

PREPARED BY, RECORDING REQUESTED  
BY AND WHEN RECORDED RETURN TO:

Vedder, Price P.C.  
222 North LaSalle Street  
Chicago, Illinois 60601  
Attn: Charles W. Murphy, Esq.

20161220000464680  
12/20/2016 01:59:47 PM  
SUBAGREM 1/15

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(Space Above For Recorder's Use)

## **SUBORDINATION AND ATTORNEY AGREEMENT**

**THIS SUBORDINATION AND ATTORNEY AGREEMENT** (this "Agreement") dated as of this 5th day of December, 2016, is made among **MAGNOLIA CREEK, LLC**, an Alabama limited liability company ("Tenant"), **MAGNOLIA CREEK REALTY, LLC**, a Delaware limited liability company ("Landlord"), and **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust (in its individual capacity as a lender, together with its successors and assigns, "MCF"), and in its capacity as agent for Lenders (as defined below) (and in such capacity, "Agent").

### **RECITALS**

A. Pursuant to that certain Credit and Guaranty Agreement dated as of July 21, 2015 (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Landlord, certain affiliates of Landlord, Agent, MCF, and the other financial institutions who are or hereafter become parties to the Credit Agreement (together with MCF, collectively or individually, as the context may require, referred to herein as "Lender"), Lenders have agreed, among other things, subject to the terms and conditions set forth in the Credit Agreement, to make certain loans and financial accommodations to Landlord. Landlord's obligations under the Credit Agreement are secured by, among other things, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (as it may have been or may be from time to time renewed, extended, amended or supplemented, the Mortgage), to be recorded in the Probate Office of Shelby County, Alabama, covering, among other property, the land (the "Land") described in Exhibit A to this Agreement and the improvements ("Improvements") on the Land (the Land and Improvements are collectively referred to as the "Property"). All capitalized terms used herein (which are not otherwise specifically defined herein) shall be used in this Agreement as defined in the Credit Agreement (as defined below).

B. Tenant is the tenant under that certain Lease Agreement dated as of April 18, 2014 between Tenant, as tenant, and Landlord, as landlord (as it may from time to time be renewed, extended, amended or supplemented, the Lease,"), covering a portion of the Property (said portion is referred to as the "Premises").

C. The term “**Landlord**” as used in this Agreement means the current landlord under the Lease or, if the landlord’s interest is transferred in any manner, the successors or assigns occupying the position of landlord under the Lease at the time in question.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual agreements in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Subordination.** Tenant acknowledges, confirms, agrees and covenants that the Lease and the rights of Tenant under the Lease, all of Tenant’s right, title and interest in and to the property covered by the Lease, and any lease thereafter executed by Tenant covering any part of the Property, are and shall be subject, subordinate and inferior to (a) the Mortgage and the rights of Agent under the Mortgage, and all right, title and interest of Agent in the Property, and (b) all other security documents now or hereafter securing payment of any indebtedness of the Landlord (or any prior landlord) to Agent which cover or affect the Property (collectively, the “**Security Documents**”). Without limitation of any other provision of this Agreement, Agent may, at its option and without joinder or further consent of Tenant, Landlord, or anyone else, at any time after the date of this Agreement, subordinate the lien of the Mortgage (or any other lien or security interest held by Agent which covers or affects the Property) to the Lease by executing an instrument that is intended for that purpose and that specifies such subordination. If Agent elects to subordinate the lien of the Mortgage, Tenant will execute any documents required to evidence such subordination; *provided, however,* that notwithstanding that the Lease may by unilateral subordination by Agent hereafter be made superior to the lien of the Mortgage, the provisions of the Mortgage relative to the rights of Agent with respect to proceeds arising from an eminent domain taking (including a voluntary conveyance by Landlord) and/or insurance payable by reason of damage to or destruction of the Property shall at all times be prior and superior to and shall control over any contrary provisions in the Lease.

2. **Termination of Tenant’s Interest in Lease.** Tenant acknowledges and agrees that, at Agent’s election, which may be exercised at Agent’s sole discretion, Agent may terminate Tenant’s interest and estate under the Lease at any time following the occurrence of an Event of Default under the Lease or the Credit Agreement. Tenant agrees not to challenge any such termination and hereby waives any rights and remedies, at law or in equity, against Agent in connection therewith.

3. **Attornment.**

(a) Tenant covenants and agrees that if the Mortgage is foreclosed, whether by court action, or upon a transfer of the Property by conveyance in lieu of foreclosure (the purchaser at foreclosure or the transferee in lieu of foreclosure, including Agent if it is the purchaser or transferee, is referred to as the “**New Owner**”), and Agent does not elect to terminate the Lease, Agent has, prior to such foreclosure or conveyance, elected to subordinate the Mortgage to the Lease. Tenant shall attorn to the New Owner as Tenant’s new landlord. Tenant further covenants and agrees that in such case the Lease shall continue in full force and effect as a direct lease between Tenant and New Owner upon all of the terms, covenants,

conditions and agreements set forth in the Lease and this Agreement, other than provisions that are impossible for Agent to perform. Notwithstanding the foregoing, in no event shall Agent or the New Owner be:

- (i) liable for any act, omission, default, misrepresentation, or breach of warranty, of any previous landlord (including Landlord) or obligations accruing prior to New Owner's actual ownership of the Property;
- (ii) subject to any offset, recoupment, estoppel, defense, claim or counterclaim that Tenant might be entitled to assert against any previous landlord (including Landlord);
- (iii) bound by any payment of rent, additional rent or other payments, made by Tenant to any previous landlord (including Landlord) for more than one (1) month in advance;
- (iv) bound by any amendment, or modification of the Lease hereafter made, or consent, or acquiescence by any previous landlord (including Landlord) under the Lease to any assignment or sublease hereafter granted, without the written consent of Agent; or
- (v) liable for any deposit that Tenant may have given to any previous landlord (including Landlord) that has not been transferred to New Owner.

