

Prepared by and return to:
Sherry D. Olson, P.C.
2515 Kings Way
Cumming, GA 30040
Phone: 770-205-8858 ext. 102

**AGREEMENT NOT TO ENCUMBER REAL PROPERTY
(Alabama)**

This Agreement is made and entered into this 4th day of January, 2005 by and between PIKE NURSERY HOLDING LLC, a Georgia limited liability company and doing business as Pike Family Nurseries in the State of Alabama, as Borrower and BANK OF AMERICA, N.A., as Lender.

RECITALS

WHEREAS, Lender has committed to Borrower to loan (the "Loan") certain funds pursuant to the terms of that certain Construction Loan Agreement dated of even date herewith between Borrower and Lender. Borrower has executed and delivered to Lender a Promissory Note (the "Note") in the amount \$8,500,000.00 (the "Loan Amount") in connection with that certain Loan Agreement (the "Loan Agreement"; capitalized terms used herein but not defined herein shall have the meaning set forth in the Loan Agreement), dated as of even date herewith, by and between Borrower and Lender; and

WHEREAS, as a condition of such Loan, the Lender requires that Borrower agree not to sell or encumber the property described herein.

NOW THEREFORE, in consideration of the sum of Ten and No/100 Dollars (\$10.00), the Loan made by Lender to Borrower, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Borrower, the parties hereto agree as follows:

1. Pledge Not to Sell or Encumber.

A. Negative Pledge. Subject to the release provisions set forth hereinbelow, Borrower hereby agrees that, for so long as any part of the Loan remains outstanding or Lender

has any commitment to make the loan or any part thereof, Borrower will not, without the prior written consent of Lender:

(1) create or permit any lien, encumbrance, charge, or security interest on any kind to exist on, or transfer, sell, assign, or in any manner dispose of, the real property described in Exhibit "A" attached hereto or any part thereof (the "Property"), other than Permitted Encumbrances; or

(2) grant any additional negative pledge against the Property or the Rents (as hereinafter defined) for the benefit of any third party lender, or make an assignment or pledge, for the benefit of any third party lender, of any of the rents, profits or proceeds from any written or oral lease of the property (the "Rents") and by reference made a part hereof.

B. Release Provisions. So long as no Event of Default exists under the Loan Agreement (or any Event of Default can be cured by the release of the Property), Borrower shall have the right to apply for and to obtain from Lender a release of the Property and termination of this Negative Pledge (i) at such time that the maximum principal amount of the Loan available to Borrower, then outstanding and available to be drawn, is equal to or less than 75% of the appraised value as determined by Lender, in Lender's sole discretion, (based upon the appraisals provided to Lender in connection with the closing of the Loan or subsequent appraisals obtained by Lender pursuant to the terms set forth below or pursuant to Section 4.21 of the Loan Agreement) of the three (3) properties known as : (1) Acworth Location, as more particularly described in the Construction Loan Agreement; (2) 1983 Highway 78, Gwinnett County, Georgia; and (3) 6100 Lawrenceville Highway, Gwinnett County, Georgia (individually, the "Deed Property" and collectively, "Deed Properties"), (ii) by making a principal reduction of the Loan such that the maximum principal amount of the Loan available to Borrower, then outstanding and available to be drawn, is equal to or less than 75% of the appraised value as determined by Lender, in Lender's sole discretion, (based upon the appraisals provided to Lender in connection with the closing of the Loan or subsequent appraisals obtained by Lender pursuant to the terms set forth below) of the Deed Properties; or (iii) by immediately applying the proceeds from the sale of the Property (including a Permitted Sale-Leaseback) to make a principal reduction of the Loan such that the maximum principal amount of the Loan available to Borrower, then outstanding and available to be drawn, is equal to or less than 75% of the appraised value as determined by Lender, in Lender's sole discretion, (based upon the appraisals provided to Lender in connection with the closing of the Loan or subsequent appraisals obtained by Lender pursuant to the terms set forth below) of the Deed Properties. Borrower shall pay all costs and expenses in connection with the release, including, but not limited to, the cost of the appraisal, and reasonable attorney fees, actually incurred. Pursuant to the terms of this subparagraph B, Borrower shall have the right to request Lender to obtain a new appraisal for one or more of the Deed Properties, subject to the following terms and conditions:

(i) Borrower shall not request Lender to obtain such appraisal of the Property more frequently than once per annum.

(ii) Within ten (10) business days after any request from the Borrower and at Borrower's expense, Lender shall order an appraisal.

- (iii) After receipt and review of such appraisal, Lender, in Lender's sole discretion, will determine the appraised value of such Deed Property or Deed Properties.
- (iv) After such determination, Lender will promptly notify of the appraised value of the Property.

