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Trey Malechek, Esq.  
The Payne Law Group  
3850 Corporate Center Drive  
Bryan, Texas 77802

AFTER RECORDING RETURN TO:  
American Momentum Bank  
One Momentum Boulevard  
College Station, TX 77845  
Attn: Teresa Eoff

### **NON-DISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT**

This NON-DISTURBANCE, ATTORNMENT AND SUBORDINATION AGREEMENT (this "**Agreement**") is made and entered into to be effective as of the 6<sup>th</sup> day of February, 2019, by and between AMERICAN MOMENTUM BANK ("**Lender**"); SEP INVERNESS MOB, LLC, a Delaware limited liability company ("**Landlord**"); and INVERNESS FAMILY DENTISTRY, P.C., an Alabama professional corporation ("**Tenant**").

#### WITNESSETH:

WHEREAS, Lender is or will be the owner and holder of that certain Promissory Note (the "**Note**") effective February 6, 2019, in the total principal sum of FOUR MILLION TWO HUNDRED EIGHT THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$4,208,750.00), secured or to be secured by that certain Deed of Trust, Mortgage, Assignment of Leases and Rents and Security Agreement ("**Mortgage**"), dated of even date with the Note, executed by Landlord in favor of Lender, and recorded on February 7<sup>th</sup>, 2019, as Instrument No. 20190207000041050 in the appropriate records of Shelby County, Alabama, which Mortgage constitutes or will constitute a lien on the land described in Exhibit "A", attached hereto and incorporated herein by reference for all purposes, and the improvements now or hereafter located thereon ("**Property**"); and

WHEREAS, Tenant is the holder of a leasehold estate in and to a portion of the Property (the property which is the subject of such leasehold estate being referred to as the "**Demised Premises**") pursuant to the terms of that certain unrecorded Lease Agreement dated January 18, 2019 (the "**Lease**"), and executed by and between Tenant, as the tenant, and Landlord, as the landlord; and

WHEREAS, Landlord, Tenant and Lender desire to confirm their understandings with respect to the Lease and the Mortgage.

NOW, THEREFORE, in consideration of the mutual and dependent covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereto agree and covenant as follows:

1. Non-Disturbance. So long as Tenant is not in default (beyond any period given Tenant to cure such default) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed, Tenant's possession, use and occupancy of the Demised Premises shall not be interfered with or disturbed by Lender during the term of the Lease or any extension thereof duly exercised by Tenant. If at, or subsequent to, the time that Lender or a Purchaser (as defined in Paragraph 5) shall acquire, in whatever manner, title to the Demised Premises (subject to the Lease), or from time to time thereafter, any default exists or occurs under the Lease, then Lender or such Purchaser shall be entitled to exercise or enforce any and all rights, privileges, remedies and recourses which it may have against Tenant under or pursuant to the Lease or other applicable law (including without limitation, the termination of the Lease, the dispossession of Tenant from the Demised Premises, or the prosecution of an action for breach of the Lease), notwithstanding the provisions of this Agreement.

2. Attornment. If the interests of Landlord in and to the Demised Premises become owned by Lender or another Purchaser by reason of judicial foreclosure, non-judicial foreclosure by the trustee under the Mortgage, other proceedings brought by Purchaser or by any other manner, including, but not limited to, Lender's exercise of its rights under any collateral assignment(s) of leases and rents, and Purchaser succeeds to the interest of the Landlord under the Lease, Tenant shall be bound to Purchaser under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extension thereof duly exercised by Tenant, with the same force and effect as if Purchaser were the Landlord under the Lease. Tenant does hereby attorn to Purchaser, as its Landlord, said attornment to be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto or of any Purchaser, immediately upon Purchaser's succeeding to the interest of the Landlord under the Lease; provided, however, that Tenant shall be under no obligation to pay rent to Purchaser until Tenant receives written notice from Purchaser that it has succeeded to the interest of the Landlord under the Lease. The respective rights and obligations of Tenant and Purchaser upon such attornment, to the extent of the then remaining balance of the term of the Lease and any extension thereof duly exercised, shall be and are the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference, with the same force and effect as if expressly set forth herein.