(b) The provisions of this Agreement regarding attornment by Tenant shall be self-operative and effective without the necessity of execution of any new lease or other document on the part of any party to this Agreement or the respective heirs, legal representatives, successors or assigns of any such party. Tenant agrees, however, to execute and deliver at any time and from time to time, upon the request of Landlord or of any holder of any of the indebtedness or other obligations secured by the Mortgage, any instrument or certificate which, in the reasonable judgment of Landlord or of such holder, may be necessary or appropriate in any such foreclosure proceeding or otherwise to evidence such attornment, including, if requested, a new lease of the Premises on the same terms and conditions as the Lease for the then unexpired term of the Lease.

4. Estoppel Certificate. Tenant agrees to execute and deliver from time to time, upon the request of Landlord or of any holder of any of the indebtedness or other obligations secured by the Mortgage, a certificate regarding the status of the Lease, consisting of statements, if true (or if not, specifying why not), (a) that the Lease is in full force and effect, (b) the date through which rentals have been paid, (c) the date of the commencement of the term of the Lease, (d) the nature of any amendments or modifications of the Lease, (e) that no default, or state of facts which with the passage of time or notice (or both) would constitute a default, exists under the Lease, (f) no setoffs, recoupments, estoppels, claims or counterclaims exist against Landlord, and (g) such other matters as may be reasonably requested.

5. Acknowledgement and Agreement by Tenant. Tenant acknowledges and agrees as follows:

(a) Tenant acknowledges that Landlord will execute and deliver to Agent in connection with the financing or refinancing of the Property an Assignment of Leases and Rents assigning absolutely the rent and all other sums due under the Lease as additional security. Tenant hereby expressly consents to such absolute assignment and agrees that such assignment shall, in all respects, be superior to any interest Tenant has in the Lease or any portion of the Property, subject to the provisions of this Agreement. Tenant will not amend, alter, terminate, or waive any provision of, or consent to the amendment, alteration, termination or waiver of any provision of the Lease without the prior written consent of Agent, and no termination of the Lease, whether pursuant to the terms of the Lease or otherwise, will be effective without the prior written consent of Agent. Tenant shall not prepay any rents or other sums due under the lease for more than one (1) month in advance of the due date therefor. Tenant acknowledges that Agent will rely upon this instrument in connection with such financing or refinancing.

(b) Agent, in making any disbursements to Landlord, is under no obligation or duty to oversee or direct the application of the proceeds of such disbursements, and such proceeds may be used by Landlord for purposes other than improvement of the Property.

(c) From and after the date of this Agreement, in the event of any act or omission by Landlord which would give Tenant the right, either immediately or after the lapse of time, to terminate the Lease or to claim a partial or total eviction, Tenant will not exercise any such right (i) until it has given written notice of such act or omission to the Agent, and (ii) until the same period of time as is given to Landlord under the Lease to cure such act or omission shall have elapsed following such giving of notice to Agent and following the time when Agent shall have become entitled under the Mortgage to remedy the same, but in any event thirty (30) days after receipt of such notice or such longer period of time as may be necessary to cure or remedy such default, act, or omission including such period of time necessary to obtain possession of the Property and thereafter cure such default, act, or omission, during which period of time Agent shall be permitted to cure or remedy such default, act or omission. Notwithstanding the foregoing, Agent shall have no duty or obligation to cure or remedy any breach or default. It is specifically agreed that Tenant shall not, as to Agent, anticipate or require cure of any such default that is personal to Landlord, and therefore not susceptible to cure by Agent.

(d) Tenant and Landlord hereby agree that if Agent notifies Tenant of a default under the Mortgage, the Credit Agreement, or Security Documents and demands that Tenant pay its rent and all other sums due under the Lease directly to Agent, Tenant shall honor such demand and pay the full amount of its rent and all other sums due under the Lease directly to Agent, without offset, or as otherwise required pursuant to such notice beginning with the payment next due after such notice of default, without inquiry as to whether a default actually exists under the Mortgage, the Credit Agreement, Security Documents, and notwithstanding any contrary instructions of or demands from Landlord and Landlord hereby agrees that Tenant shall receive credit against rent due under the Lease for any such payments made to Agent.

(e) Tenant shall send a copy of any notice or statement under the Lease to Agent at the same time such notice or statement is sent to Landlord.

(f) Tenant has no right or option of any nature whatsoever, whether pursuant to the Lease or otherwise, to purchase the Premises or the Property, or any portion of or any interest in the Premises or the Property, and to the extent that Tenant has had, or hereafter acquires, any such right or option, same is hereby acknowledged to be subject and subordinate to the Mortgage and is hereby waived and released as against Agent.

(g) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a non-disturbance agreement, and Tenant waives any requirement to the contrary in the Lease.

(h) Agent and any New Owner shall have no liability to Tenant or any other party for any conflict between the provisions of the Lease and the provisions of any other lease affecting the Property, including, but not limited to, any provisions relating to exclusive or non-conforming uses or rights, renewal options and options to expand, and in the event of such a conflict, Tenant shall have no right to cancel the Lease or take any other remedial action against Agent or New Owner, or against any other party for which Agent or any New Owner would be liable.

(i) Agent and any New Owner shall have no obligation nor incur any liability with respect to the erection or completion of the improvements in which the Premises are located or for completion of the Premises or any improvements for Tenant's use and occupancy, either at the commencement of the term of the Lease or upon any renewal or extension of the Lease or upon the addition of additional space, pursuant to any expansion rights contained in the Lease.

