

STATE OF ALABAMA)

COUNTY OF SHELBY)

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of the 8th day of November, 2021 ("Effective Date"), by and among **COMMERCEONE BANK**, an Alabama banking corporation ("Lender"), **COLUMBIANA TRACTOR, LLC**, an Alabama limited liability company ("Tenant") and **HUFFPOINT CAPITAL, LLC**, an Alabama limited liability company ("Landlord").

RECITALS:

- A. Tenant is the holder of a leasehold estate in a portion of the property described on Exhibit "A" attached hereto (the "Property"), under and pursuant to the provisions of that certain lease agreement described on Exhibit "B" attached hereto (the "Lease").
- B. The Property is or is to be encumbered by that certain Mortgage and Security Agreement and that certain separate Assignment of Rents and Leases (collectively, the "Security Instrument"), from Landlord in favor of Lender.
- C. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT:

NOW, THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, Tenant, Landlord and Lender mutually agree as follows:

- 1. **Subordination.** The Lease shall be subject and subordinate in all respects (i) to the Security Instrument, (ii) to any and all advances to be made thereunder, and (iii) to all renewals, modifications, consolidations, replacements, amendments and extensions thereof.
- 2. **Nondisturbance.** So long as Tenant pays all rents and other charges as specified in the Lease and is not otherwise in default (beyond applicable notice and cure periods) of any of its obligations and covenants pursuant to the Lease, Lender agrees for itself and its successors in interest and for any other person acquiring title to the Property through a foreclosure (an "Acquiring Party"), that Tenant's possession of the premises as described in the Lease, will not be disturbed during the term of the Lease, as said term may be extended pursuant to the terms of the Lease, by reason of a foreclosure. For purposes of this Agreement, a "foreclosure" shall include (but not be limited to) a sheriff's or trustee's sale under the power of sale contained in the Security Instrument, the termination of any superior lease of the Property and any other transfer of the Landlord's interest in the Property under peril of foreclosure, including, without limitation to the generality of the foregoing, conveyance in lieu of foreclosure, but shall not

include Landlord or its permitted assigns under the Lease.

3. **Attornment.** Tenant agrees to attorn to, accept and recognize Lender or 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, upon execution of this Agreement or upon receipt of written notice of any subsequent acquisition to Tenant. 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 within ten (10) days upon receipt of written request from Lender or any Acquiring Party any reasonable instrument which may be necessary or appropriate to evidence such attornment.

4. **Estoppel Certificate.** Tenant agrees to execute and deliver within ten (10) days after request therefor from Landlord or such other addressee or addressees as Landlord may designate (and any such addressee may rely thereon), a statement in writing certifying (if true) that the Lease is in full force and effect and unmodified or describing any modifications; that Tenant has accepted the premises as described in the Lease; that Landlord has performed all of its obligations under the Lease arising prior to the date of the certificate; that there are no defenses or offsets against the enforcement of the Lease or stating with particularity those claimed by Tenant; stating the date to which rent has been paid; and making such other true representations as may be reasonably requested by Landlord. If Tenant fails to give the estoppel certificate required by this Section within the time permitted hereby or fails to object in writing specifying with particularity the manner in which the requested estoppel certificate is untrue, it shall be conclusively deemed that the matters set forth in the requested estoppel certificate are true and correct as of the date of the request. Tenant shall indemnify, defend (with counsel reasonably approved by Landlord in writing) and hold Landlord and/or Lender, as applicable, harmless from and against any and all claims, judgments, suits, causes of action, damages, losses, liabilities and expenses (including attorneys' fees and court costs) attributable to any failure by Tenant to timely deliver any such estoppel certificate to Landlord.

5. **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 Landlord; provided, however, that Lender, any receiver or Acquiring Party shall be liable and responsible for the performance of all covenants and obligations of landlord under the Lease accruing from and after the date that it takes title to the Property;

(b) except as set forth in subsection (a) above, liable for any failure of any Landlord to construct any improvements;

(c) subject to any offsets, credits, claims or defenses which Tenant might have against any Landlord;

(d) bound by any rent or additional rent which is payable on a monthly basis and which Tenant might have paid for more than one (1) month in advance to any Landlord; or

(e) be liable to Tenant hereunder or under the terms of the Lease beyond Lender's or any receiver's or Acquiring Party's interest in the Property.