3. Purchaser's Obligations. If Purchaser shall succeed to the interest of Landlord under the Lease, Purchaser shall be bound to Tenant under all of the terms, covenants and conditions of the Lease; provided, however, that Purchaser shall not be:

(a) liable for any act or omission of any prior Landlord (including Landlord) under the Lease; or

(b) subject to the offsets or defenses which Tenant might have against any prior Landlord (including Landlord) under the Lease; or

(c) bound by any rent, additional rent, advance rent or other monetary obligations which Tenant might have paid for more than the current month to any prior Landlord (including Landlord) under the Lease, and all such rent or other monetary obligations shall remain due and owing, notwithstanding such advance payment; or

(d) bound by any security deposit of any type or advance rental deposit made by Tenant under the Lease which is not delivered or paid over to Purchaser and with respect to which Tenant agrees to look solely to Landlord for refund or reimbursement; or

(e) bound by any amendment or modification of the Lease made without Lender's or Purchaser's prior written consent and approval; or

(f) required to complete the construction of any improvements or otherwise perform the obligations of Landlord under the Lease in the event that Lender or a Purchaser acquires title to the Property prior to full completion and acceptance by Tenant of improvements required under the Lease; or

(g) liable or responsible under or pursuant to the terms of the Lease after it ceases to own an interest in or to the Property.

4. Subordination. Subject to the terms of this Agreement, the Lease now is, and shall at all times continue to be, subject, inferior and subordinate in each and every respect to the Mortgage and to any and all renewals, amendments, modifications, extensions, substitutions, replacements, increases and/or consolidations of the Mortgage, and the Mortgage, and any and all renewals, amendments, modifications, extensions, substitutions, replacements, increases and/or consolidations thereof, shall be and remain, in each and every respect prior and superior to the Lease. Nothing herein contained shall be deemed or construed as limiting or restricting the enforcement by Lender of any of the terms, covenants, provisions or remedies of the Mortgage, whether or not consistent with the Lease, including (without limitation) any rights, remedies, privileges and recourses of Lender with respect to insurance proceeds and condemnation awards with respect to the Demised Premises or the Property.



5. Purchaser. The term "**Purchaser**" shall be deemed to include Lender and any of its successors and assigns, including anyone who shall have succeeded to Landlord's interest by, through or under judicial foreclosure, non-judicial foreclosure sale or other proceedings brought pursuant to the Mortgage, deed in lieu of such foreclosure, other proceedings brought by Lender under or with respect to the Note or Mortgage, or otherwise.

6. Representations. Landlord and Tenant represent, warrant and certify to Lender, as of the date hereof, as follows:

- (a) the Lease is presently in full force and effect;
- (b) the Lease has not been modified, amended, supplemented, replaced, restated or otherwise changed, either orally or in writing;
- (c) all conditions or requirements specified in the Lease that could have been satisfied as of the date hereof have been fully satisfied;
- (d) no rent under the Lease has been paid for more than the current rental period established in the Lease;
- (e) to its actual knowledge after due inquiry, no default (or any event, condition or circumstance, which with notice, grace or lapse of time could constitute a default) exists under said Lease;
- (f) Tenant, as of this date, has no charge, lien or claim of offset under said Lease or otherwise against rents or other charges due or to become due under the Lease;
- (g) the Lease constitutes the entire agreement between the Tenant and Landlord and that the Lender shall have no liability or responsibility with respect to any security deposit or advance rental deposit made by the Tenant;
- (h) the only persons or entities in possession of the Demised Premises or having any right to the possession, use or occupancy of the Demised Premises (other than the record owner or holders of recorded easements) is Tenant; and
- (i) Tenant has no right or interest in or under any contract, option or agreement (other than as shown in the Lease) involving the sale or transfer of the Demised Premises.

7. Negative Covenants. In the absence of the prior written consent of Lender, Tenant agrees not to do any of the following: (a) prepay the rent or other monetary obligations under the Lease for more than one (1) month in advance, (b) enter into any agreement, whether oral or written, with the Landlord to materially amend, modify, supplement, replace, restate or otherwise change the Lease, (c) voluntarily surrender the Demised Premises or terminate the Lease, and (d) sublease or assign all or any portion of the Demised Premises.

