  
20170322000095930 1/11 \$45.00  
Shelby Cnty Judge of Probate, AL  
03/22/2017 01:06:02 PM FILED/CERT

UPON RECORDATION

RETURN TO:

Linda D. Nguyen

Page, Scrantom, Sprouse, Tucker & Ford, PC

P.O. Box 1199

Columbus, Georgia 31902

SYNOVUS BANK, its successors and assigns  
(Lender)

and

SWIFT STRAW II, LLC, a Georgia limited liability company (Tenant)

SUBORDINATION AND  
ATTORNMENMENT AGREEMENT

Dated: March 14, 2017

Location: 3080 Lee Street, Pelham, Alabama 35124

## SUBORDINATION AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION AND ATTORNMENMENT AGREEMENT (the "Agreement") is made as of the 14<sup>th</sup> day March, 2017, by and between SYNOVUS BANK having an address at P.O. Box 120, Columbus, GA 31902 ("Lender") and SWIFT STRAW II, LLC, a Georgia limited liability company ("Tenant").

### RECITALS:

- A. Tenant is the holder of a leasehold estate in a portion of the property located in 3080 Lee Street, Pelham, Alabama 35124 as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property") under and pursuant to the provisions of a Ground Lease Agreement dated as of February 21, 2017, between PELHAM INVESTMENT PARTNERS, LLC, a Georgia limited liability company ("Landlord") and Tenant (as amended through the date hereof, the "Lease");
- B. The Property is or is to be encumbered by one or more mortgage and security agreements or similar security agreements and an assignments of leases and rents, together with any modifications, renewals and modifications (collectively, the "Security Instrument") from PELHAM INVESTMENT PARTNERS, LLC, a Georgia limited liability company ("Borrower") in favor of Lender; and
- C. Tenant and Borrower are related entities with similar ownership and Tenant benefits from Lender making a loan to Borrower with the proceeds of said loan being used by Borrower in the acquisition of the Property by Borrower, and to induce Lender to make said loan to Borrower, Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien and security title thereof.

### AGREEMENT:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficient of which is hereby acknowledged by this parties hereto, the parties hereto mutually agree as follows:

1. Subordination. The Lease shall be subject and subordinate in all respects to the lien, security title and terms of the Security Instrument, to any and all advances to be made thereunder and to all renewals, modifications, consolidations, replacements and extensions thereof.
2. Attornment. Lender or any other person or entity acquiring the property through foreclosure of the Security Instrument, or sale under power of sale under the Security Instrument, or deed-in-lieu of foreclosure (each such person or entity, which could be Lender if Lender so acquires the Property, is herein called an "Acquiring Party"), may, at such party's election, terminate the Lease in connection with such foreclosure, however, if such Acquiring Party elects not to terminate the Lease, then Tenant agrees to attorn to, accept and recognize any Acquiring Party as the landlord under the Lease pursuant to the provisions expressly set forth therein for the then remaining balance of the term of the Lease, and any extensions thereof as made pursuant to

the Lease. The foregoing provision shall be self-operative and shall not require the execution of any further instrument or agreement by Tenant as a condition to its effectiveness. Tenant agrees, however, to execute and deliver, at any time and from time to time, upon the request of the Lender or any Acquiring Party any reasonable instrument which may be necessary or appropriate to evidence such attornment.

3. No Liability. Notwithstanding anything to the contrary contained herein or in the Lease, it is specifically understood and agreed that neither the Lender, any receiver nor any Acquiring Party shall be:

(a) liable for any act, omission, negligence or default of any prior landlord (including, without limitation, Landlord); or

(b) liable for any failure of any prior landlord to complete any tenant improvements required to be completed by any prior landlord (including, without limitation, Landlord);

(c) subject to any offsets, credits, claims or defenses which Tenant might have against any prior landlord (including, without limitation, Landlord) or bound by any amendment to or modification of the Lease unless such amendment and/or modification is consented to in writing by Lender (which consent may be withheld in the reasonable discretion of Lender); or

(d) bound by any rent or additional rent under the Lease that is paid to any prior landlord (including, without limitation, Landlord) more than one (1) month in advance of its due date; or

(e) be liable to Tenant hereunder or under the terms of the Lease beyond its interest in the Property (i.e., any claim against Lender or an Acquiring Party may only be recovered from such party's interest in the Property.)

