

**20200519000199790
05/19/2020 03:57:34 PM
SUBAGREM 1/9**

WHEN RECORDED MAIL TO:

**FIDELITY NATIONAL TITLE CO – NCS DIV
ONE EAST WASHINGTON STREET, SUITE 450
PHOENIX, AZ 85004
ATTN: KELLI VOS
(602)343-7572**

TITLE NO.: 1012R-20

ESCROW NO.: Z2032770

DO NOT REMOVE THIS COVER SHEET. IT IS NOW PART OF THE RECORDED DOCUMENT.

DOCUMENT TO BE RECORDED:

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Instrument Prepared By:

Scott S. Frederick
Baker Donelson Bearman Caldwell
& Berkowitz, PC
420 20th Street North, Suite 1400
Birmingham, AL 35203

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT ("Agreement") executed by and between CGP Tattersall TB, LLC, a Delaware limited liability company ("Landlord"), Tacala, LLC, a Delaware limited liability company ("Tenant") and Community Bank of Mississippi ("Lender")

WITNESSETH:

WHEREAS, Tenant has entered into a certain lease ("Lease") with **CGP Tattersall TB, LLC, a Delaware limited liability company** ("Landlord") dated May 13, 2020, relating to certain premises located in Shelby County, Alabama (the "Premises"), said Premises being more particularly described in said Lease and being situated on the real property described in EXHIBIT A attached hereto and made a part hereof; and

WHEREAS, Lender has made a loan to Landlord in the principal amount of ~~One Million Four Hundred sixty one Thousand Two Hundred Twenty Five~~ Dollars (\$1,461,225.97), secured by that certain [Mortgage / Deed to Secure Debt] (the "Mortgage") dated May 13 2020 covering the Premises, which Mortgage was recorded in the real property records of Shelby County, Alabama at Book _____, page _____; and
Instrument 20200519000199530

WHEREAS, Tenant and Lender desire to establish certain rights, safeguards, obligations, and priorities with regard to their respective interests by means of this Agreement;

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender, for itself and its successors and assigns, and Tenant hereby agree as follows:

1. To the extent that Tenant's rights and entitlements under the Lease are not diminished or otherwise affected, and except as provided in this Agreement, the Lease is and shall be subject and subordinate to the lien of the Mortgage and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage.

2. Lender hereby acknowledges and consents to Tenant's rights under the Lease to obtain a leasehold mortgage (the "Leasehold Mortgage"), and the liens and security interests evidenced by the same and encumbering (among other things) Tenant's leasehold interest under the Lease. In no event shall the Mortgage cover or encumber (and shall not be construed as subjecting in any manner to the lien thereof) any of Tenant's fixtures, business, equipment, furniture, signs, or other personal property at any time placed on or about the Premises, Lender

and Tenant acknowledging that such property shall be pledged to the leasehold mortgagee as further security for the obligations of Tenant under the Leasehold Mortgage. Likewise, in no event shall the Leasehold Mortgage cover or encumber any of the Improvements as defined in the Lease. Lender acknowledges that upon any exercise by the leasehold mortgagee of any of its rights and remedies under the Leasehold Mortgage and related loan documents, all such property, together with Tenant's rights under the Lease, may be transferred to the leasehold mortgagee.

3. In the event of foreclosure of the Mortgage or should Lender obtain title by deed in lieu thereof, or otherwise, Lender, for itself and its successors and assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure), agrees that the Lease shall not terminate on account of such foreclosure or other such succession, by operation of law or otherwise, and Tenant shall not be disturbed in its quiet use, possession and occupancy of the Premises in accordance with the terms and provisions of the Lease, so long as Tenant is not in material default under the Lease beyond any applicable notice and cure period. Lender agrees not to name Tenant as a party defendant in any foreclosure action.

4. Subject to the foregoing provisions, Tenant agrees to attorn to: (a) Lender when in possession of the Premises; (b) a receiver appointed in an action or proceeding to foreclose the Mortgage or otherwise; or (c) to any party acquiring title to the Premises as a result of foreclosure of the Mortgage or deed in lieu thereof. Tenant further covenants and agrees to execute and deliver, upon request of Lender, or its assigns, an appropriate agreement of attornment, in form and content reasonably acceptable to Tenant and Lender (but which shall not amend the terms of the Lease or otherwise diminish Tenant's rights thereunder) with any subsequent titleholder of the Premises.