2. Representations and Warranties.

(a) Borrower owns the Property and represents that there are no encumbrances, security interests, liens, agreements or other adverse claims or interests against the Property, subject to utility easements serving the Property and Permitted Encumbrances. Borrower further represents that there are no suits, judgments, bankruptcies or executions pending (or to the best of its knowledge, threatened) against the Borrower in any court whatsoever that could in any way affect Borrower's ownership of the Property, or constitute a lien thereon.

(b) The Borrower is a limited liability company duly organized and validly existing in good standing under the laws of the State of Georgia and Alabama and has all requisite power and authority to enter into this Agreement.

(c) The execution and delivery by Borrower of this Agreement and the Promissory Note evidencing the Loan and the performance of the respective obligations hereunder and thereunder have been duly authorized. This Agreement, the Promissory Note, and the loan documents executed in connection with this Loan constitute the legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms. The execution and delivery of this Agreement and the compliance with the provisions hereof will not conflict with or constitute a breach or default under, any of the provisions of any other agreement to which the Borrower is a party.

(d) The continued validity in all respects of the aforesaid representations and warranties shall be a condition precedent to Lender's obligation to fund the Loan or any portion thereof. If any or the representations and warranties shall not be correct in any material respect at the time the same is made or at the times a request for an advance under the Loan is made, Lender will be under no obligation to make any such advance under the Loan.

3. Default. The occurrence and continuation of the following events shall be an "Event of Default" under this Agreement:

(a) Any representation or warranty made by Borrower in this Agreement shall prove to be untrue or misleading in any material respect;

(b) Borrower shall fail to pay when due any installment of interest or principal according to the terms of this Loan, which is not cured pursuant to the terms of the Loan Agreement;

(c) Any default by Borrower under any other covenant or provision contained in the Loan Agreement or any other agreement between Borrower and Lender, which is not cured pursuant to the terms of the Loan Agreement; or

(d) Any default occurs under any agreement in connection with any credit the Borrower or any of the Borrower's related entities or affiliates has obtained from anyone else or which the Borrower or any of the Borrower's related entities or affiliates has guaranteed.

Upon the occurrence of an Event of Default, at the option of Lender, all sums remaining unpaid under that certain Promissory Note, dated of even date herewith, from Borrower to Lender, in the amount of \$8,500,000.00, shall become immediately due and payable.

4. Security Interest. In the Event of Default by Borrower, which is not cured within any applicable notice and cure period, Borrower shall execute and deliver to Lender within ten (10) days after receipt of written request by Lender, all documents and take all steps which Lender deems reasonably necessary to create and perfect a first priority security interest in the Property, including, but not limited to, execution of a Mortgage. Further, immediately upon an Event of Default which is not cured within any applicable notice and cure period, Lender shall be authorized to file an UCC Financing Statement against the fixtures on the Property. Borrower shall pay all fees and expenses incurred in connection with granting Lender a security interest in the Property, including, but not limited to, reasonable attorney fees. Nothing contained in this Paragraph 4 shall in any way limit or impair Lender's right to accelerate the Loan if an Event of Default occurs.

5. Recordation. Both parties agree that this Agreement may be recorded at any time by either party in the public records of Madison County, Alabama.

6. General Provisions.

(a) No Waiver. Borrower's obligations hereunder shall in no way be impaired, reduced or released by reason of: (a) Lender's omission or delay to exercise any right described herein; or (b) any act or omission of Lender in connection with any notice, demand, warning or claim regarding violations of codes, laws or ordinances governing the Property.

(b) Successors and Assigns. This Agreement shall be continuing, irrevocable and binding on Borrower and its successors and assigns, and shall inure to the benefit of Lender and Lender's successors and assigns. It is agreed by Borrower that its liabilities hereunder are not contingent on the signature of Lender.

(c) Survival of Representation and Warranties. All representations and warranties of Borrower contained in the Agreement shall survive the execution and delivery of this Agreement.

(d) Notices. Any notices which any party may be required, or may desire, to give shall be delivered pursuant to the notice provisions contained in the Loan Agreement.

(e) Amendment and Waiver. This Agreement may be amended and observance of any term of this Agreement may be waived only with the written consent of the Lender.

(f) Governing Law. This Agreement shall be governed and controlled as to interpretation, enforcement, validity, construction, effect and in all other respects by the laws, statutes and decisions of the State of Alabama.

(g) Severability. All provisions contained in this Agreement are severable and the invalidity or unenforceability of any provisions shall not affect or impair the validity or enforceability of the remaining provisions of this Agreement.