4. Rent. Tenant has notice that the Lease and the rents and all other sums due thereunder have been or will be assigned to Lender as security for the loan secured by the Security Instrument. In the event Lender notifies Tenant of the occurrence of a default under the Security Instrument and demands that Tenant pay its rents and all other sums due or to become due under the Lease directly to Lender, Tenant shall honor such demand and pay its rent and all other sums due under the Lease directly to Lender or as otherwise authorized in writing by Lender. Landlord hereby irrevocably authorizes Tenant to make the foregoing payments to Lender upon such notice and demand.

5. Lender to Receive Notices. Tenant shall notify Lender of any default by Landlord under the Lease which would entitle Tenant to cancel the Lease, and agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof shall be effective unless Lender shall have received notice of default giving rise to such cancellation and shall have failed within sixty (60) days after receipt of such notice to cure such default, or if such default cannot be cured within sixty (60) days, shall have failed within sixty (60) days after receipt of such notice to commence and thereafter diligently pursue any action necessary to cure such default (Nothing contained herein obligates Lender to pursue a cure of any such default).



6. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the receiving party at its address set forth below:

if to Tenant: Swift Straw II, LLC  
Attention: Matthew Lowe  
2255 Cumberland Parkway Building 1700  
2nd Floor  
Atlanta, Georgia 30339


If to Lender: Synovus Bank  
1148 Broadway  
Columbus, Georgia 31901  
to the attention of: Matt Prielozny

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Paragraph 6, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in Columbus, Georgia. Either party by notice to the other may also designate additional or different addresses for subsequent notices or communications.

7. Successors. The obligations and rights of the parties pursuant to this Agreement shall bind and inure to the benefit of the successors, assigns, heirs and legal representatives of the respective parties. In addition, Tenant acknowledges that all references herein to Landlord shall mean the owner of the landlord's interest in the Lease, even if said owner shall be different than the Landlord named in the Recitals.

8. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

(Signatures begin on following page)


  
20170322000095930 4/11 \$45.00  
Shelby Cnty Judge of Probate, AL  
03/22/2017 01:06:02 PM FILED/CERT

IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER:


SYNOVUS BANK

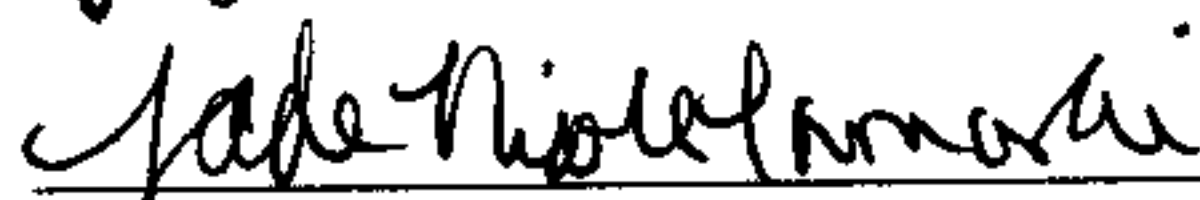
By:

  
Name: Matthew Prielozny  
Title: Authorized Signer

(SEAL)

Signed, Sealed and Delivered in  
the presence of:

  
Witness

  
Notary Public

My Commission Expires: 6-2-17  
(NOTARIAL SEAL)



STATE OF Georgia  
COUNTY OF Muscogee

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Matthew Prielozny whose name as authorized signer of Synovus Bank, a Georgia banking 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 this instrument, he, as such authorized signer of said Synovus Bank and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and seal of office this 14 day of March, 2017.