(j) Agent and any New Owner shall have no obligation nor incur any liability with respect to any warranties of any nature whatsoever, whether pursuant to the Lease or otherwise, including, without limitation, any warranties respecting use, compliance with zoning, Landlord's title, Landlord's authority, habitability, fitness for purpose or possession.

(k) If Agent or any New Owner shall acquire title to the Premises or the Property, Agent or such New Owner shall have no obligation, nor incur any liability, beyond Agent's or New Owner's then equity interest, if any, in the Property or the Premises, and Tenant shall look exclusively to such equity interest of Agent or New Owner, if any, for the payment and discharge of any obligations imposed upon Agent or New Owner under this Agreement or under the Lease or for recovery of any judgment from Agent, or New Owner, and in no event shall Agent, New Owner, nor any of their respective officers, directors, shareholders, agents, representatives, servants, employees or partners ever be personally liable for such judgment.

(l) Nothing in this Agreement is intended, nor shall it be construed, to abridge or adversely affect any right or remedy of Landlord under the Lease in the event of any default by Tenant in the payment of rent and/or any other sums due under the Lease or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant's part to be performed.

(m) Landlord has not agreed to any abatement of rent or other sums or period of "free rent" for the Premises unless same is specifically provided in the Lease, and Tenant agrees that if Agent or any New Owner becomes the owner of the Property, no agreement for

abatement of rent or any other sum not specifically provided in the Lease will be binding on Agent or New Owner.

(n) Tenant has never permitted, and will not permit, the generation, treatment, storage or disposal of any hazardous substance as defined under federal, state, or local law, on the Premises or Property except for such substances of a type and only in a quantity normally used in connection with the occupancy or operation of buildings (such as nonflammable cleaning fluids and supplies normally used in the day to day operation of first class nursing home establishments, which substances are being held, stored, and used in strict compliance with federal, state, and local laws. Tenant shall be solely responsible for and shall reimburse and indemnify Landlord, New Owner or Agent, as applicable, for any loss, liability, claim or expense, including without limitation, cleanup and all other expenses, including, without limitation, legal fees that Landlord, New Owner or Agent, as applicable, may incur by reason of Tenant's violation of the requirements of this Paragraph 5(n).

6. Acknowledgment and Agreement by Landlord. Landlord, as landlord under the Lease and grantor under the Mortgage, acknowledges and agrees for itself and its heirs, representatives, successors and assigns: (a) that this Agreement does not constitute a waiver by Agent of any of its rights under the Mortgage, the Credit Agreement, or Security Documents, or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage, the Credit Agreement, or Security Documents; (b) that the provisions of the Mortgage, the Credit Agreement, or Security Documents remain in full force and effect and must be complied with by Landlord; and (c) that Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Agent upon receipt of a notice as set forth in paragraph 5(d) above from Agent and that Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage, the Credit Agreement, or Security Documents. Landlord hereby releases and discharges Tenant from any liability to Landlord resulting from Tenant's payment to Agent in accordance with this Agreement. Landlord represents and warrants to Agent that a true and complete copy of the Lease has been delivered by Landlord to Agent.

7. Lease Status. Landlord and Tenant certify to Agent that neither Landlord nor Tenant has knowledge of any default on the part of the other under the Lease, that the Lease is bona fide and contains all of the agreements of the parties to the Lease with respect to the letting of the Premises and that all of the agreements and provisions contained in the Lease are in full force and effect. Tenant hereby acknowledges, covenants and agrees as follows:

(a) Lease Status. Landlord and Tenant certify to Agent that neither Landlord nor Tenant has knowledge of any default under the Lease, that the Lease is valid, enforceable and contains all of the agreements of the parties to the Lease with respect to the letting of the Premises, and that all of the agreements and provisions contained in the Lease are in full force and effect.

(b) Method for Making Rent Payments. On or before the first (1st) day of each month, Tenant shall make all payments to Landlord due under the Lease, including, without limitation, base rent, impounds and reserves, by wire transfer to the following account, in accordance with the following direction:

SunTrust Bank  
25 Park Place, Atlanta, Georgia 30303  
ABA #: 061-000-104  
Account Name: MIDCAP FINANCIAL TRUST  
Account #: 1000113400435  
Act Holder's Address: 7255 Woodmont Avenue,  
Suite 200, Bethesda, Maryland 20814  
Reference: Nautic-Odyssey

The foregoing payment direction may not be modified, amended or revoked without the written consent of Agent. All payments due under the Lease shall be due without prior notice or demand. Notwithstanding the foregoing, if Agent so elects, monthly payments due under the Lease shall be paid directly to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Tenant in an Automated Clearing House debit authorization executed by Tenant. Tenant shall execute any and all forms and documentation necessary from time to time to effectuate and maintain such automatic debiting. If, at any time, Agent notifies Tenant to make payments due under the Lease into a lockbox or pursuant to any other commercially reasonable arrangement, Tenant shall comply with such requirements within five (5) Business Days after written notice from Agent and shall execute any and all forms and documentation necessary from time to time to effectuate and maintain such arrangement.

(c) Security Deposit. Pursuant to that certain Assignment of Leases and Rents dated as of the date hereof by Landlord in favor of Agent, Landlord has assigned or may assign to Agent, as additional collateral for repayment of its loan obligations to Lenders, all of Landlord's right, title and interest in and to all security deposits. Landlord hereby agrees not to waive or alter any requirements of Landlord or Tenant to deposit or maintain a security deposit pursuant to the Lease. To the extent permitted by applicable law, all security deposits paid to Agent may be commingled with the general funds of Agent, and no such sums shall be deemed to be held in trust for the benefit of Landlord or Tenant. To the extent permitted by applicable law, no interest shall be payable on any deposits hereunder. All of Landlord's right, title and interest in and to all security deposits shall be part of Agent's collateral and shall stand as additional security for all of the Obligations (as defined in the Credit Agreement). Any letters of credit or security deposits pledged to Landlord as security for Tenant's obligations under the Lease are being collaterally assigned and/or pledged by Landlord to Agent as security for Landlord's obligations under the Credit Agreement and the other Financing Documents. Nothing in this Section 7(c) shall be construed to limit or modify any duty of Landlord (or any New Owner), pursuant to the terms of the Lease, to return to Tenant any security deposits given to Landlord.