(h) Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

(i) Time. Time is of the essence of this Agreement.

(j) Termination. This Agreement shall remain in full force and effect until the Loan shall have been paid in full or the Property shall be released pursuant to paragraph B hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered under seal, the day and year first above written.

BORROWER:

PIKE NURSERY HOLDING LLC

By: Drew Garner (Seal)
Name: Drew Garner
Title: Secretary

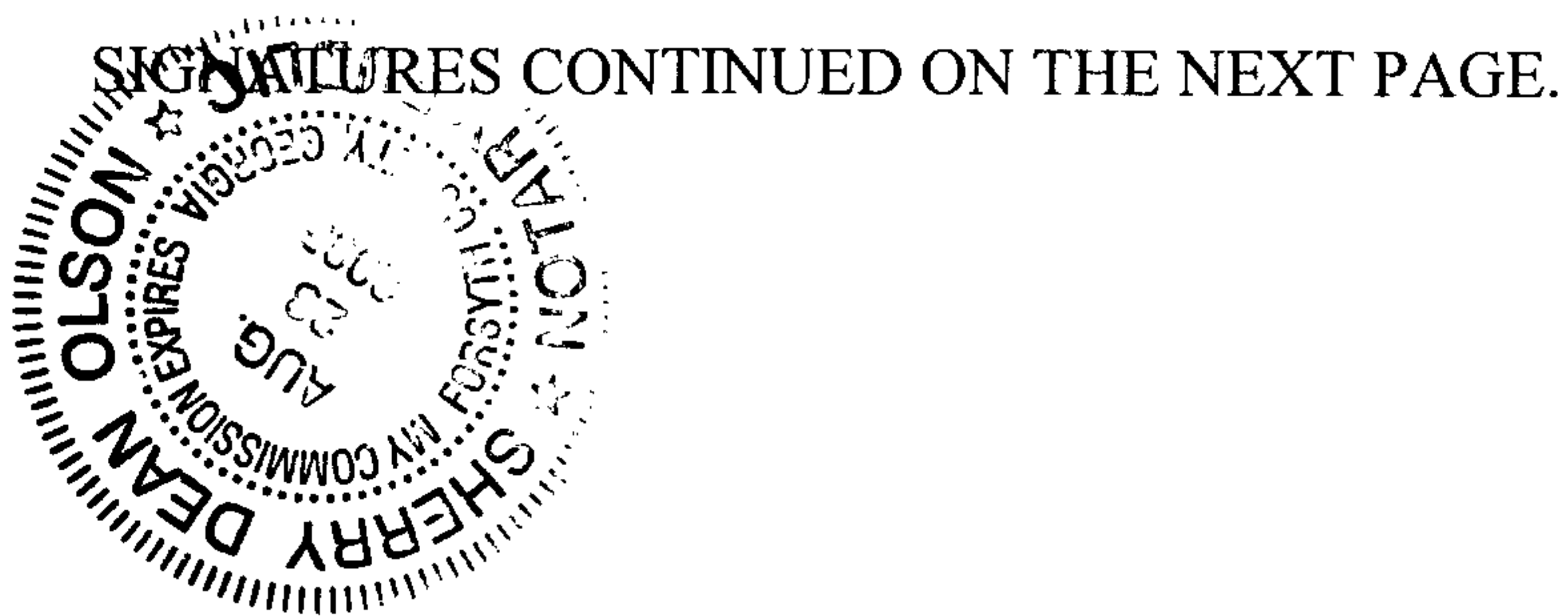
STATE OF GEORGIA)
Dwinnett COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Drew Garner, whose name as Secretary of Pike Nursery Holding LLC, is signed to the foregoing conveyance and who is known to me, acknowledged before me, on this day that, being informed of the contents of said conveyance, he, as such officer and with full authority, executed the same voluntarily on behalf of the company on the day same bears date.

Given under my hand and official seal this 5th day of January, 2005.