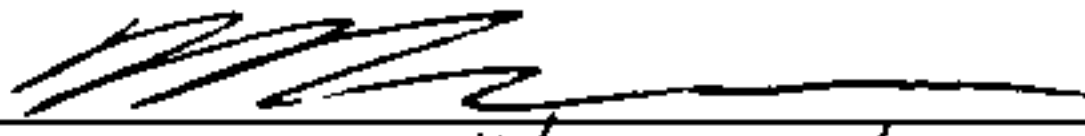
[NOTARY SEAL]



Jade Nicole Tamaski  
Notary Public  
My Commission Expires: 6-2-17

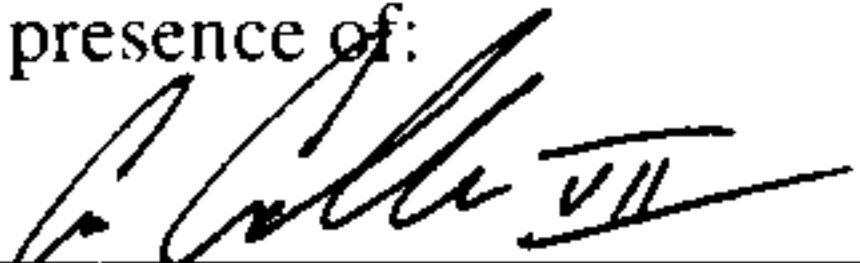
TENANT:

SWIFT STRAW II, LLC, a Georgia limited liability company

By:   
Name: Matthew Lowe  
Title: CEO

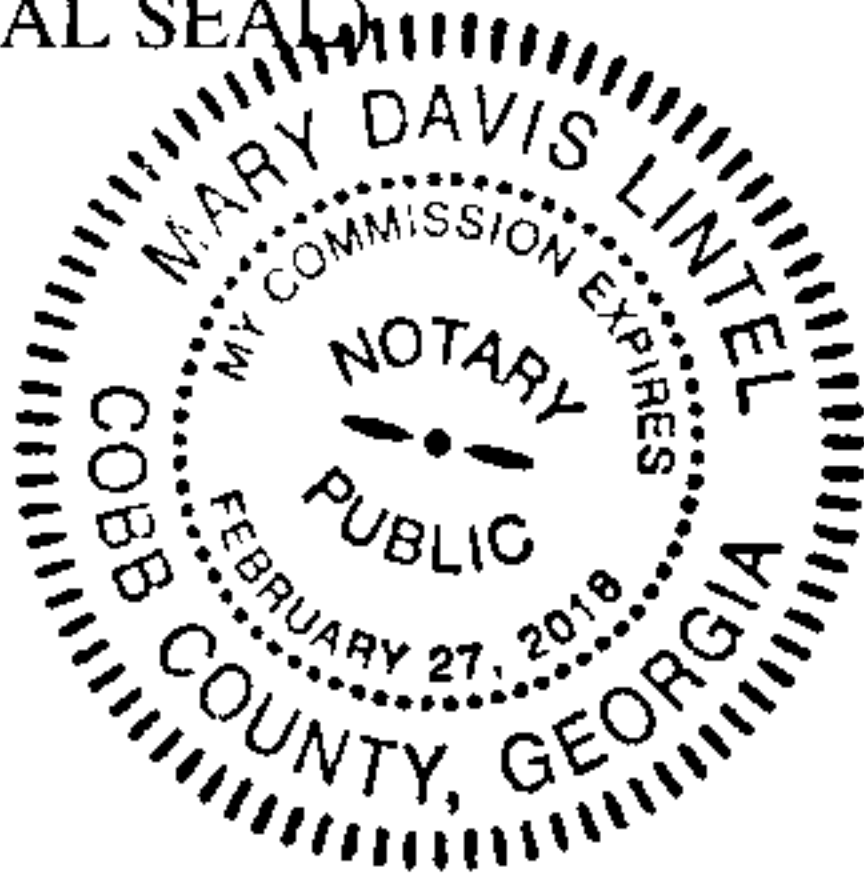
(SEAL)