8. Default. In the event Landlord shall fail to perform or observe any of the terms, conditions or agreements in the Lease, Tenant shall give written notice thereof to Lender and Lender shall have the right (but not the obligation) to cure such default. Tenant shall not take any action with respect to such default under the Lease, including without limitation any action in order to terminate, rescind or avoid the Lease or to withhold any rent or other monetary obligations thereunder, for a period of thirty (30) days after receipt of such written notice by Lender; provided, however, that in the case of any default which cannot with diligence be cured within said thirty (30) day period, if Lender shall proceed promptly to cure such default and thereafter prosecute the curing of such default with diligence and continuity, the time within which such default may be cured shall be extended for such period as may be necessary to complete the curing of such default with diligence and continuity.

9. Notices. All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be in writing and shall be considered as properly given if (i) mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested, (ii) by delivering same in person to the intended addressee, or (iii) by delivery to a third party commercial delivery service for same day or next day delivery to the office of the addressee with proof of delivery. Notice so given shall be effective, as applicable, upon (i) its deposit with the U.S. Postal Service, (ii) delivery to the addressee, or (iii) upon delivery to such third party delivery service. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the parties shall be:

Lender: AMERICAN MOMENTUM BANK  
One Momentum Boulevard  
College Station, Texas 77845  
Attention: Teresa N. Eoff

Landlord: SEP INVERNESS MOB, LLC  
5215 Old Orchard Road, Suite 160  
Skokie, Illinois 60077  
Attention: Brian L. Howard

Tenant: INVERNESS FAMILY DENTISTRY, P.C.

202 Inverness Center Drive, Suite 301  
Birmingham, Alabama 35242  
Attn: Charles Douglas Martin, Managing Partner

Notwithstanding the foregoing, any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other parties in the manner set forth herein.

10. Counterparts. To facilitate execution, this instrument may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature or acknowledgment of, or on behalf of, each party, or that the signature of all persons required to bind any party, or the acknowledgment of such party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this instrument to produce or account for more than a single counterpart containing the respective signatures of, or on behalf of, and the respective acknowledgments of, each of the parties hereto. Any signature or acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures or acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature or acknowledgment pages.

11. Amendment. This Agreement may not be modified orally or in any manner other than by an agreement, in writing, signed by the parties hereto and their respective successors in interest.

12. Successors. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

13. Termination. This Agreement shall be of no further force and effect and shall become null and void upon the recording in the applicable records of Lender's written release of the lien of the Mortgage.

14. Governing Law. This Agreement and the respective rights and obligations of the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Alabama, without regard to its conflicts of laws provisions.

***[SEPARATE SIGNATURE PAGES FOLLOW]***



**SEPARATE SIGNATURE PAGE  
NON-DISTURBANCE, ATTORNMENT AND  
SUBORDINATION AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**LENDER:**

AMERICAN MOMENTUM BANK

By: \_\_\_\_\_

Name: Teresa Eoff

Title: Senior Vice President

STATE OF TEXAS           )  
                                      )SS  
COUNTY OF BRAZOS    )

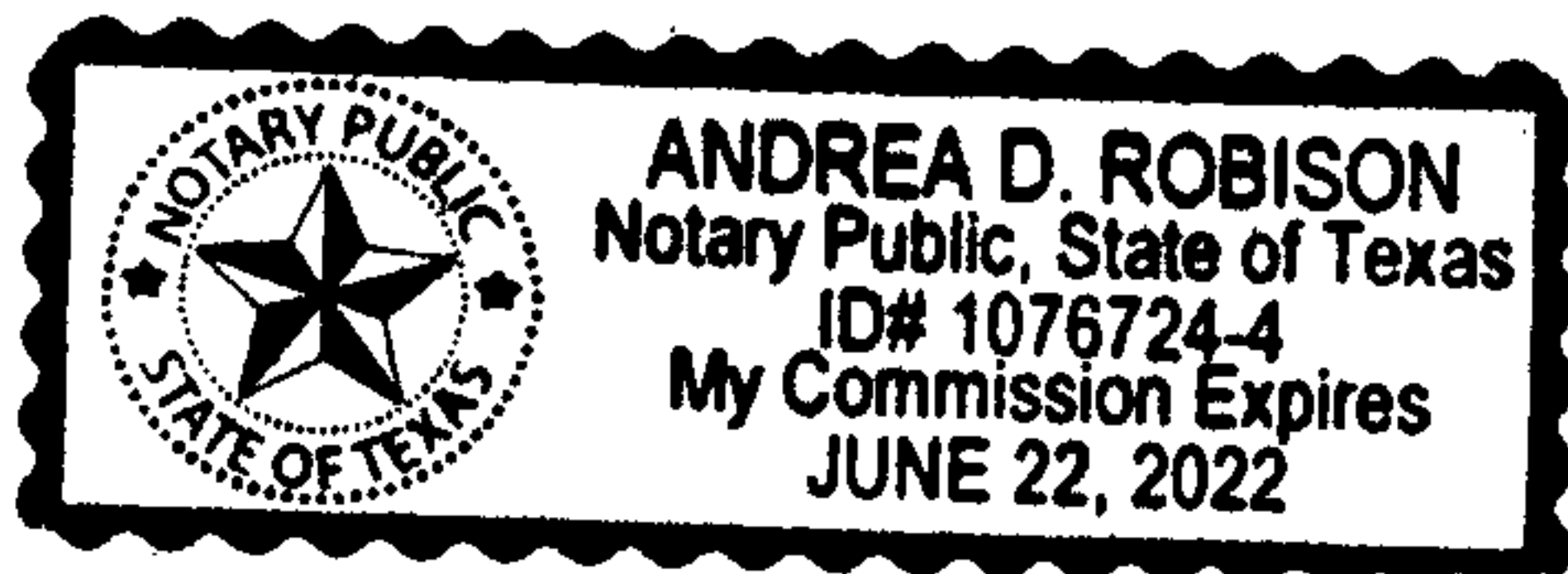
I, the undersigned, a notary public in and for said county in said state, hereby certify that Teresa Eoff, whose name as Senior Vice President of AMERICAN MOMENTUM BANK, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of such instrument, she, as such Senior Vice President and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand and official seal this 1<sup>st</sup> day of February, 2019.