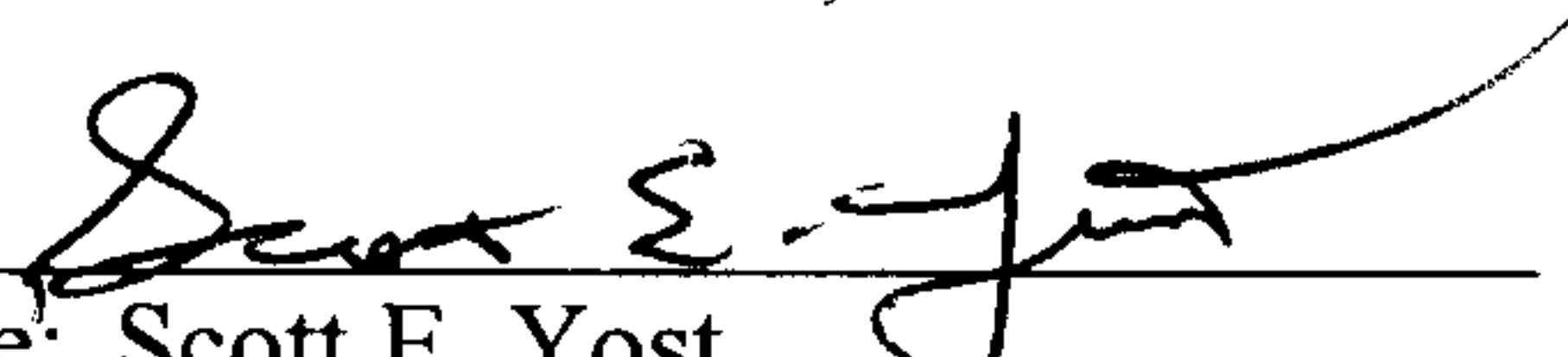
[Signature]
Notary Public

My Commission Expires: _____



LENDER:


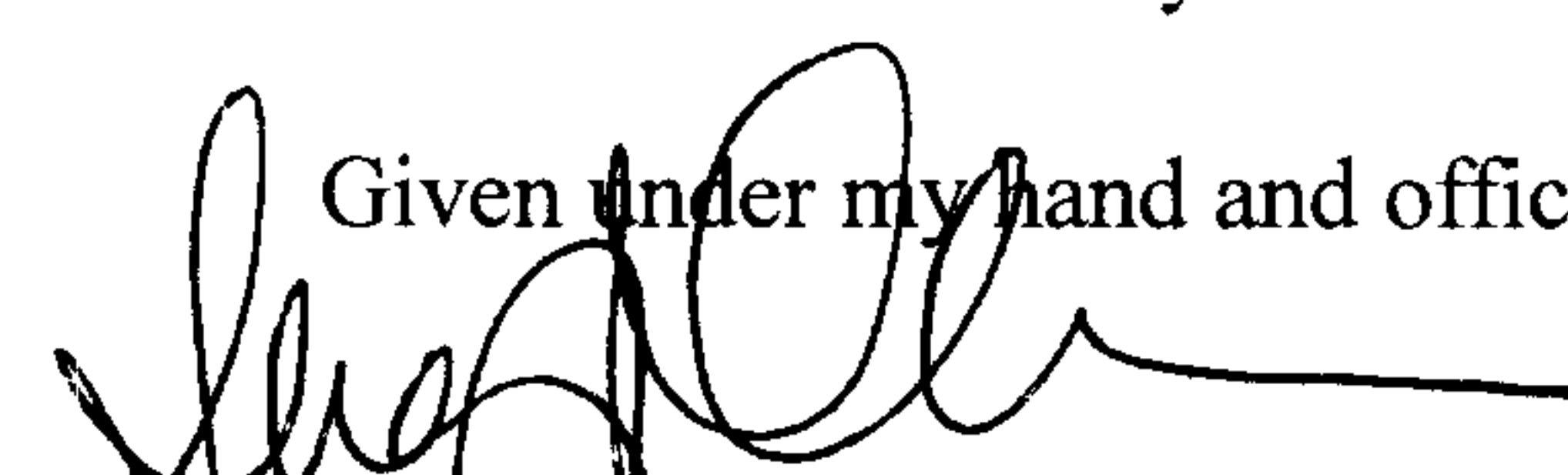
BANK OF AMERICA, N.A.

By: 
Name: Scott E. Yost
Title: Senior Vice President

(BANK SEAL)

STATE OF GEORGIA)
Gwinnett COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Scott E. Yost, whose name as Senior Vice President of Bank of America, N.A., is signed to the foregoing conveyance and who is known to me, acknowledged before me, on this day that, being informed of the contents of said conveyance, he, as such officer and with full authority, executed the same voluntarily on behalf of the corporation on the day same bears date.

Given under my hand and official seal this  day of January, 2005.