(d) Consents by Agent. Whenever a provision in the Lease shall require the Tenant to obtain the Landlord's consent prior to taking or omitting to take any action pertaining to alterations to the Premises, a change in the use of the Property, any assignment, transfer or sublet of the Lease or any interest therein, or any amendment to a material term of the Lease, Tenant shall also be required to obtain Agent's consent. Consents required from Agent shall be subject to the same requirements and limitations with respect to time, reasonableness and the like that apply to Landlord in the Lease. Without limiting the foregoing or the terms of the Lease, (i)

a transfer or sale of any of the voting interest or capital stock of Tenant to any other person or entity, or (ii) the merger or consolidation of Tenant with or into a third party, shall each be deemed an assignment requiring the consent of Landlord and Agent.

(e) Inspection of Books and Records of the Tenant. Tenant hereby grants to Agent and its representatives prompt and reasonable access to the Premises, upon reasonable advance notice, for the purpose of inspecting the Premises, to inspect, appraise, value or make physical verifications of any of Agent's tangible collateral, to review the operations of the Premises, the patient census and other non-privileged records relating to the operation of the behavioral treatment facility on the Premises. The inspection rights hereunder shall be subject to any applicable "Patient's Bill of Rights" or any similar legislation, including such limitations as may be necessary to preserve the confidentiality of any facility-patient relationship or physician-patient relationship, as to any information deemed protected health information, and to comply with the provisions of HIPAA.

(f) Duty to Cooperate. In the event that the Lease is terminated for any reason while any of the Obligations (as defined in the Credit Agreement) are outstanding, or in the event Agent has terminated or is in the process of terminating Tenant's interest and estate under the Lease, in accordance with the provisions of this Agreement, then Tenant shall fully cooperate with and/or permit Agent to take any actions necessary to protect its or the Lenders' interests in the Property as well as to cooperate with and/or permit Agent or its designee (including a receiver) to submit any applications, notices, documentation or other information necessary for the use or operation of Property to the applicable governmental authority, or to take such other steps as Agent may deem advisable to obtain, maintain, sell, limit, transfer or renew any certificate of need, licenses or other governmental approvals in connection with the operation of the Property for its current use.

8. Notices. All notices, requests, consents, demands and other communications required or which any party desires to give under this Agreement shall be in writing and shall be deemed sufficiently given or furnished if delivered by personal delivery, by facsimile, by nationally recognized overnight delivery service with proof of delivery, or by registered or certified United States mail, postage prepaid, at the addresses specified below (unless changed by similar notice in writing given by the particular party whose address is to be changed).

To Tenant:

c/o Nautic Partners, LLC  
50 Kennedy Plaza, 12th Floor  
Providence, RI 02903

To Landlord:

c/o Nautic Partners, LLC  
50 Kennedy Plaza, 12th Floor  
Providence, RI 02903

To Agent:

Midcap Financial Trust  
c/o MidCap Financial Services, LLC, as servicer  
7255 Woodmont Avenue, Suite 200,  
Bethesda, Maryland 20814  
Attn: Portfolio Manager for Odyssey  
Telecopier No.: (301) 941-1450  
with a copy to:

Midcap Financial Trust  
c/o MidCap Financial Services, LLC, as servicer  
7255 Woodmont Avenue, Suite 200,  
Bethesda, Maryland 20814  
Attn: General Counsel  
Telecopier No.: (301) 941-1450

Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided in this Agreement or, in the case of facsimile, upon receipt. Notwithstanding the foregoing, no notice of change of address shall be effective except upon receipt. This Paragraph 8 shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Agreement or in the Lease or in any document evidencing, securing or pertaining to the loan or to require giving of notice or demand to or upon any person in any situation or for any reason.

9. Miscellaneous.

(a) This Agreement supersedes any inconsistent provision of the Lease or any other agreement, express or implied, between Landlord and Tenant, and shall survive any termination of the Lease by operation of law following any foreclosure of the lien of the Mortgage.

(b) Nothing contained in this Agreement shall be construed to derogate from or in any way impair, or affect the lien, security interest or provisions of the Mortgage, the Credit Agreement, or Security Documents.

(c) This Agreement shall inure to the benefit of the parties, their respective successors and permitted assigns, and any New Owner, and its heirs, personal representatives, successors and assigns; *provided, however*, that if Agent assigns or transfers its interest, all obligations and liabilities of the assigning Agent under this Agreement shall terminate, and thereupon all such obligations and liabilities shall be the responsibility of the party to whom Agent's interest is assigned or transferred; and *provided, further*, that the interest of Tenant under this Agreement may not be assigned or transferred without the prior written consent of Agent.