Signed, Sealed and Delivered in  
the presence of:

  
Witness

Mary Davis Lintel  
Notary Public

My Commission Expires: 2/27/18  
(NOTARIAL SEAL)

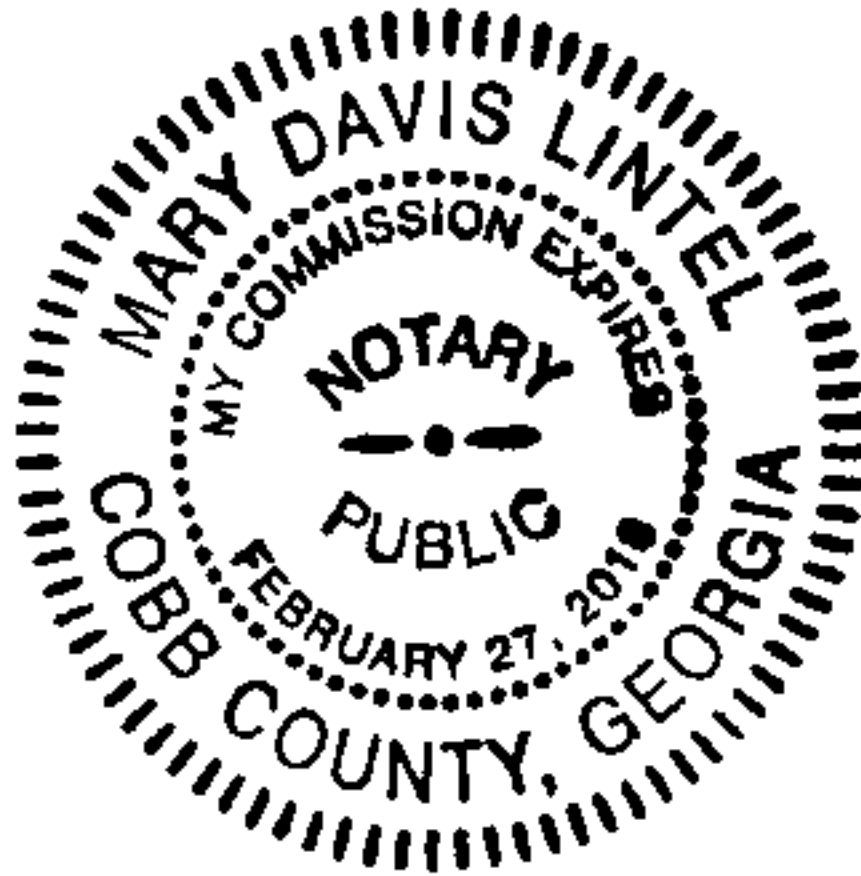


STATE OF Georgia  
COUNTY OF Cobb

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that Matthew W. Lowe whose name as CEO of Swift Straw II, LLC, a Georgia 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 this instrument, he, as such CEO of said Swift Straw II, LLC and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and seal of office this 14th day of March, 2017.

[NOTARY SEAL]



Mary Davis Lintel  
Notary Public  
My Commission Expires: 2/27/18



Landlord executes this Subordination and Attornment Agreement to evidence its understanding of the foregoing as of the date first above written, and the undersigned hereby authorizes Tenant to pay rent directly to Lender as and when contemplated in Section 4 of the foregoing Agreement.

