuant thereto.

6. Tenant covenants and acknowledges that it has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Property or the real property of which the Property is a part, or any portion thereof or any interest therein and to the extent that Tenant has had, or hereafter acquires any such right or option, the same is hereby acknowledged to be subject and subordinate to the Deed of Trust and is hereby waived and released as against Lender.

7. Anything herein or in the Lease to the contrary notwithstanding, in the event that Lender shall acquire title to the Property, Lender shall have no obligation, nor incur any liability, beyond Lender's then interest in the Property, and Tenant shall look exclusively to such interest of Lender in the Property for the payment and discharge of any obligations imposed upon Lender hereunder or under the Lease, or otherwise, subject to the limitation of Lender's obligations provided for in Paragraphs 3 and 4 above.

8. Tenant hereby agrees to give to Lender copies of all notices of Landlord default(s) under the Lease in the same manner as, and whenever, Tenant shall give any such notice of default to Landlord, and no such notice of default shall be deemed given to Landlord unless and until a copy of such notice shall have been so delivered to Lender. Lender shall have the right to remedy any Landlord default under the Lease, or to cause any default of Landlord under the Lease to be remedied, and for such purpose Tenant hereby grants Lender such additional period of time as may be reasonable to enable Lender to remedy, or cause to be remedied, any such default in addition to the period given to Landlord for remedying, or causing to be remedied, any such default. Tenant shall accept performance by Lender of any term, covenant, condition or agreement to be performed by Landlord under the Lease with the same force and effect as though performed by Landlord. No Landlord default under the Lease shall exist or shall be deemed to exist (i) as long as Lender, in good faith, shall have commenced to cure such default within the above referenced time period and shall be prosecuting the same to completion with reasonable diligence, subject to force majeure, or (ii) if possession of the Premises is required in order to cure such default, or if such default is not susceptible of being cured by Lender, as long as Lender, in good faith, shall have notified Tenant that Lender intends to institute proceedings under the Deed of Trust, and, thereafter, as long as such proceedings shall have been instituted and shall be prosecuted with reasonable diligence. The Lease shall not be assigned (except in the event of an assignment that is permitted in the Lease without Landlord's consent) by Tenant or Landlord, modified, amended or terminated (except in the event of a termination that is permitted in the Lease without Landlord's consent) without Lender's prior written consent in each instance. Neither Lender nor its designee or nominee shall become liable under the Lease unless and until Lender or its designee or nominee becomes, and then only with respect to periods in which Lender or its designee or nominee becomes, the fee owner of the Premises. Lender shall have the right, without Tenant's consent, to foreclose the Deed of Trust or to accept a deed in lieu of foreclosure of the Deed of Trust or to exercise any other remedies under the Deed of Trust.

9. Tenant has no knowledge of any prior assignment or pledge of the rents accruing under the Lease by Landlord. Tenant hereby consents to that certain Assignment of Rents from Landlord to Lender executed in connection with the Loan. Tenant acknowledges that the interest of the Landlord under the Lease is to be assigned to Lender solely as security for the purposes specified in said assignments, and Lender shall have no duty, liability or obligation whatsoever under the Lease or any extension or renewal thereof, either by virtue of said assignments



or by any subsequent receipt or collection of rents thereunder, unless Lender shall specifically undertake such liability in writing. Tenant agrees that upon receipt of a written notice from Lender of a default by Landlord under the Loan, Tenant will thereafter, if requested by Lender, pay rent to Lender in accordance with the terms of the Lease.

10. If Tenant is a corporation, each individual executing this Agreement on behalf of said corporation represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the by laws of said corporation, and that this Agreement is binding upon said corporation in accordance with its terms. If Tenant is a partnership or limited liability company, each individual executing this Agreement on behalf of said partnership or limited liability company, as the case may be, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said partnership or limited liability company, as the case may be, in accordance with the partnership agreement or operating agreement for said entity.