(d) **THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT RESPECT TO ANY OTHERWISE APPLICABLE CONFLICTS-OF-LAWS PRINCIPLES, BOTH AS TO INTERPRETATION AND PERFORMANCE, EXCEPT ONLY TO THE EXTENT, IF ANY, THAT THE LAWS OF THE STATE OF ALABAMA NECESSARILY CONTROL, AND THE PARTIES EXPRESSLY CONSENT AND AGREE TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, STATE OF NEW YORK AND TO THE LAYING OF VENUE IN NEW YORK, WAIVING ALL CLAIMS OR DEFENSES BASED ON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE, INCONVENIENT FORUM OR THE LIKE. EACH PARTY HEREBY CONSENTS TO SERVICE OF PROCESS BY MAILING A COPY OF THE SUMMONS TO SUCH PARTY, BY CERTIFIED OR REGISTERED MAIL, POSTAGE PREPAID, TO SUCH PARTY'S ADDRESS SET FORTH IN PARAGRAPH 8 ABOVE.**

(e) **Waiver of Trial by Jury.** EACH PARTY HEREBY (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUES TRIABLE OF RIGHT BY A JURY, AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW HERAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY, BY EACH PARTY, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A JURY TRIAL WOULD OTHERWISE ACCRUE. EACH PARTY IS HEREBY AUTHORIZED AND REQUESTED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES TO THIS AGREEMENT, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF THE FOREGOING WAIVER OF THE RIGHT TO JURY TRIAL. FURTHER, EACH PARTY HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF ANOTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WILL NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO JURY TRIAL PROVISION.

(f) This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by each of the parties to this Agreement or their respective successors in interest. The Recitals and Exhibits to this Agreement are hereby incorporated in this Agreement.

(g) If any provision of the Agreement shall be held to be invalid, illegal, or unenforceable in any respect, the invalidity, illegality or unenforceability shall not apply to or affect any other provision of this Agreement, but this Agreement shall be construed as if such invalidity, illegibility, or unenforceability did not exist.

(h) If any bankruptcy proceedings shall hereafter commence with respect to Landlord, and if the Lease is rejected by the trustee pursuant to Section 365 of the United States Bankruptcy Code, Tenant agrees with Agent (i) not to treat the Lease as terminated, and (ii) to remain in possession of the Premises.

**[NO FURTHER TEXT ON THIS PAGE]**

*(Signature Page to Subordination and Attornment Agreement)(645 Crenshaw Road, Columbiana, Alabama)*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed as of the date first above written.