Andrea D. Robison  
Notary Public

[Notarial Seal]

My Commission Expires: June 22, 2022



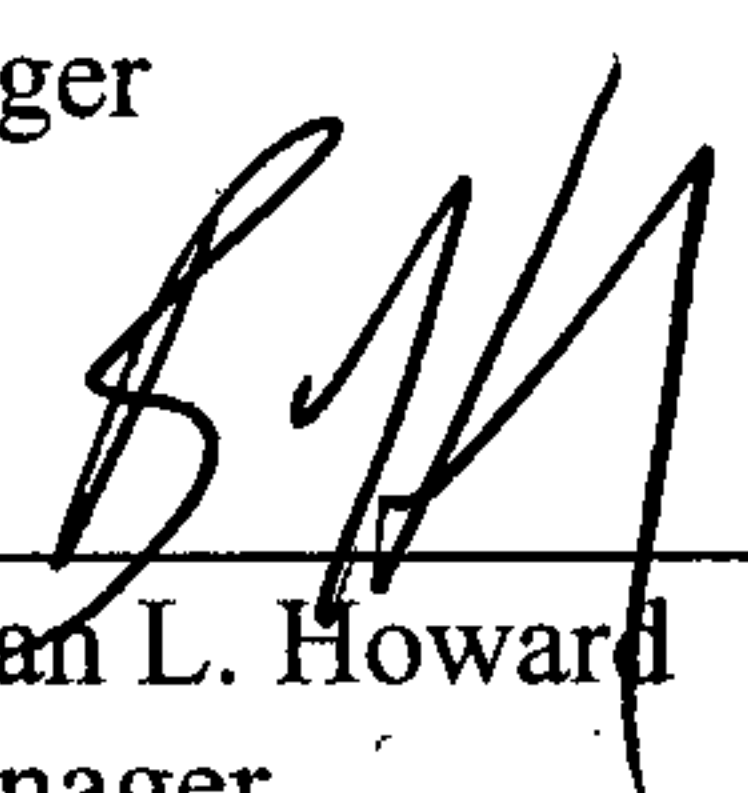
**SEPARATE SIGNATURE PAGE  
NON-DISTURBANCE, ATTORNMENT AND  
SUBORDINATION AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day  
and year first above written.

