


SBA Loan No. 5180555002

**STATE OF ALABAMA
COUNTY OF SHELBY**


20170209000049460 1/9 \$39.00
Shelby Cnty Judge of Probate, AL
02/09/2017 03:18:37 PM FILED/CERT

SUBORDINATION AGREEMENT

As used in this Subordination Agreement, these terms shall have the following meanings:

| | |
|-------------------------|--|
| Borrower(s) | NOVA HR, LLC |
| CDC | The Birmingham City Wide Local Development Company |
| CDC's Address | 1500 1 st Ave. North Unit 12/B 106 Birmingham, AL 35203 |
| Note | That certain promissory Note executed by Borrower(s) on May 13, 2013__ (date), in the original principal amount of \$ 530,000__ in favor of CDC and assigned by CDC to SBA. |
| Property | The real estate described in Exhibit A attached hereto |
| SBA | The Small Business Administration, an agency of the Government of the United States of America |
| SBA Liens | (i) The mortgage securing the Note executed by Borrower(s) in favor of CDC and recorded at # 20130514000200160__, in the Office of the Judge of Probate, Shelby County, Alabama; (ii) The assignment of rents and leases executed by Borrower(s) in favor of CDC and recorded at # 20130514000200170, in the Office of the Judge of Probate, Shelby, County, Alabama; |
| Stated Purpose(s) | Purpose to which the Borrower(s) intends to apply the proceeds of the loan from Third Party Lender the refinancing and paying off the existing obligations to Bancorp South Bank. (if refinance, clearly delineate such) |
| Third Party Lender | First Commercial Bank |
| Third Party Loan Amount | \$578,000.00 |

WHEREAS, Borrower(s)s are presently indebted SBA, as evidenced by the Note; and

WHEREAS, the Note is secured by, among other things, the SBA Liens; and

WHEREAS, said Borrower(s) are desirous of obtaining an additional loan in the amount of Third Party Loan Amount from Third Party Lender for the Stated Purpose(s) (the "Third Party Lender's Loan"); and

WHEREAS, the Third Party Lender requires the Borrower(s) to secure the Third Party Lender's Loan with a mortgage and/or security interest on the Property and further requests that SBA subordinate the SBA Liens to the mortgage and/or security interest having been taken or to be

taken by Third Party Lender and secured by the Property.

NOW THEREFORE, in and for good and valuable consideration, and in order to induce said Third Party Lender to make Third Party Lender's Loan to Borrower(s), SBA does herewith **subordinate** the SBA Mortgage to the mortgage taken or to be taken by the Third Party Lender, which secures Third Party Lender's 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 Liens with regard to any legal or equitable interest in the Property. Borrower(s) and Third Party Lender shall hold SBA harmless from any impairment of its lien (with regard to any party other than the Third Party Lender) which is occasioned by this subordination.
- (2) Use of Proceeds. All proceeds of Third Party 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 Liens, plus customary closing costs. If the Third Party Lender's Loan is not a refinance, then all proceeds of the Third Party Lender's loan shall be used solely for the Stated Purpose(s). Any other use of proceeds not described herein shall void this agreement.
- (3) This subordination agreement is void if not duly executed by Third Party Lender, SBA, the Borrower(s) and all Guarantors of the Borrower(s).
- (4) Compliance With 504 Loan Program Requirements. Third Party Lender confirms that the note evidencing Third Party Lender's Loan, any lien instruments securing Third Party Lender's Loan, and all other documents executed in connection with Third Party Lender's Loan ("Third Party 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 Third Party Lender's Loan Documents, maintaining collateral, and/or protecting the lien(s) securing the Third Party Lender's Loan, (b) are not cross-collateralized with any other financing now or hereafter to be provided by Third Party Lender, (c) have no early call features, (d) are not payable on demand unless the Third Party 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 loan being refinanced 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 Third Party Lender, as compared to CDC and SBA, related to making, servicing, or liquidating the Third Party 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 Third Party Lender's senior lien position(s) on the collateral should this be Property. Third Party Lender agrees that if Third Party Lender's Loan Documents or any provision therein does not comply with these requirements, then Third Party Lender waives its right to enforce any such non-complying document or provision unless Third Party 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 Third Party Lender's Loan, in whole or in part, prior to the stated maturity; any late fees or charges due in connection with the Third Party Lender's Loan; any escalated, increased, or default interest charged in excess of the rate of interest in Third Party 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 Third Party Lender's Loan. Third Party 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 Borrower(s), hereinafter referred to as the "504 Loan" and, to the extent that Third Party Lender's Loan Documents secure any Default Charges, Third Party Lender hereby subordinates such lien(s) to the lien(s) securing the 504 Loan.