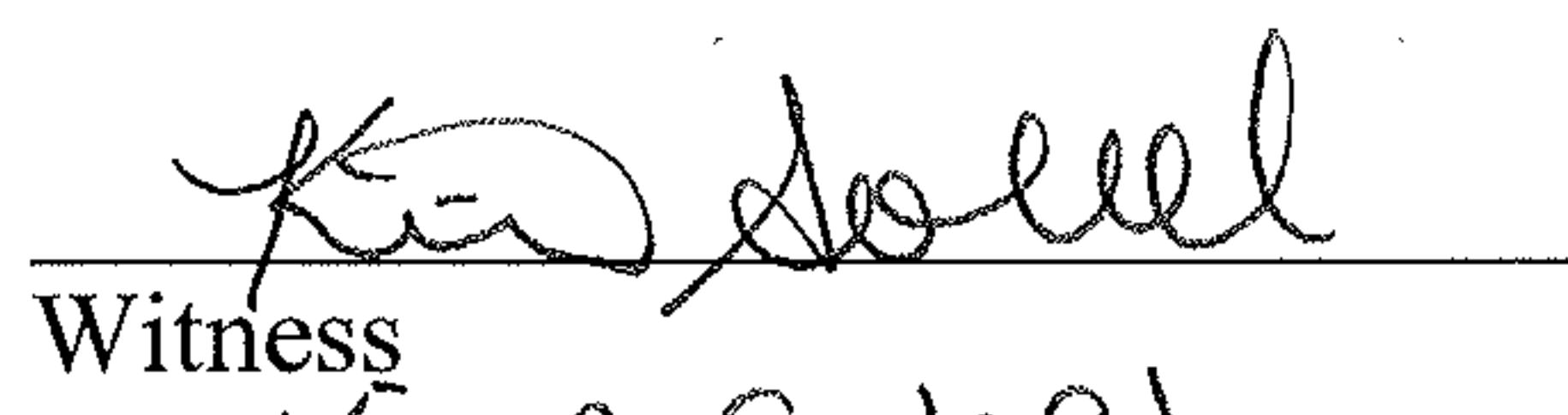
**AGENT:**



Witness

**Michael Levin**

Print Name



Witness

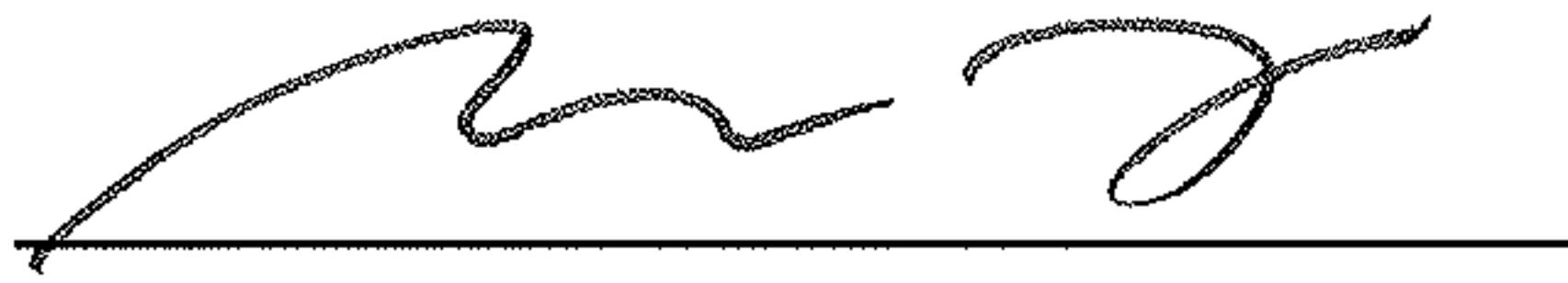
**Kim Sobe**

Print Name

**MIDCAP FINANCIAL TRUST**, a Delaware statutory trust

By: Apollo Capital Management, L.P.  
Its: Investment Manager

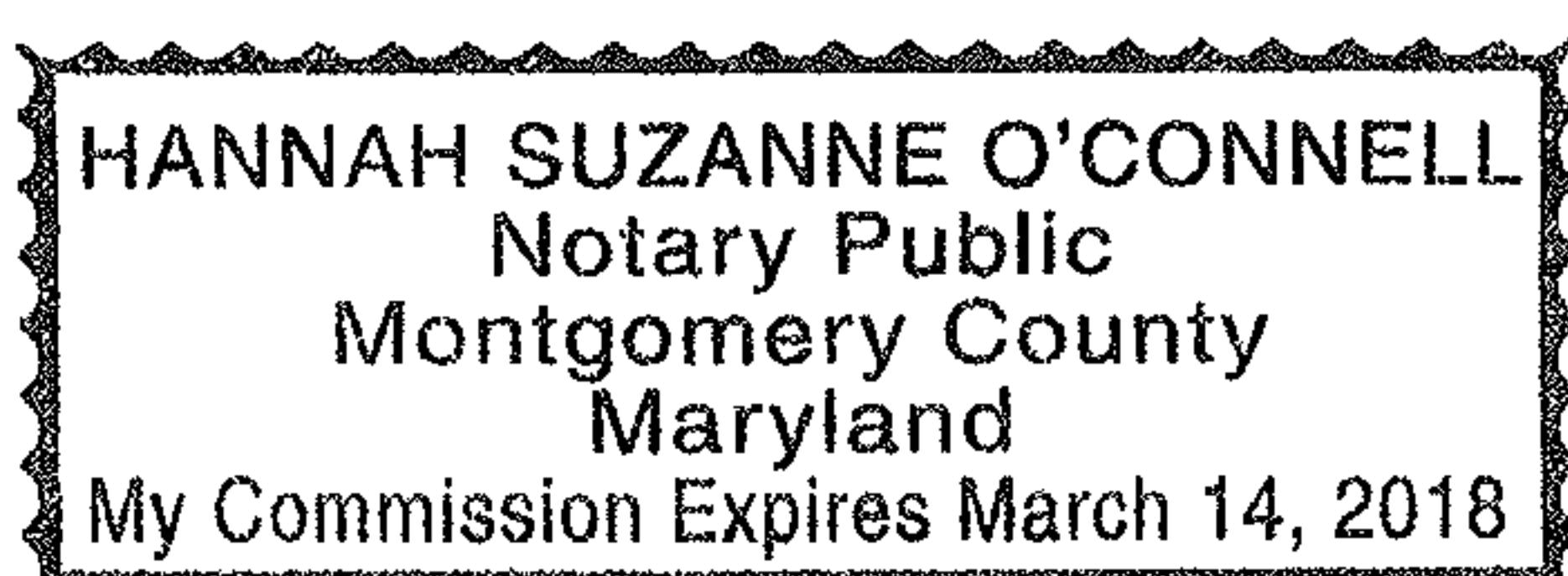
By: Apollo Capital Management, GP, LLC  
Its: General Partner

By:   
**Maurice Amsellem**  
Authorized Signatory

**STATE OF Maryland )**  
**COUNTY OF Montgomery )**

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Maurice Amsellem, whose name as Authorized Signatory of Apollo Capital Management, GP, LLC, the General Partner of Apollo Capital Management, L.P., the Investment Management of MidCap Financial Trust, a Delaware statutory trust, 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 for and as the act of said limited liability company.

Given under my hand and official seal, this 6 day of December, 2016.



  
Notary Public  
My Commission Expires: 3/14/18

(Signature Page to Subordination and Attornment Agreement)(645 Crenshaw Road, Columbiana, Alabama)