6. **Rent.** Tenant has notice that the Lease, the rents, and all other sums due thereunder have been

assigned to Lender as security for the loan secured by the Security Instrument. In the event Lender notifies Tenant in writing 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.

7. **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 thirty (30) days after receipt of such notice to cure such default, or if such default cannot be cured within thirty (30) days, shall have failed within thirty (30) 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).

8. **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 (as 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 above, and:

If to Tenant:	Columbiana Tractor, LLC 10047 Hwy 280 East Westover, AL 35147
to the attention of:	Chris Mundy
If to Lender:	CommerceOne Bank 2100A Southbridge Parkway, Suite 385 Birmingham, AL 35209
to the attention of:	Gaines Belcher
If to Landlord:	Huffpoint Capital, LLC 104 Walnut Hill Lane Birmingham, AL 35226
to the attention of:	James R. Mundy

or addressed as such party may from time to time designate by written notice to the other parties in accordance herewith. For purposes of this Paragraph 8, 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 Birmingham, Alabama.

9. **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 first

paragraph hereof.

10. **Duplicate Originals; Counterparts.** This document, and any amendment or modification thereto or restatement thereof, may be executed in one or more counterparts, including electronic counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to constitute one agreement binding on all parties to the document. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this document are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of this document, or any other document contemplated hereby, bearing an original or electronic signature by facsimile transmission, by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of a paper document bearing an original or electronic signature. It is hereby acknowledged by the parties that the enforcement of this provision is recognized under the full faith and credit provision of the U.S. Constitution and the U.S. Code and the Alabama Uniform Electronic Transactions Act (Ala. Code §§ 8-1A-1, et seq. (1975)).

11. **Assignment of Lease.** Except as provided in the Lease, Tenant agrees that it shall not assign, pledge or convey its interest in the Lease or any part thereof, to any party without the prior written consent of Lender.

12. **Amendment.** This Agreement may not be modified except by a written agreement signed by the parties hereto or their respective successors in interest.

[EXECUTION AND ACKNOWLEDGMENT BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Lender has duly executed this Agreement as of the date set forth below to be effective as of the Effective Date.

LENDER:

COMMERCEONE BANK,
an Alabama banking corporation

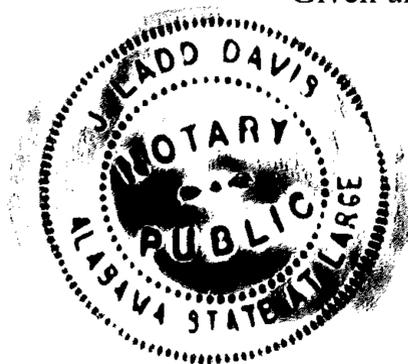
By: 
Name: Gaines Belcher
Title: Commercial Relationship Manager

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Gaines Belcher, whose name as Commercial Relationship Manager of **CommerceOne Bank**, an Alabama banking corporation, whose name is signed to the foregoing instrument acknowledged before me on this day that, being informed of the contents of such instrument, he as such Commercial Relationship Manager and with full authority, executed the same voluntarily for and as the act of said bank on the day the same bears date.

Given under my hand and official seal this 8th day of November, 2021.



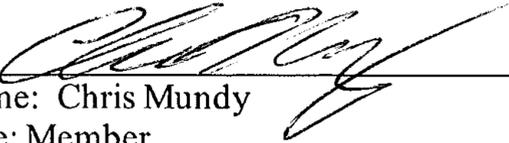

Notary Public
My Commission Expires: 11/1/2025

[EXECUTION AND ACKNOWLEDGMENT CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Tenant has duly executed this Agreement as of the date set forth below to be effective as of the Effective Date.