LANDLORD:

PELHAM INVESTMENT PARTNERS, LLC,  
a Georgia limited liability company

By: IRBY FAMILY INVESTMENTS, LLC,  
a Georgia limited liability company, its  
Manager

By: \_\_\_\_\_ (Seal)  
Name: John H. Irby  
Title: Manager

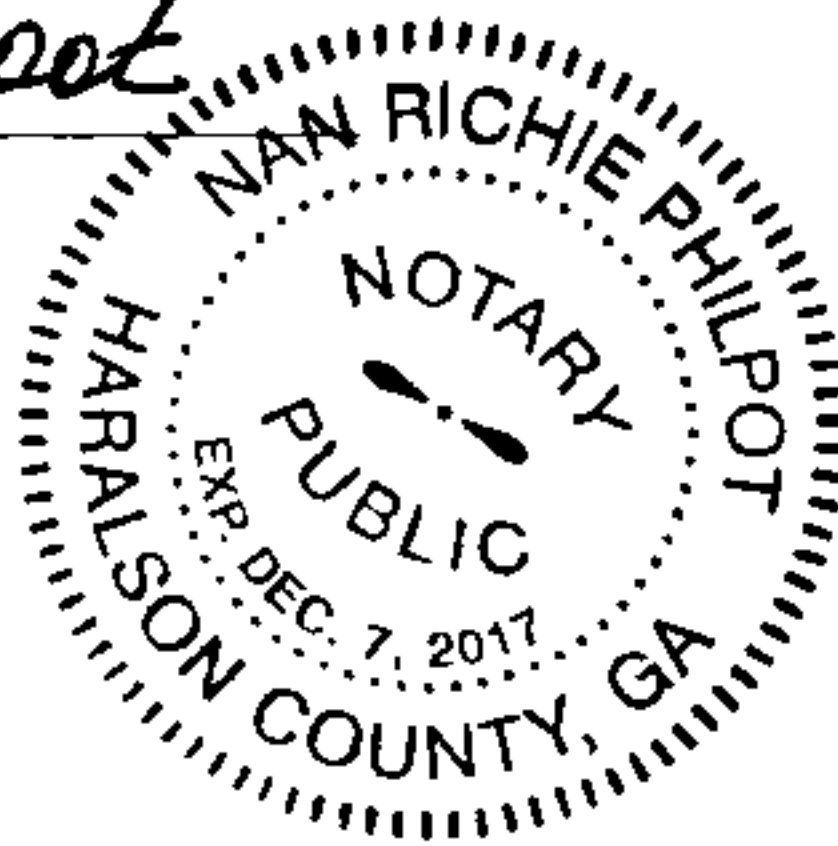
Signed, Sealed and Delivered in  
the presence of:

Witness

*Nan Richie Philpot*

Notary Public

My Commission Expires:  
(NOTARIAL SEAL)



STATE OF Georgia  
COUNTY OF Hall

I, the undersigned, a Notary Public in and for said County in said State, do hereby certify that John H. Irby whose name as manager of Irby Family Investments, LLC, a Georgia limited liability company, as a manager of Pelham Investment Partners, LLC, a Georgia 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 this instrument, he, as such manager of said Irby Family Investments, LLC as a manager of Pelham Investment Partners, LLC and with full authority, executed the same voluntarily for and as the act of said companies.