  
Witness

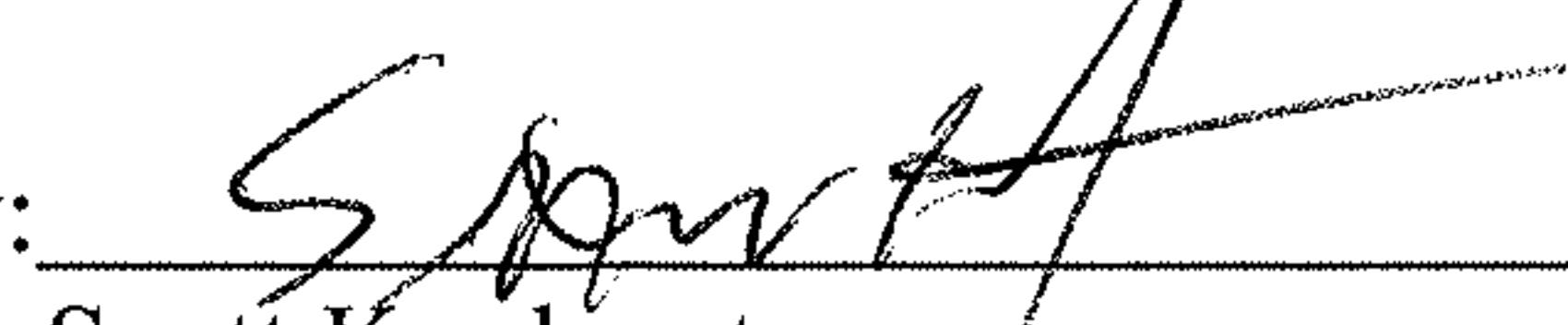
Joseph Kardenetz  
Print Name

  
Witness

Lance Hayes  
Print Name

**LANDLORD:**

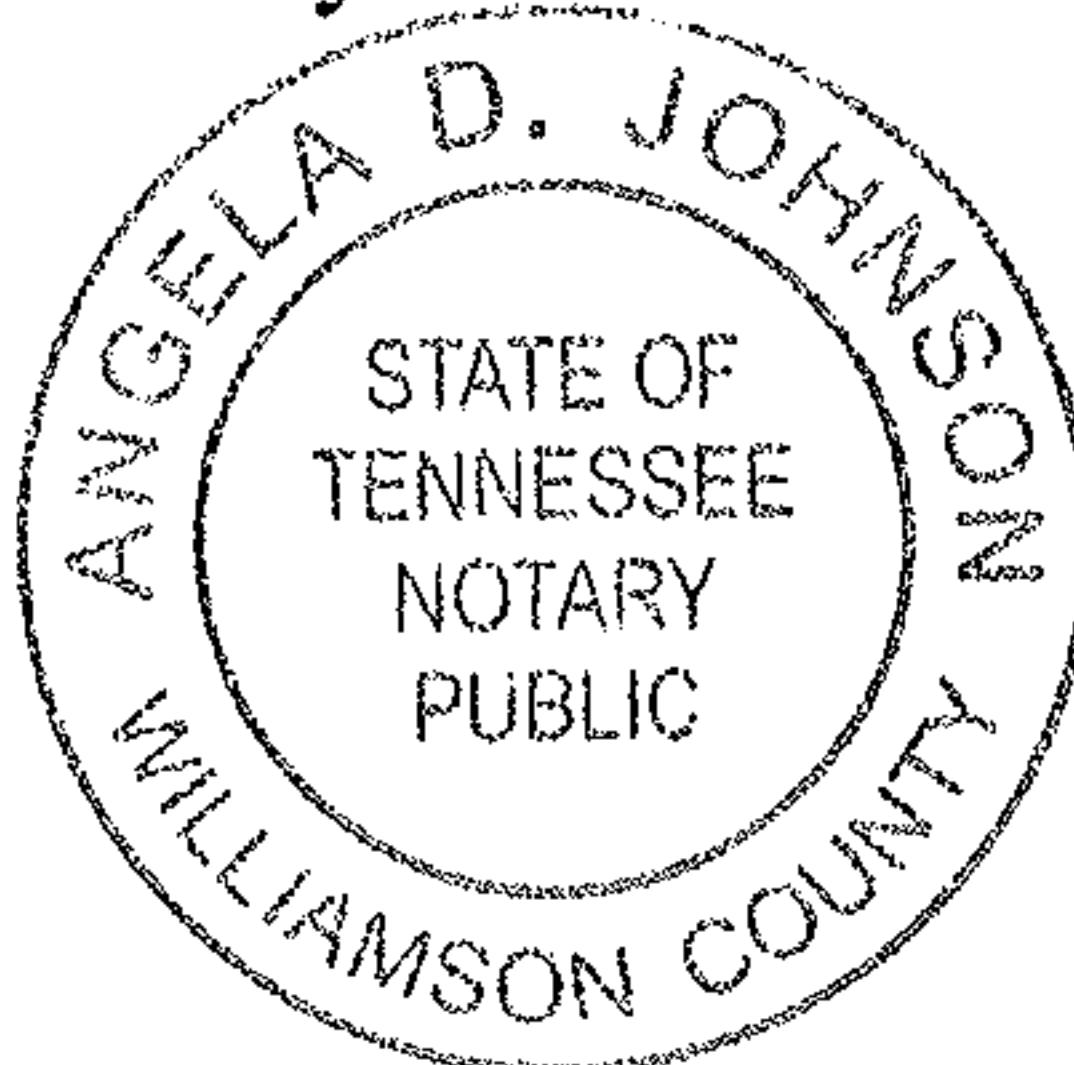
**MAGNOLIA CREEK REALTY, LLC**, an Alabama limited liability company

By:   
Scott Kardenetz  
Chief Executive Officer, President and Secretary

STATE OF TN)  
COUNTY OF WILLIAMSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Scott Kardenetz, whose name as Chief Executive Officer, President and Secretary of Magnolia Creek Realty, LLC, an Alabama limited liability company, 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 for and as the act of said limited liability company.

Given under my hand and official seal, this 5<sup>th</sup> day of DEC, 2016.



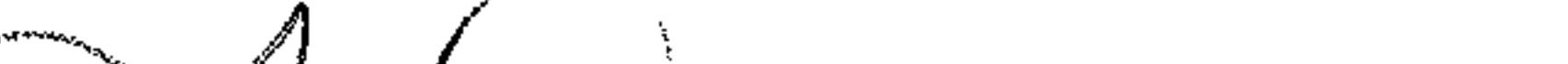
My Commission Expires Jan. 13, 2019

angela d. johnson

Notary Public  
My Commission Expires: 1/13/19

  
Witness

John Smith

  
\_\_\_\_\_  
Witness Ernest Mayes

Print Name \_\_\_\_\_

**TENANT:**

**MAGNOLIA CREEK, LLC, an Alabama  
limited liability company**

By:   
Scott Kardenetz  
Chief Executive Officer, President and  
Secretary

STATE OF TN)  
COUNTY OF WICHLERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Scott Kardenetz, whose name as Chief Executive Officer, President and Secretary of Magnolia Creek, LLC, an Alabama limited liability company, 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 for and as the act of said limited liability company.

Given under my hand and official seal, this 5<sup>th</sup> day of Dec, 2016.