TENANT:

COLUMBIANA TRACTOR, LLC
an Alabama limited liability company

By: 
Name: Chris Mundy
Title: Member

STATE OF ALABAMA)

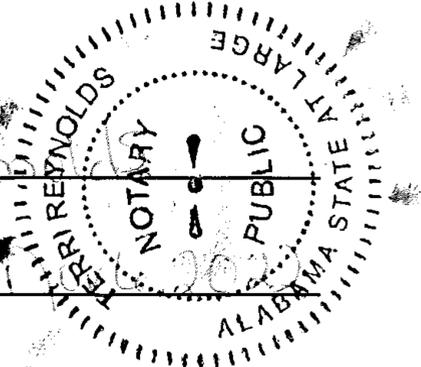
COUNTY OF JEFFERSON)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Chris Mundy, whose name as Member of **Columbiana Tractor, LLC**, an Alabama limited liability company, whose name is signed to the foregoing instrument acknowledged before me on this day that, being informed of the contents of such instrument, he as such Member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this 4th day of November, 2021.



Notary Public
My Commission Expires: 11/09/2023



[EXECUTION AND ACKNOWLEDGMENT CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Landlord has duly executed this Agreement as of the date set forth below to be effective as of the Effective Date.

LANDLORD:

HUFFPOINT CAPITAL, LLC
an Alabama limited liability company

By: [Signature]
Name: James Robert Mundy, III
Title: Member

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, a notary public in and for said county in said state, hereby certify that James Robert Mundy, III, whose name as Member of **Huffpoint Capital, 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 such instrument, he as such Member, 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 9th day of November, 2021.



[Signature]
NOTARY PUBLIC
My Commission Expires: 10-21-2024

NATALIE JOHNSTON FRIEDMAN
Notary Public, Alabama State at Large
My Commission Expires 10/21/2024

THIS INSTRUMENT PREPARED BY:
J. Ladd Davis, Esq.
Rushton, Stakely, Johnson & Garrett, P.A.
2100B Southbridge Parkway, Suite 240
Birmingham, Alabama 35209
(205) 484-0841
File No. 10170-49

EXHIBIT "A"
TO
SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

[Legal Description]

PARCEL I

A parcel of land situated in the Northwest Quarter of Section 26, Township 19 South, Range 1 East in Shelby County, Alabama being more particularly described as follows:

Commence at the Northwest corner of Section 26, Township 19 South, Range 1 East; thence run South along the West boundary line of said section for a distance of 612.08 feet to the Southerly right of way line of U.S. Highway No. 280; thence turn 108 degrees 13 minutes 56 seconds left and run along said road right of way for a distance of 353.94 feet to the point of beginning; thence continue along last said course for a distance of 210.00 feet along said road right of way; thence turn 108 degrees 13 minutes 56 seconds right and run a distance of 210.00 feet; thence turn 71 degrees 46 minutes 04 seconds right and run a distance of 210.00 feet; thence turn 108 degrees 13 minutes 56 seconds right and run a distance of 210.00 feet to the point of beginning.

LESS AND EXCEPT:

A parcel of land situated in the Northwest Quarter of the Northwest Quarter of Section 26, Township 19 South, Range 1 East in Shelby County, Alabama being more particularly described as follows:

Commence at a 1 ½ inch open top pipe found locally accepted to be the Northwest corner of said quarter-quarter section; thence run in a Southerly direction along the West line of said quarter-quarter section on an assumed bearing of South 00 degrees 38 minutes 17 seconds East for a distance of 609.00 feet to an iron found with a SSI cap on the Southerly right of way line of U. S. Highway 280; thence run North 71 degrees 46 minutes 04 seconds East along said right of way line for a distance of 343.37 feet to a 2 ½ inch pipe found; thence continue along said right of way line North 71 degrees 20 minutes 53 seconds East for a distance of 45.00 feet to an iron pin set at the point of beginning; thence continue along said right of way line North 71 degrees 20 minutes 53 seconds East for a distance of 165.00 feet to a 3/8 inch rebar found; thence run South 00 degrees 17 minutes 41 seconds East for a distance of 210.00 feet to 3/8 inch rebar found; thence run South 71 degrees 20 minutes 53 seconds West for a distance of 99.00 feet to an iron pin set; thence run North 18 degrees 36 minutes 45 seconds West for a distance of 199.31 feet to the point of beginning.

LESS AND EXCEPT any portion lying within the ROW of Highway 280.