11. Any notice, election, communication, request or other document or demand required or permitted under this Agreement shall be in writing and shall be deemed delivered on the earlier to occur of (a) receipt, or (b) the date of delivery, refusal or nondelivery indicated on the return receipt, if deposited in a United States Postal Service Depository, postage prepaid, sent certified or registered mail, return receipt requested, or if sent via a recognized commercial courier service providing for a receipt, addressed to Tenant, or Landlord, or Lender, as the case may be, at the following addresses:

If to Tenant:

Hydra-Power Systems, Inc.  
5445 NE 122nd Avenue  
Portland, Oregon 97230-1092

If to Landlord:

HPSX Properties, LLC  
5445 NE 122nd Avenue  
Portland, Oregon 97230-1092

If to Lender:

KeyBank National Association  
OR-MM-Portland Metro Commercial Banking  
1211 SW Fifth Ave., Suite 505  
Portland, Oregon 97204

12. The term "Lender" as used herein includes any successor or assign of the named Lender herein, including without limitation, any co lender at the time of making the Loan, any purchaser at a foreclosure sale and any transferee pursuant to a deed in lieu of foreclosure, and their successors and assigns, and the terms "Tenant" and "Landlord" as used herein include any successor and assign of the named Tenant and Landlord herein, respectively; provided, however, that such reference to Tenant's or Landlord's successors and assigns shall not be construed as Lender's consent to any assignment or other transfer by Tenant or Landlord.

13. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to be enforceable, or if such modification is not practicable, such provision shall be deemed deleted from this Agreement, and the other


provisions of this Agreement shall remain in full force and effect, and shall be liberally construed in favor of Lender.

14. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing executed by the party against which enforcement of the termination, amendment, supplement, waiver or modification is sought.

This Agreement shall be construed in accordance with the laws of the state of Oregon.


**LANDLORD:**

HPSX Properties, LLC,  
an Oregon limited liability company

By:   
Title: MEMBER

**TENANT:**

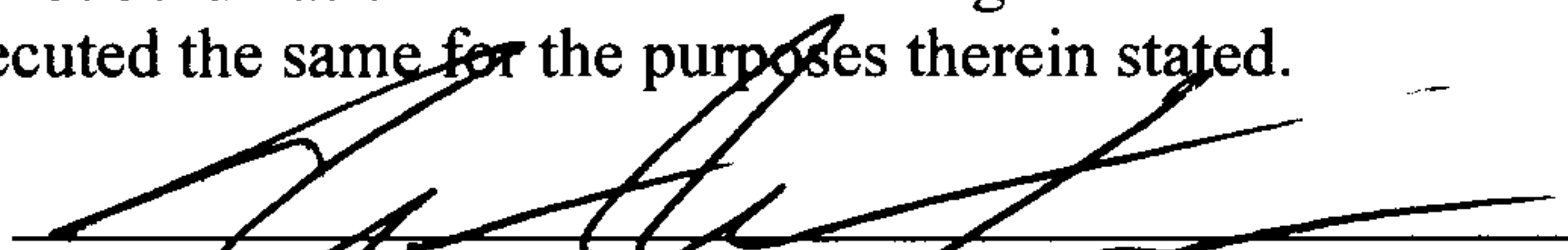
Hydra-Power Systems, Inc.  
an Oregon corporation

By:   
Title: ~~MEMBER~~ President


STATE OF OREGON )  
County of McClatsine ) ss

On this 26 day of May, 2016, before me, a Notary Public in and for said state, personally appeared Jeffery R. Stuart, ~~Member~~ \* of Hydra-Power Systems, Inc., an Oregon corporation, known to me to be the person who executed the within Subordination and Attornment Agreement on behalf of said corporation and acknowledged to me that he/she executed the same for the purposes therein stated.