April 1943

Notary Public  
My Commission Expires: 1/13/19

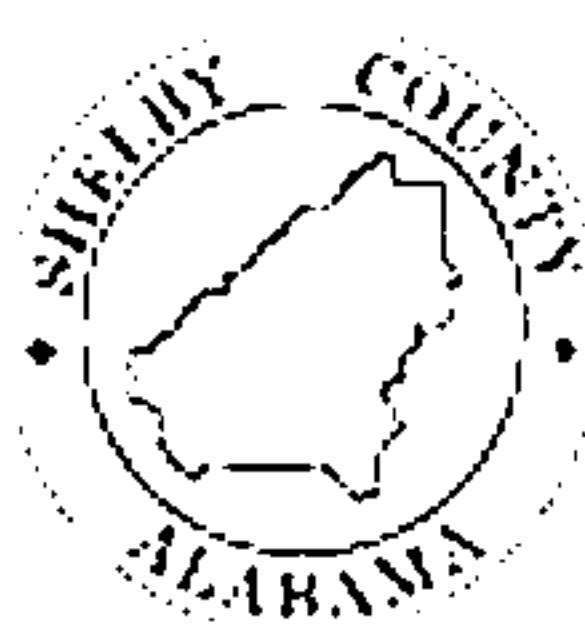
**EXHIBIT A**

**Legal Description of the Land**

A PARCEL OF LAND IN THE NE  $\frac{1}{4}$  OF THE NE  $\frac{1}{4}$  OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 1 WEST, SHELBY COUNTY, ALABAMA DESCRIBED AS FOLLOWS:

FROM THE NORTHWEST CORNER OF THE NE  $\frac{1}{4}$  OF NE  $\frac{1}{4}$  OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 1 WEST, BEING THE POINT OF BEGINNING OF HEREIN DESCRIBED PARCEL OF LAND, RUN THENCE EAST ALONG THE NORTH BOUNDARY OF SAID NE  $\frac{1}{4}$  OF NE  $\frac{1}{4}$  A DISTANCE OF 1326.15 FEET TO THE NORTHEAST CORNER THEREOF; THENCE TURN 92 DEG. 36 MIN. 52 SEC. RIGHT AND RUN ALONG THE EAST BOUNDARY OF SAID NE  $\frac{1}{4}$  OF NE  $\frac{1}{4}$  A DISTANCE OF 1335.18 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE TURN 87 DEG. 33 MIN. 15 SEC. RIGHT AND RUN 597.26 FEET ALONG THE SOUTH BOUNDARY OF SAID NE  $\frac{1}{4}$  OF NE  $\frac{1}{4}$  TO A POINT ON THE NORTHERLY BOUNDARY OF CRENSHAW SWAMP ROAD; THENCE TURN 45 DEG. 25 MIN. 14 SEC. RIGHT AND RUN 106.93 FEET ALONG SAID ROAD BOUNDARY AND THE FOLLOWING COURSES: 08 DEG. 48 MIN. 40 SEC. LEFT FOR 187.07 FEET; 04 DEG. 31 MIN. 41 SEC. LEFT FOR 103.66 FEET; 11 DEG. 04 MIN. 29 SEC. LEFT FOR 153.54 FEET; 08 DEG. 41 MIN. 10 SEC. RIGHT FOR 114.16 FEET; THENCE TURN 05 DEG. 57 MIN. 25 SEC. RIGHT AND RUN 188.18 FEET ALONG SAID ROAD BOUNDARY TO A POINT ON THE WEST BOUNDARY OF AN AFOREMENTIONED NE  $\frac{1}{4}$  OF NE  $\frac{1}{4}$ ; THENCE TURN 56 DEG. 48 MIN 05 SEC. RIGHT AND RUN 866.81 FEET TO THE POINT OF BEGINNING OF HEREIN DESCRIBED PARCEL OF LAND. SUBJECT TO 60.0 FOOT PRIVATE ROAD EASEMENT TO WIT: FROM THE NORTHWEST CORNER OF THE NE  $\frac{1}{4}$  OF NE  $\frac{1}{4}$  OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 1 WEST, RUN THENCE EAST ALONG THE NORTH BOUNDARY OF SAID NE  $\frac{1}{4}$  OF NE  $\frac{1}{4}$  A DISTANCE OF 8.83 FEET TO THE POINT OF BEGINNING OF THE CENTERLINE OF SAID 60.0 FEET EASEMENT; THENCE TURN 91 DEG. 04 MIN. 31 SEC. RIGHT AND RUN 144.70 FEET ALONG SAID EASEMENT CENTERLINE OF THE FOLLOWING COURSES: 00 DEG. 56 MIN. 45 SEC. RIGHT FOR 91.31 FEET; 08 DEG. 30 MIN. 02 SEC. RIGHT FOR 88.95 FEET; 04 DEG. 53 MIN. 10 SEC. RIGHT FOR 101.00 FEET; 06 DEG. 23 MIN. 05 SEC. LEFT FOR 80.39 FEET; 05 DEG. 48 MIN. 17 SEC. LEFT FOR 241.68 FEET; THENCE TURN 16 DEG. 00 MIN. 55 SEC. RIGHT AND RUN 120.21 FEET ALONG SAID EASEMENT CENTERLINE TO A POINT OF TERMINATION IN THE CENTER OF CRENSHAW SWAMP ROAD. ALL BEING SITUATED IN SHELBY COUNTY, ALABAMA.

ALSO, ALL THAT PART OF THE NW  $\frac{1}{4}$  OF NE  $\frac{1}{4}$  OF SECTION 23, TOWNSHIP 20, RANGE 1 WEST, LYING WEST OF THE WEST LINE OF THE NE  $\frac{1}{4}$  OF THE NE  $\frac{1}{4}$  AND EAST OF THE ABOVE DESCRIBED 60 FOOT PRIVATE ROAD EASEMENT AND NORTH OF CRENSHAW ROAD



Filed and Recorded  
Official Public Records  
Judge James W. Fuhrmeister, Probate Judge,  
County Clerk  
Shelby County, AL  
12/20/2016 01:59:47 PM  
\$57.00 CHERRY  
20161220000464680

A handwritten signature in black ink, appearing to read "J.W. Fuhrmeister".