PARCEL II

A parcel of land situated in the Northwest Quarter of Section 26, Township 19 South, Range 1 East in Shelby County, Alabama being more particularly described as follows:

Commence at the Northwest corner of Section 26, Township 19 South, Range 1 East; thence run South along the West boundary line of said section for a distance of 612.08 feet to the South right of way line of U.S. Highway 280; thence turn 108 degrees 13 minutes 56 seconds left and run along said road right of way for a distance of 252.94 feet to the point of beginning; thence continue along last said course for

100.0 feet; thence turn 108 degrees 13 minutes 56 seconds right and run 210.0 feet; thence turn 66 degrees 30 minutes 21 seconds right and run 103.57 feet; thence turn 113 degrees 29 minutes 39 seconds right and run 220.0 feet to the point of beginning.

LESS AND EXCEPT any portion lying within the ROW of Highway 280.

PARCEL III

A parcel of land situated in the Northwest Quarter of Section 26, Township 19 South, Range 1 East in Shelby County, Alabama being more particularly described as follows:

Commence at the Northwest corner of Section 26, Township 19 South, Range 1 East; thence run South along the West boundary line of said section for 612.8 feet to the South right of way line of U.S. Highway 280; thence turn an angle of 108 degrees 13 minutes 56 seconds to the left and run 178.94 feet to the point of beginning; thence continue along last said course for 75 feet; thence turn an angle of 108 degrees 15 minutes 14 seconds to the right and run 220.0 feet; thence turn an angle of 66 degrees 30 minutes 09 seconds to the right and run 65.0 feet; thence turn an angle of 110 degrees 30 minutes 29 seconds to the right and run 222.73 feet to the point of beginning.

LESS AND EXCEPT any portion lying within the ROW of Highway 280.

PARCEL IV

Commence at the NW corner of Section 26, Township 19 South, Range 1 East and run South 0 degrees 00 minutes 00 seconds East along the West line of said section for a distance of 612.08 feet to the Southerly right of way line of Highway 280; thence run North 71 degrees 46 minutes 04 seconds East along said right of way for a distance of 128.94 feet to the point of beginning. From said point of beginning continue North 71 degrees 46 minutes 04 seconds East along said right of way line for a distance of 50.00 feet; thence leaving said right of way line run South 2 degrees 58 minutes 04 seconds East for a distance of 222.73 feet; thence run North 66 degrees 31 minutes 27 seconds East for a distance of 65.00 feet; thence run South 0 degrees 01 minutes 18 seconds West for a distance of 80.00 feet; thence run South 69 degrees 25 minutes 07 seconds West for a distance of 110.11 feet; thence run North 2 degrees 58 minutes 04 seconds West for a distance of 300.00 feet to a point on said Southerly right of way line of Highway 280, said point being the point of beginning of the herein described parcel of land.

LESS AND EXCEPT any portion lying within the ROW of Highway 280.

PARCEL V

A parcel of land situated in the Northwest Quarter of the Northwest Quarter of Section 26, Township 19 South, Range 1 East, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of said quarter-quarter section; thence run in a Southerly direction along the West line of said quarter-quarter section for a distance of 609.00 feet to an iron pin set on the Southerly right of way line of U. S. Highway No. 280, also being the point of beginning; thence turn an angle to the left of 107 degrees 35 minutes 39 seconds and run in a Northeasterly direction along said Southerly right of way line for a distance of 22.13 feet to an iron pin set; thence turn an angle to the right of 108 degrees 13 minutes 56 seconds and run in a Southerly direction for a distance of 363.11 feet to a

point; thence turn an angle to the left of 91 degrees 01 minutes 47 seconds and run in an Easterly direction for a distance of 210.56 feet to a point; thence turn an angle to the right of 91 degrees 16 minutes 34 seconds and run in Southerly direction for a distance of 43.31 feet to an iron pin found; thence turn an angle to the right of 88 degrees 32 minutes 33 seconds and run in a Westerly direction for a distance of 226.95 feet to an iron pin set on the West line of said quarter-quarter Section; thence turn an angle to the right of 90 degrees 34 minutes 23 seconds and run in a Northerly direction along the West line of said quarter-quarter section for a distance of 400.53 feet to the point of beginning.

LESS AND EXCEPT any portion lying within the ROW of Highway 280.