**LANDLORD:**

SEP INVERNESS MOB, LLC,  
a Delaware limited liability company

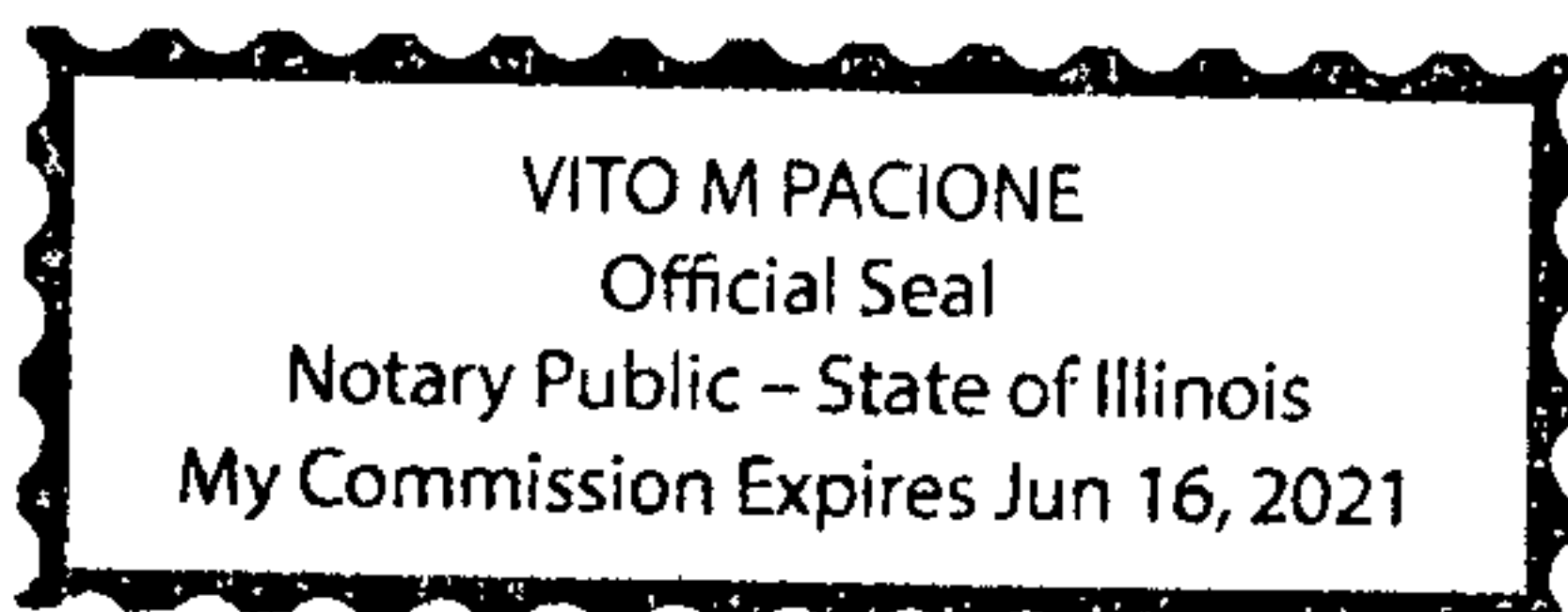
By: Stage Director, LLC,  
a Delaware limited liability company  
Its: Sole Manager

By:   
Name: Brian L. Howard  
Title: Manager

STATE OF ILLINOIS       )  
                                      )SS  
COUNTY OF DUPAGE     )

I, the undersigned, a notary public in and for said county in said state, hereby certify that  
Brian L. Howard, whose name as Manager of Stage Director, LLC, a Delaware limited liability  
company, the Sole Manager of SEP INVERNES MOB, LLC, a Delaware 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 such instrument, he, as such manager 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 1<sup>st</sup> day of February, 2019.



  
Notary Public

[Notarial Seal]

My Commission Expires: 6/16/21



SEPARATE SIGNATURE PAGE  
NON-DISTURBANCE, ATTORNMENT AND  
SUBORDINATION AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day  
and year first above written.

TENANT:

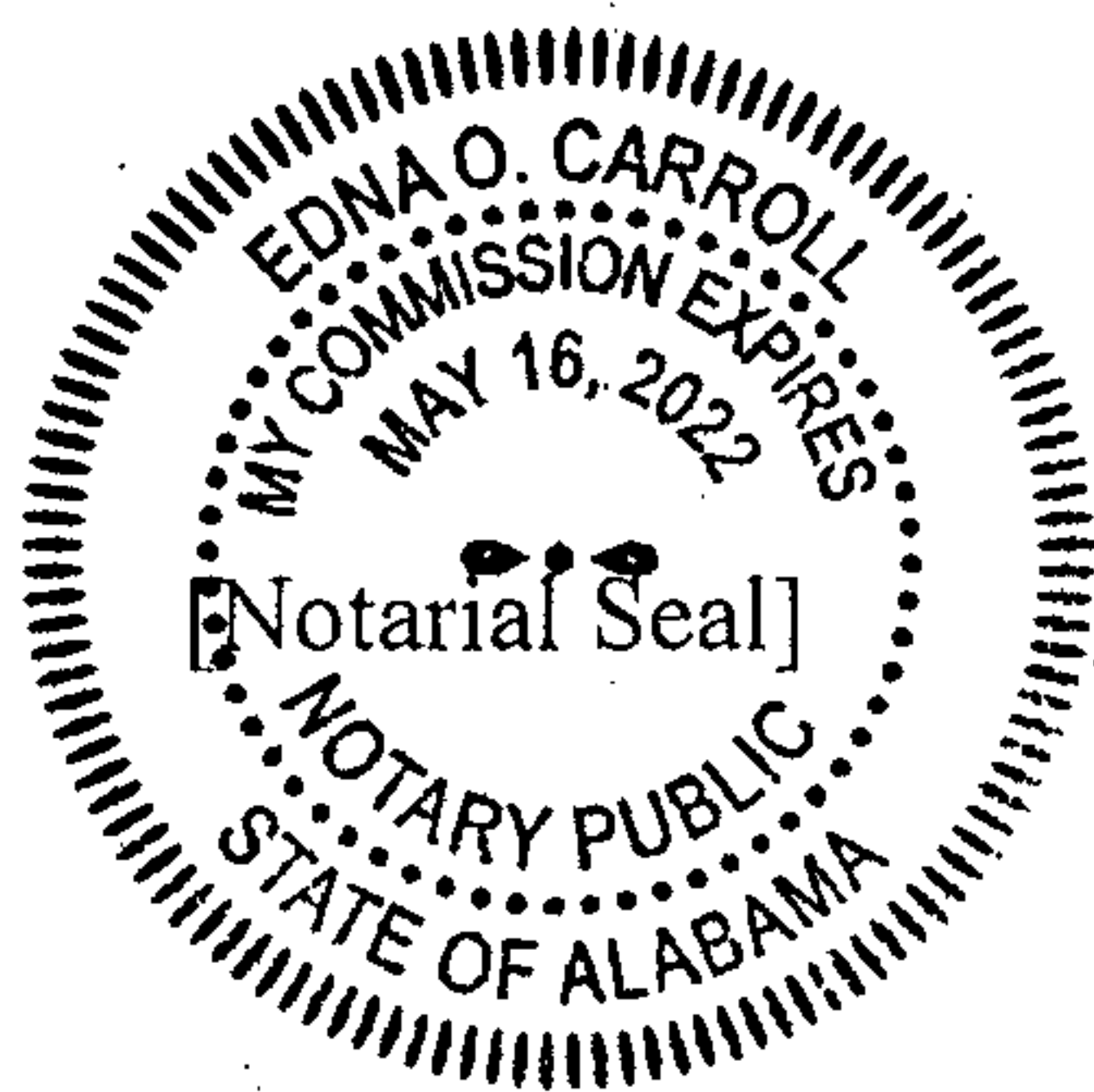
INVERNESS FAMILY DENTISTRY, P.C., an  
Alabama professional corporation

By: Charles D. Martin  
Name: Charles Douglas Martin  
Title: President

STATE OF ALABAMA     )  
                                  )SS  
COUNTY OF SHELBY    )

I, the undersigned, a notary public in and for said county in said state, hereby certify that  
Charles Douglas Martin, whose name as President of INVERNESS FAMILY DENTISTRY,  
P.C., an Alabama professional 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 such  
instrument, he, as such President and with full authority, executed the same voluntarily for and as  
the act of said professional corporation.

Given under my hand and official seal this 30<sup>th</sup> January day of February, 2019.



Edna O. Carroll  
Notary Public

My Commission Expires: 5/16/2022

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**EXHIBIT "A"**  
**Land Description**

SITE 24-A, ACCORDING TO THE SURVEY OF INVERNESS CENTER SITE 24A, AS  
RECORDED IN MAP BOOK 15, PAGE 31, IN THE PROBATE OFFICE OF SHELBY  
COUNTY, ALABAMA.



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
02/08/2019 08:36:40 AM  
\$42.00 CHERRY  
20190208000041570

*Allen S. Bayl*