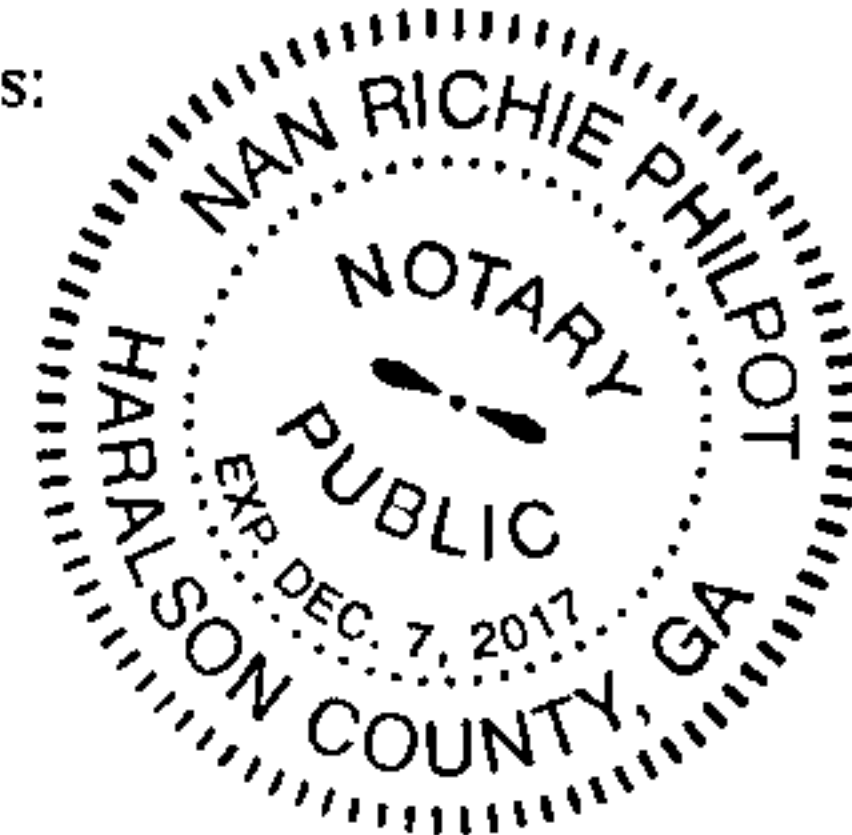
Given under my hand and seal of office this 14th day of March, 2017.

[NOTARY SEAL]

Nan Richie Philpot

Notary Public

My Commission Expires:



THIS INSTRUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:  
Angela Hicks and Linda Nguyen of  
Page, Scrantom, Sprouse,  
Tucker & Ford, P.C.  
P. O. Box 1199  
Columbus GA 31902  
(706) 324-0251


## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

A parcel of land located in the Southeast  $\frac{1}{4}$  of Section 14, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at the Southeast corner of said Section 14; thence in a Westerly direction along the South line of said Section 14 a distance of 201.98 feet to the center line of Atlantic Coast Line Railroad right of way; thence  $62^{\circ} 35'$  right along the center line of said right of way in a Northwesterly direction a distance of 196.31 feet to the intersection of the center line of the Ashville-Montevallo Road; thence  $20^{\circ} 35'$  right in a Northwesterly direction along said center line of said road a distance of 703.74 feet; thence  $90^{\circ}$  left in a Southwesterly direction a distance of 30.0 feet to the West right of way line of said road and the Point of Beginning of herein described property; thence continue along last described course a distance of 180.88 feet to the Northeast right of way line of Atlantic Coast Line Railroad; thence  $69^{\circ} 25'$  right in a Northwesterly direction along said right of way a distance of 594.74 feet to the beginning of a curve to the left, said curve having a central angle of  $27^{\circ} 12'$  (measure  $8^{\circ} 07' 53''$ ) and a radius of 2,914.82 feet; thence along arc of said curve a distance of 413.67 feet; thence  $125^{\circ} 32' 53''$  right, measured from tangent of said curve, in an Easterly direction a distance of 670.32 feet to the West right of way line of Ashville-Montevallo Road, said point being on a curve to the left having a central angle of  $2^{\circ} 23' 18''$  and a radius of 277.35 feet (calculated 2,775.35); thence  $95^{\circ} 34' 48''$  right, measured to tangent of said curve, in a Southerly direction along arc of said curve a distance of 115.69 feet to end of said curve; thence continue along said right of way line in a Southerly direction a distance of 180.82 feet to the beginning of a curve to the left, said curve having a central angle of  $10^{\circ} 01' 30''$  and a radius of 3,223.53 feet; thence continue along arc of said curve in a Southerly direction a distance of 564.02 feet to end of said curve and the Point of Beginning.

Tax parcel # 13 6 14 4 001 002.000

  
20170322000095930 11/11 \$45.00  
Shelby Cnty Judge of Probate, AL  
03/22/2017 01:06:02 PM FILED/CERT