ALSO:

A parcel of land situated in the Northwest Quarter of the Northwest Quarter of Section 26, Township 19 South, Range 1 East, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of said quarter-quarter section; thence run in a Southerly direction along the West line of said quarter-quarter section for a distance of 609.00 feet to an iron pin set on the Southerly right of way line of U.S. Highway No. 280; thence turn an angle to the left of 107 degrees 35 minutes 39 seconds and run in a Northeasterly direction along said Southerly right of way line for a distance of 22.13 feet to an iron pin set at the point of beginning; thence continue along last stated course for a distance of 97.35 feet to an iron pin set; thence turn an angle to the right of 105 degrees 15 minutes 54 seconds and run in a Southerly direction for a distance of 300.22 feet to an iron pin found; thence turn an angle to the left of 107 degrees 36 minutes 51 seconds and run in a Northeasterly direction for a distance of 110.11 feet to an iron pin found; thence turn an angle to the right of 110 degrees 49 minutes 40 seconds and run in Southerly direction for a distance of 128.68 feet to a point; thence turn an angle to the right of 88 degrees 43 minutes 26 seconds and run in a Westerly direction for a distance of 210.56 feet to a point; thence turn an angle to the right of 91 degrees 01 minutes 47 seconds and run in a Northerly direction for a distance of 363.11 feet to the point of beginning.

LESS AND EXCEPT any portion lying within the ROW of Highway 280.

PARCEL VI

Commence at the Northwest corner of Section 26, Township 19 South, Range 1 East, Shelby County, Alabama; thence South along the West boundary line of said Section 26 for a distance of 1,335.72 feet; thence turn an angle of 91 degrees 01 minutes 26 seconds to the left and run a distance of 277.15 feet; thence turn an angle of 88 degrees 58 minutes 17 seconds to the left and run a distance of 326.60 feet to the point of beginning; thence continue along last said course for a distance of 252.30 feet; thence turn an angle of 66 degrees 44 minutes 24 seconds to the right and run a distance of 103.88 feet; thence turn an angle of 04 degrees 45 minutes 16 seconds to the right and run a distance of 125.80 feet; thence turn an angle of 108 degrees 32 minutes 30 seconds to the right and run a distance of 328.76 feet; thence turn an angle of 88 degrees 45 minutes 22 seconds to the right and run a distance of 214.53 feet to the point of beginning.

LESS AND EXCEPT any portion lying within the ROW of Highway 280.

PARCELS I THROUGH VI MORE PARTICULARLY DESCRIBED AS:

A parcel of land situated in the Northwest 1/4 of the Northwest 1/4 of Section 26, Township 19 South, Range 1 East, Shelby County, Alabama, being more particularly described as follows:

COMMENCE at the Northwest corner of Section 26, Township 19 South, Range 1 East, (2" open top pipe) and run in a Southerly direction along the West line of said section a distance of 609.00 feet to a found capped rebar (S.S.I. CA#0053LS) being on the Southerly right of way line of U.S. Highway No. 280 and the POINT OF BEGINNING of the parcel herein described; thence 107 degrees 43 minutes 36 seconds to the left in a Northeasterly direction along the Southerly right of way line of U.S. Highway No. 280 a distance of 388.75 feet to a set PK nail in asphalt; thence 89 degrees 50 minutes 00 seconds to the right in a Southeasterly direction (leaving said right of way line) a distance of 200.17 (deed 199.31 feet) feet to a found 3/8" rebar; thence 90 degrees 06 minutes 07 seconds to the left in a Northeasterly direction a distance of 14.70 feet to a found rebar; thence 108 degrees 43 minutes 15 seconds to the right in a Southerly direction a distance of 329.09 feet (328.76 feet deed) to a set PK nail; thence 88 degrees 46 minutes 23 seconds to the right in a Westerly direction a distance of 441.62 feet to a found capped rebar (S.S.I. CA#0053LS) being on the West line of Section 26, Township 19 South, Range 1 East; thence 90 degrees 30 minutes 05 seconds to the right in a Northerly direction along West line of said Section 26, a distance of 400.53 feet to the POINT OF BEGINNING.



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
11/09/2021 10:05:53 AM
\$52.00 CHERRY
20211109000541650

Allie S. Bevil