5. So long as the Mortgage remains outstanding and unsatisfied, Tenant will deliver to Lender a copy of all notices of default given to Landlord by Tenant. At any time before the rights of Landlord shall have been forfeited or adversely affected because of any default under the Lease as therein provided, Lender shall have the right (but not the obligation) to cure such default within the same period of time as is allowed Landlord under the Lease.

6. If Lender shall succeed to the interest of Landlord under the Lease, Lender shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interest of Landlord under the Lease, have the same remedies against Lender for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord if Lender had not succeeded to the interest of Landlord; provided, however, that Lender shall not be:

(a) liable for any act or omission of any prior landlord (including Landlord), except those of a continuing nature; or

(b) subject to any offsets, defenses or abatements which Tenant might have against any prior landlord (including Landlord), except (i) offsets specifically provided for in the Lease, or (ii) those which arose out of such Landlord's default under the Lease and accrued after

Tenant has notified Lender and given Lender an opportunity to cure as provided in Paragraph 5 above; or

(c) bound by any rent or Additional Rent which Tenant might have paid for more than the current month to any prior landlord (including Landlord).

7. Lender consents to the application and disposition of casualty proceeds and condemnation awards in accordance with the Lease.

8. The Tenant and Landlord shall not agree to any alteration, modification, amendment, waiver or termination of the Lease without first obtaining the Bank's prior written consent.

9. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns (which shall include any persons acquiring title by voluntary deed, assignment or other disposition or transfer in lieu of foreclosure) of each of the parties.

9. Any notices under this Agreement may be delivered by hand or sent by commercial delivery services or United States Postal Service express mail, in either case for overnight delivery with proof of service, or sent by certified mail, return receipt requested, to the following addresses:

To Landlord: CGP Tattersall TB, LLC
361 Summit Boulevard, Suite 110
Birmingham, Alabama 35243
Attn: Mr. Chad Post
Phone: (205) 968-9217
Fax: (205) 968-9229

With a Copy to: Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.
420 20th Street North, Suite 1400
Birmingham, Alabama 35203
Attn: Scott Frederick
Phone: (205) 244-3856
Fax: (205) 488-3856

To Tenant: Tacala, LLC
3750 Corporate Woods Drive
Birmingham, Alabama 35242
Attn: Lease Administration
Phone: (205) 443-9600

To Lender: Community Bank of Mississippi
Attn: Mr. Brent Balogh
813 Shades Creek Pkwy, Suite 100
Birmingham, Alabama 35209

The notice shall be deemed to have been given, in the case of hand delivery, on the date of delivery, and in the case of delivery by commercial delivery service or United States Postal Service, on the date of receipt or refusal as evidenced by the carrier's or courier's receipt.

10. This Agreement may be executed and delivered in counterparts for the convenience of the parties.


11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State in which the Premises are located, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date indicated below their respective signatures.

TENANT:

Tacala, LLC, a Delaware limited liability company

By: 
Name: Michael Border
Title: Chief Development Officer

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

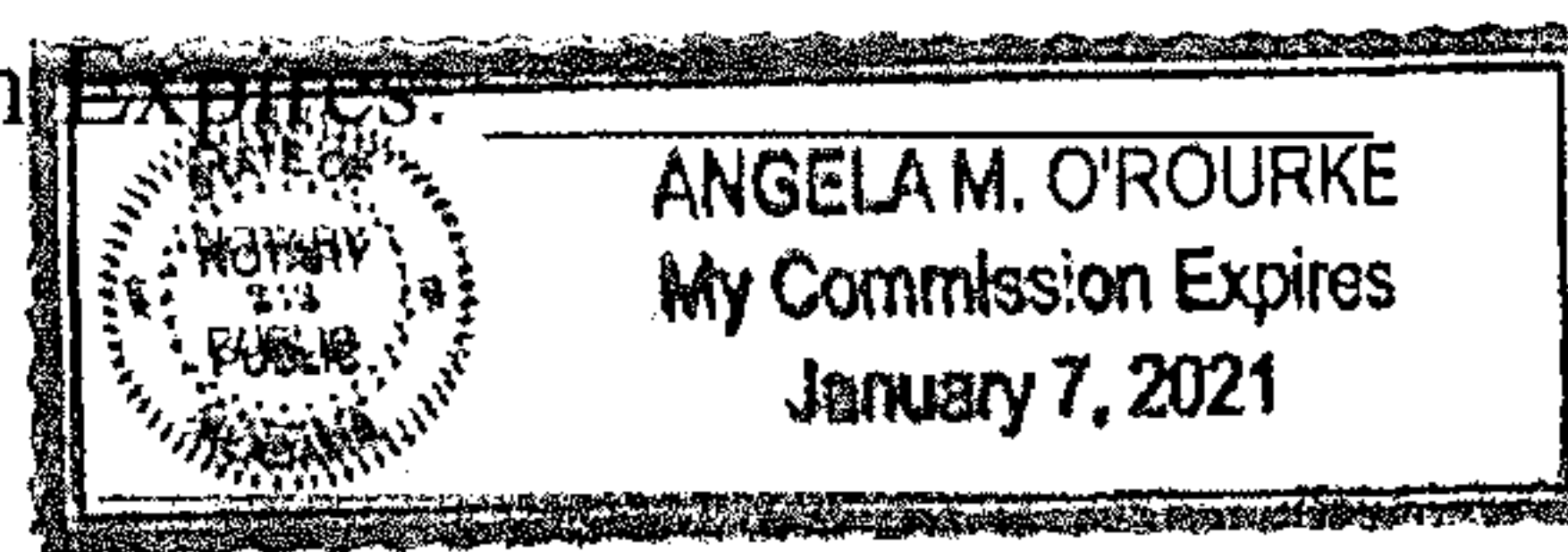
I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Michael Border whose name as Chief Development Officer of Tacala, LLC, a Delaware limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, in his/her capacity as such Chief Development Officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this the 28th day of April, 2020.

[SEAL]


Notary Public


My Commission Expires.



[Tenant's signature page to Subordination, Non-Disturbance and Attornment Agreement.]

LANDLORD:

CGP Tattersall TB, LLC,
a Delaware limited liability company

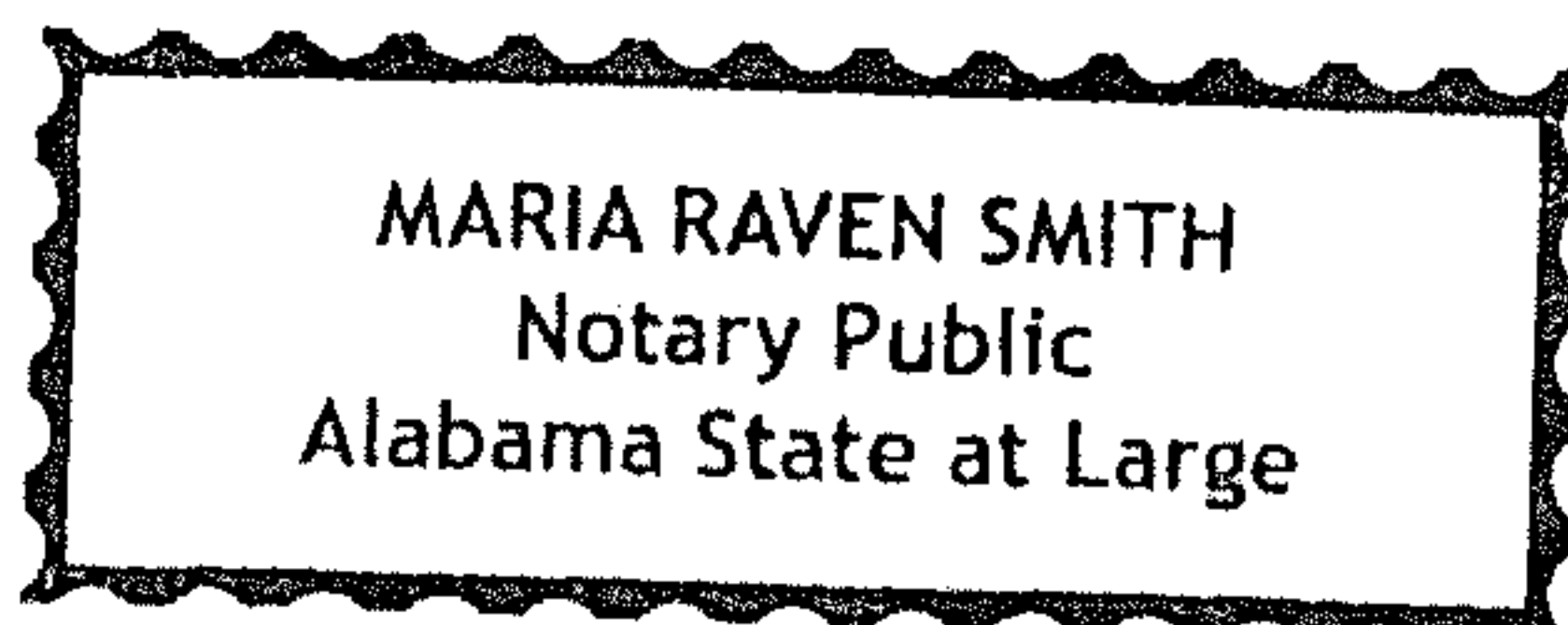
By: 
Print Name: Chad J. Post
Its: Authorized Agent