- (6) Notice of Default Under the Third Party Lender Loan. If any default, event of default or delinquency, upon which Third Party Lender intends to take action, occurs under the Third Party Lender's Loan Documents, then Third Party 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 Third Party Lender's Loan current or to purchase Third Party Lender's note, provided that the amount to bring the Third Party Lender's Loan current or to purchase Third Party Lender's note will be net of all amounts attributable to Default Charges. Third Party Lender further agrees that if Third Party Lender receives from CDC or SBA any amounts attributable to Default Charges, then Third Party 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 Third Party Lender intends to take action and at least sixty (60) days prior to the date of any proposed sale of collateral and Third Party 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 Third Party 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 CDC 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 Third Party Lender's Loan or the 504 Loan is declared in default; Third Party Lender, CDC and SBA agree to cooperate in liquidating and/or selling the collateral. Third Party Lender agrees (a) to accept cash, certified funds or a U.S. Treasury check(s) in connection with any purchase of Third Party 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 Third Party 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 Third Party Lender; and (d) to provide any other information about Borrower(s) or the Third Party 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, Borrower(s). This Agreement also does not grant any right, benefit, priority, or interest to any third parties, including but not limited to, Borrower(s).

- (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 Third Party Lender's Loan or Third Party 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(s) or guarantor of the 504 Loan may claim or assert against SBA any local or state law to deny any obligation of Borrower(s), 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 31st day of January, 2017.

U.S. SMALL BUSINESS ADMINISTRATION

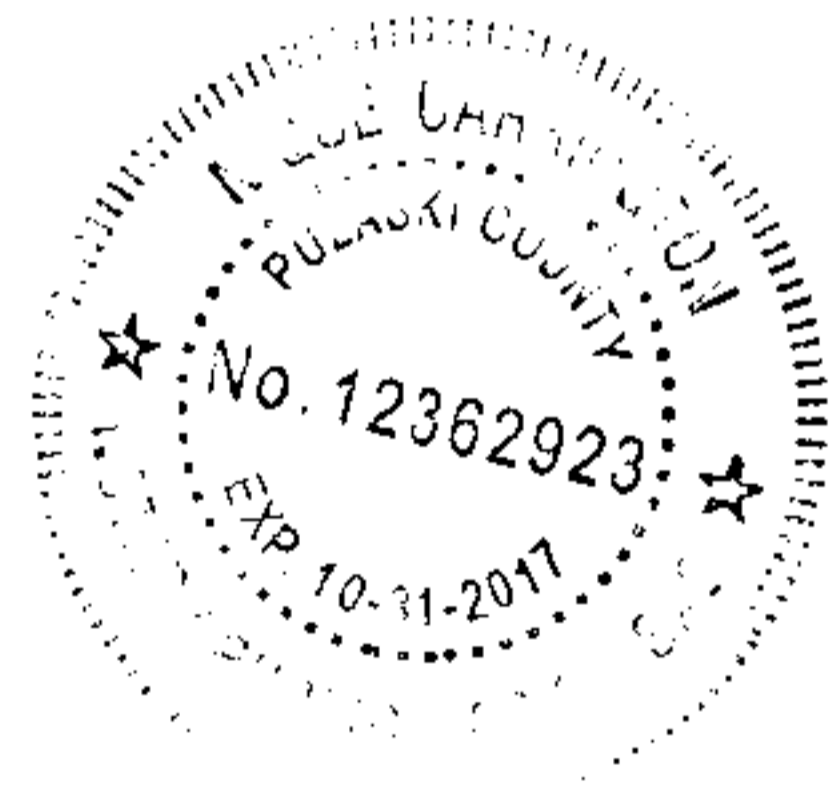
By: Sarah Hawkins
Name: Sarah Hawkins
Title: Center Deputy Director


STATE OF ARKANSAS
COUNTY OF PULASKI

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Sarah Hawkins whose name as Deputy Director of USCB 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 31st day of January, 2017.