  
Notary Public - State of Oregon

\* President


  
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Shelby Cnty Judge of Probate, AL  
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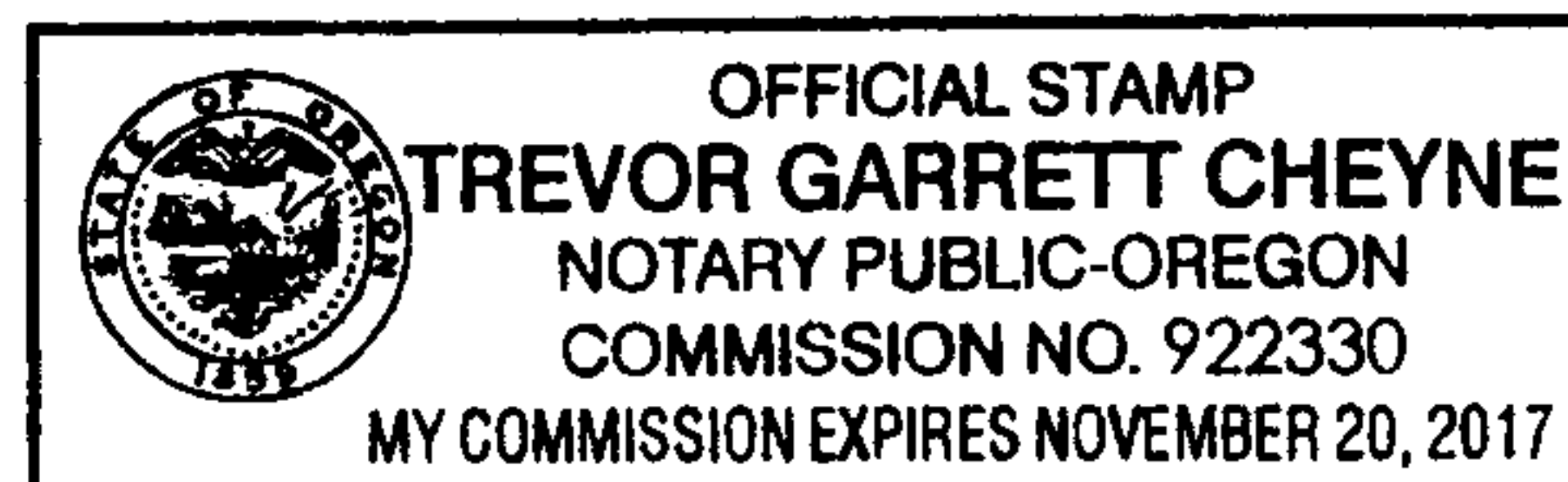



STATE OF OREGON

County of McHernah )  
 ) ss

On this 26 day of May, 2016, before me, the undersigned Notary Public, personally appeared Jeffery R. Stuart, Member of HPSX Properties, LLC, an Oregon limited liability company (the "Limited Liability Company"), personally known to me or proved to me on the basis of satisfactory evidence to be an authorized agent of the Limited Liability Company and that he/she executed the Subordination and Attornment Agreement and acknowledged the Subordination and Attornment Agreement to be the free and voluntary act and deed of the Limited Liability Company, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute this Subordination and Attornment Agreement and in fact executed the Subordination and Attornment Agreement on behalf of the Limited Liability Company.

  
Notary Public – State of Oregon



  
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## EXHIBIT A

### Legal Description

A parcel of land located in the East 1/2 of the Southwest 1/4 of Section 30, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the Northwest corner of said East 1/2 of said Southwest 1/4, thence in a Southerly direction along the West line of said East 1/2 a distance of 1,029.95 feet to the point of beginning; thence continue along last described course a distance of 155.16 feet; thence 87 degrees, 44 minutes left in an Easterly direction a distance of 280.97 feet to a point on the West right of way line of Business Center Drive, thence 92 degrees 16 minutes left in a Northerly direction along said right of way line a distance of 155.16 feet; thence 87 degrees, 44 minutes left in a Westerly direction a distance of 280.97 feet to the point of beginning. Said parcel being located in the Valleydale Business Center as recorded in Map Book 8, Page 170 in the Office of the Judge of Probate of Shelby County, Alabama.

Situated in Shelby County, Alabama.



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