STATE OF ALABAMA)
)
COUNTY OF JEFFERSON)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Chad J. Post whose name as Authorized Agent of CGP Tattersall TB, 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 said instrument, he/she, in his/her capacity as such Authorized Agent and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and seal this the 30th day of April, 2020.

[SEAL]




Notary Public

My Commission Expires: 10/21/2023

[Landlord's signature page to Subordination, Non-Disturbance and Attornment Agreement.]

LENDER:

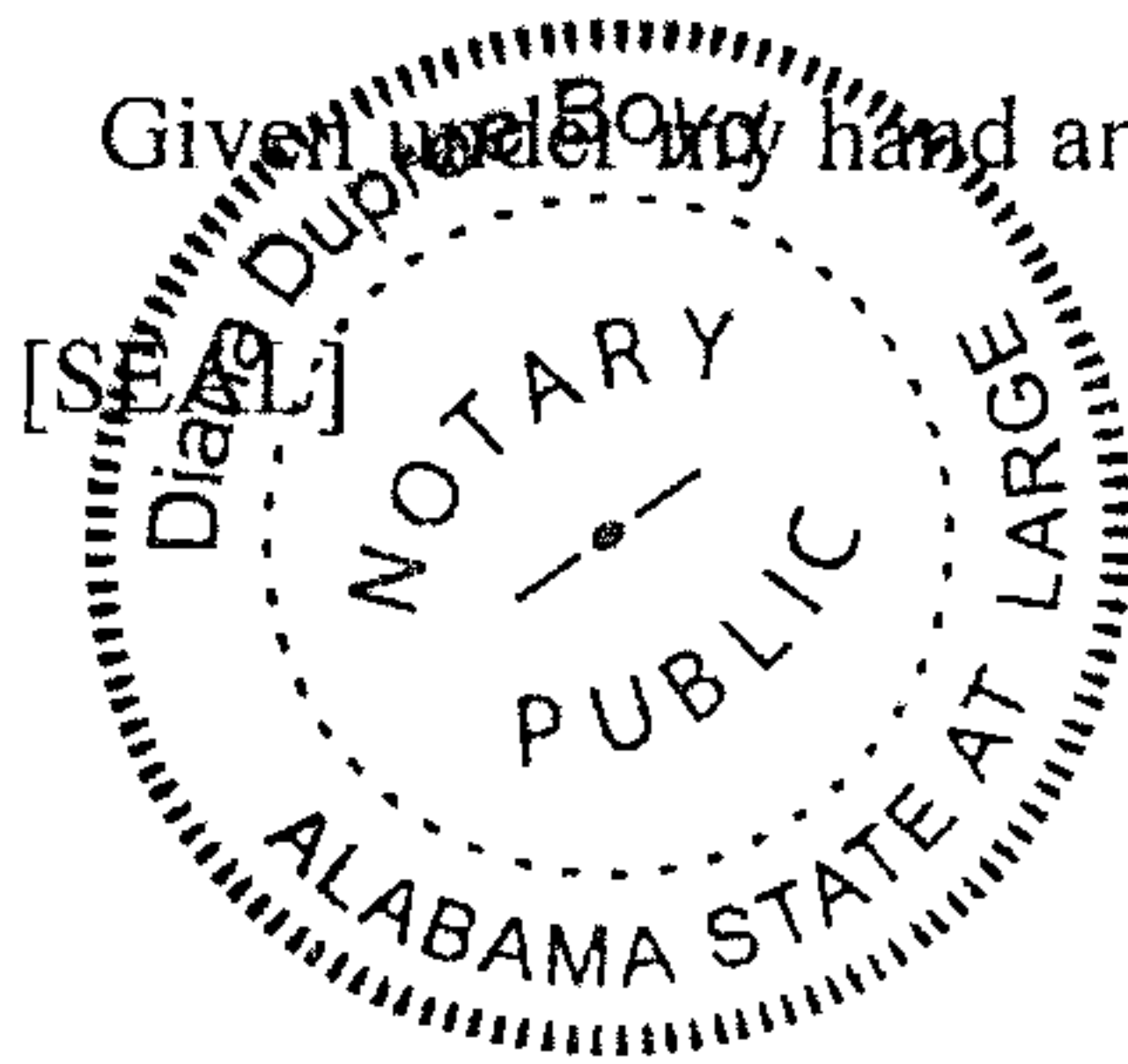
Community Bank of Mississippi

By: [Signature]
Print Name: BRENT BALOGH
Its: SVD

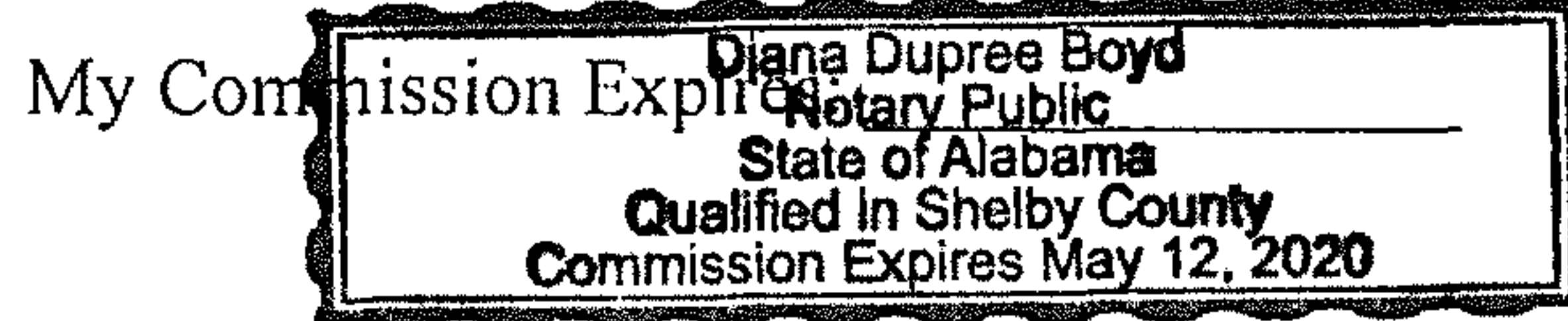
STATE OF Alabama)
COUNTY OF Jefferson)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Brent Balogh whose name as Sr. VP of Community Bank of Mississippi, 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, in his/her capacity as such Sr. VP and with full authority, executed the same voluntarily for and as the act of said Sr. VP.

Given under my hand and seal this the 6th day of May, 2020.



[Signature]
Notary Public



[Lender's signature page to Subordination, Non-Disturbance and Attornment Agreement.]

Exhibit A
Legal Description

Lot 5-B1 according to Tattersall Park Resurvey No. 6 as recorded in Map Book 51, Page 40, in the Probate Office of Shelby County, Alabama.

Together with access and other easements and privileges set forth in Greystone Commercial Declaration of Covenants, Conditions and Restrictions as recorded in Real Volume 314, page 506; First Amendment to Declaration as recorded in Instrument 1996-531; Second Amendment to Declaration as recorded in Instrument 1996-532; Third Amendment to Declaration as recorded in Instrument 2000-38942, Assignment of Developers as recorded in Instrument 2001-35832; Confirmation of Approval and Waiver as recorded in Instrument 20020911000436060; Assignment of Developers Rights as recorded in Instrument 201605120001163130, in the Probate Office of Shelby County, Alabama.

Together with perpetual and non-exclusive easements granted in that certain Restrictive Use and Reciprocal Easement Agreement by and between EBSCO Industries. Inc. and CGP Tattersall TB, LLC. filed for record August 23, 2019, recorded in Instrument 20190823000310590, 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
05/19/2020 03:57:34 PM
\$46.00 CHERRY
20200519000199790

Alli S. Beyl