Aiguo Cao
Notary Public
My commission expires: 10/31/2017




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IN WITNESS WHEREOF, the undersigned parties have consented to the contents, terms and conditions of this Subordination Agreement, this 9th day of February, 2017

BORROWER(S)

NOVA HR, LLC

BY: Laurie Halverson
Print Name: Laurie Halverson
Title: Manager

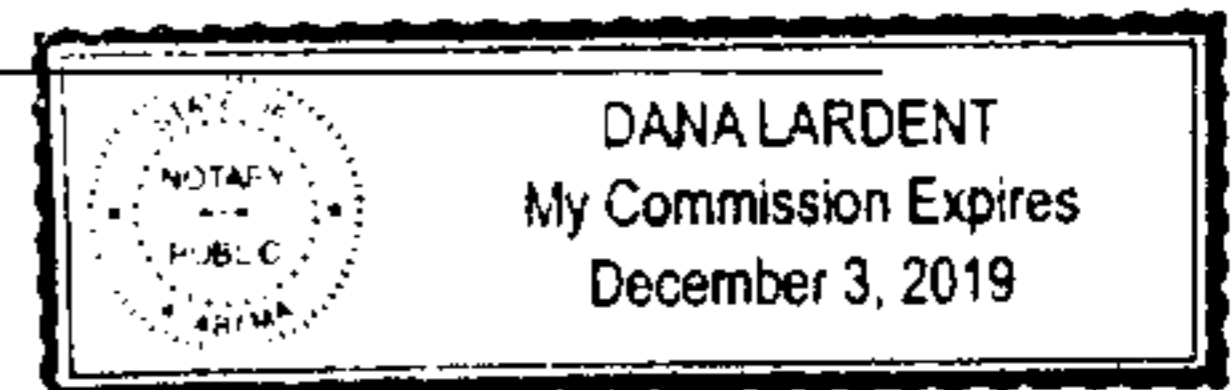
STATE OF ALABAMA
COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Laurie Halverson whose name as Manager of NOVA HR, LLC, a corporation/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/she, as such officer/member/manager/authorized representative, and with full authority, executed the same voluntarily, as an act of said corporation/company, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 9th day of February, 2017.



[Signature]
NOTARY PUBLIC
My Commission Expires: _____



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THIRD PARTY LENDER:

FIRST COMMERCIAL BANK

BY: *[Signature]*

Print Name: Matt Condra

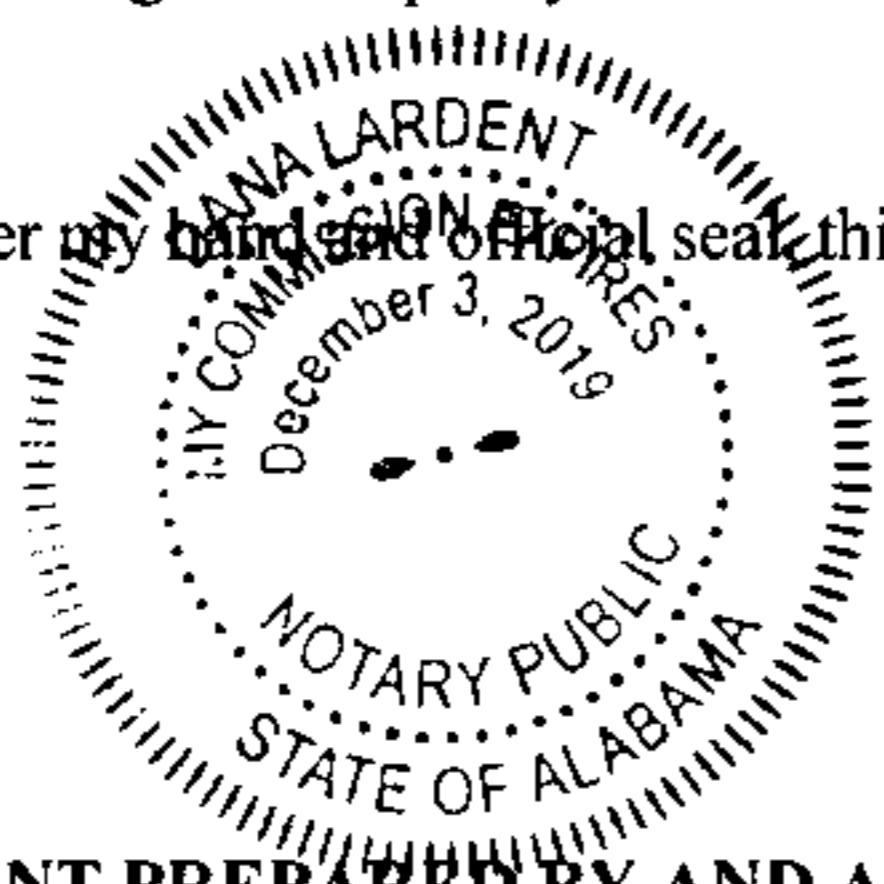
Title: VP

STATE OF ALABAMA

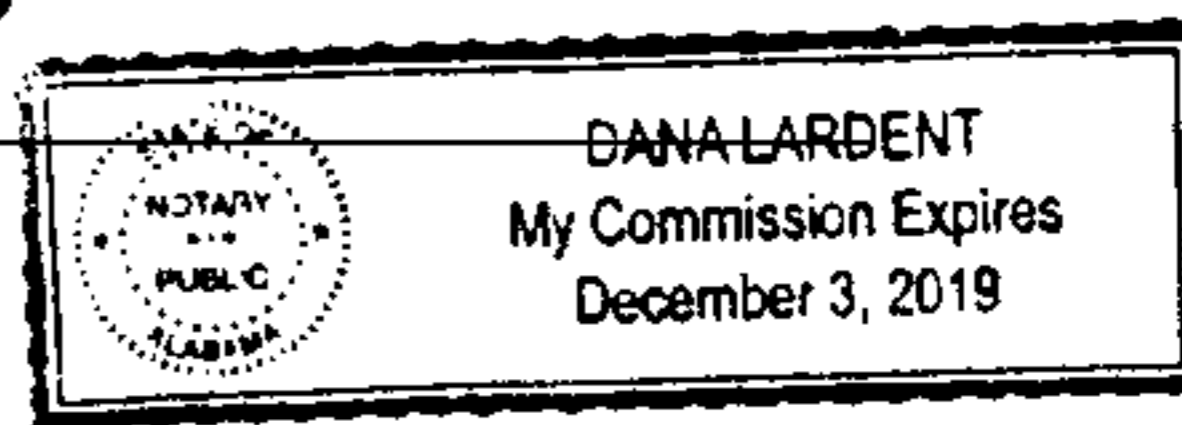
COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Matt Condra whose name as Vice President 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/she, 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 8th day of February, 2017.



[Signature]
NOTARY PUBLIC
My Commission Expires: _____



**THIS INSTRUMENT PREPARED BY AND AFTER
RECORDATION SHOULD BE RETURNED TO:**

THE BIRMINGHAM CITY WIDE
LOCAL DEVELOPMENT COMPANY
1500 1st Ave. North
Unit 12/B 06
Birmingham, AL 35203
(205)-250-6380

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



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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.

BORROWER(S)

NOVA HR, LLC

BY: Laurie Halvorson
Print Name: Laurie Halvorson
Title: Manager

GUARANTORS

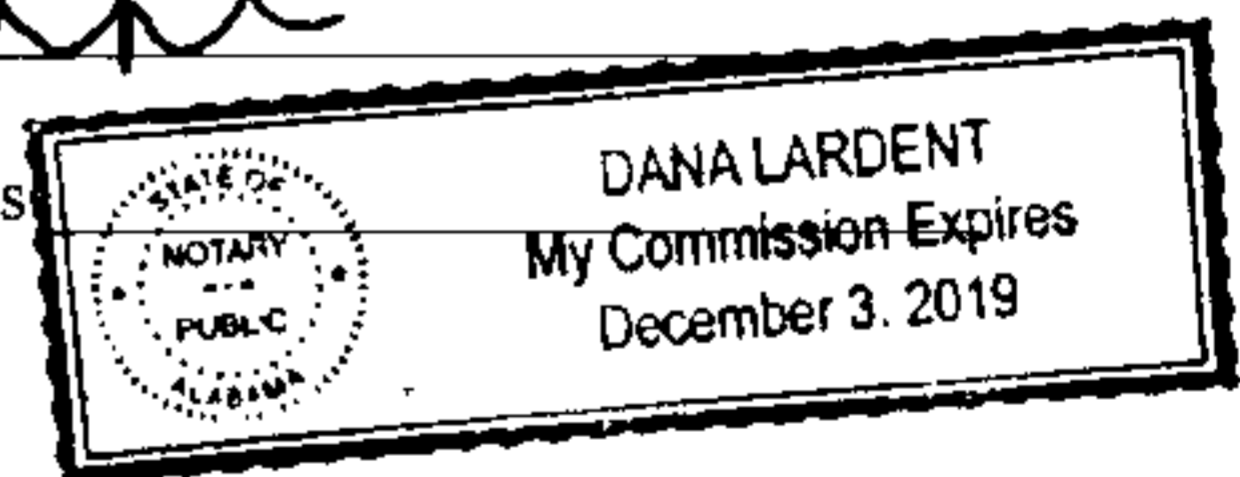
Shelby Ear Nose & Throat Associates, P.C.
BY: [Signature]
Print Name: David Halvorson
[Signature]
Print Name: David Halvorson
Laurie Halvorson
Print Name: Laurie Halvorson

STATE OF ALABAMA
COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Laurie Halvorson whose name as Manager of NOVA HR, LLC, a corporation/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/she, as such officer/member/manager/authorized representative, and with full authority, executed the same voluntarily, as an act of said corporation/company, acting in its capacity as aforesaid.

Given under my hand and official seal, this the 8th day of February, 2017.

[Signature]
NOTARY PUBLIC
My Commission Expires

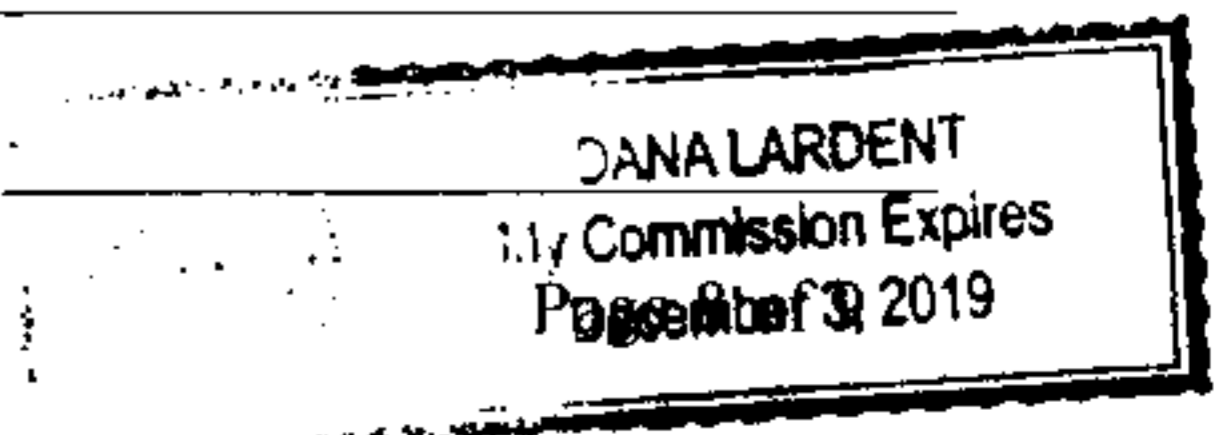


STATE OF ALABAMA
COUNTY OF Jefferson

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that David Halvorson whose name 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, executed the same voluntarily, on the day the same bears date.

Given under my hand and official seal, this the 8th day of February, 2017.

[Signature]
NOTARY PUBLIC
My Commission Expires



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Subordination Template_BCW_4-12-2016

EXHIBIT "A"

Lot 1-A, according to the Survey of Cotter Resurvey, as recorded in Map Book 42 , Page 111, in the Probate Office of Shelby County, Alabama.

Together with rights, title and interest in and to that certain Cross Easement Agreement recorded in Instrument 20120806000288240, in the Probate Office of Shelby County, Alabama.

SUBJECT TO: i) taxes and assessments for the year 2013, a lien but not yet payable; ii) Restrictions appearing of record in Misc. Volume 21, Page 614, amended in Misc. Volume 30, page 158; Deed Book 155, page 593, and Deed Book 172, page 520, in the Probate Office of Shelby County, Alabama; iii) Transmission line permit to Alabama Power Company recorded in Deed Book 103, page 54; Deed Book 138, page 434; Deed Book 157, page 285; Deed Book 175, page 394; Deed Book 176, page 377, in the Probate Office of Shelby County, Alabama; vi) Easement to South Central Bell recorded in Deed 168, Page 480; v) Cross Easement Agreement as recorded in 20120806000288240 in the Probate Office of Shelby County, Alabama; and vi) coal, oil, gas and mineral and mining rights which are not owned by Mortgagor.


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