Notary Public
My Commission Expires: _____

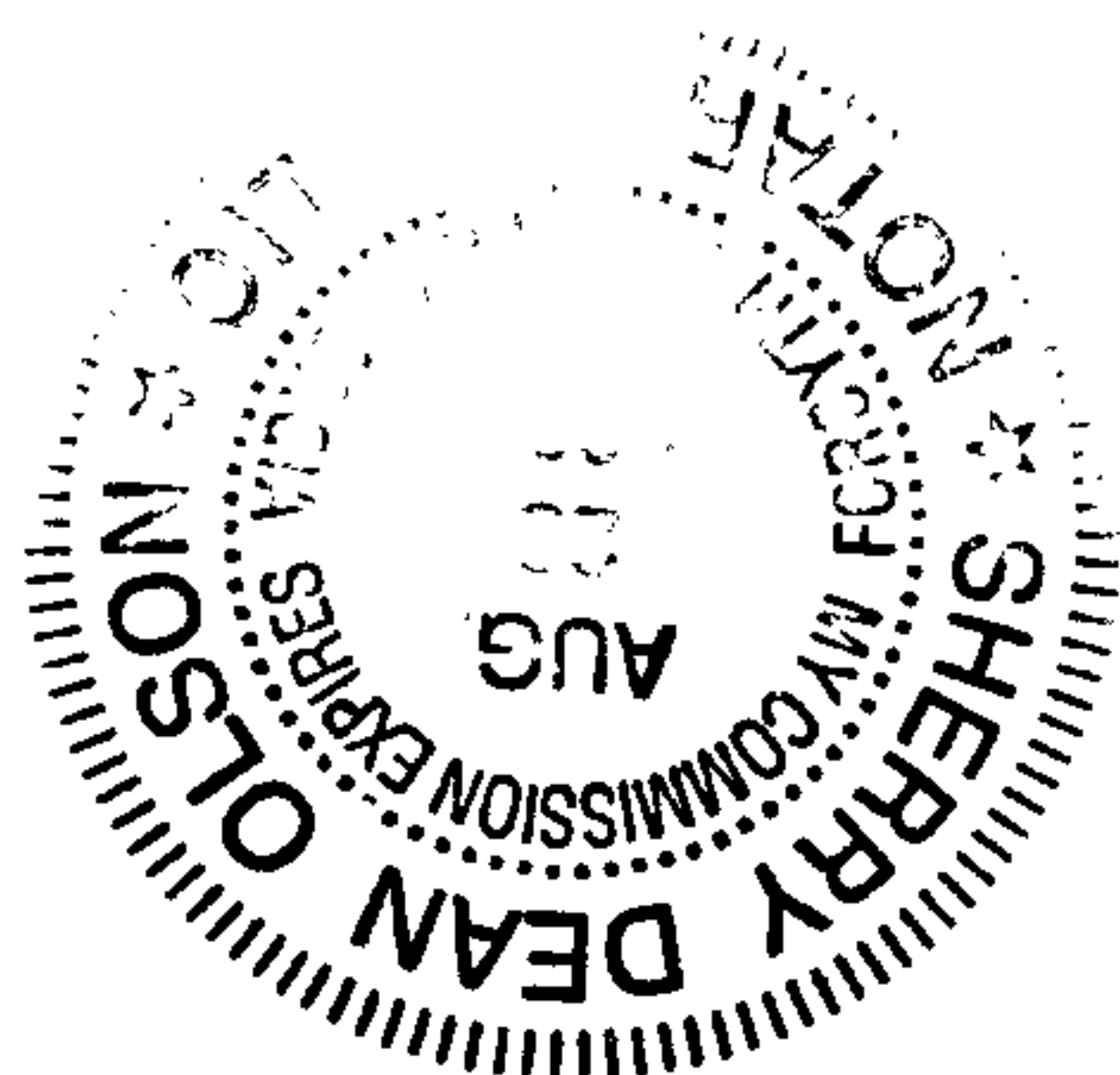


Exhibit A

(Legal Description)

PARCEL I

A parcel of land situated in the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama; being more particularly described as follows:

Begin at the Southeast corner of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said section and run North along the East line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 1344.00 feet to the Northeast corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence $129^{\circ} 37'$ to the left in a Southwesterly direction a distance of 447.55 feet to the Easternmost corner of Lot 1, Heatherbrooke Office Park Resurvey, as recorded in Map Book 23, Page 46, in the Office of the Judge of Probate of Shelby County, Alabama; thence continue along the last described course and along a Southeasterly property line of said Lot 1 a distance of 382.03 feet to a point; thence $0^{\circ} 14' 28''$ to the right in a Southwesterly direction along a Southeasterly property line of said Lot 1 a distance of 411.00 feet to a point; thence $72^{\circ} 57' 52''$ to the left in a Southeasterly direction along the property boundary of said Lot 1 a distance of 128.29 feet to a point on a curve to the right having a radius of 670.14 feet and a central angle of $2^{\circ} 17' 39''$; thence $87^{\circ} 21' 32''$ to the left (angle measured to tangent) in a Northeasterly direction along the arc of said curve a distance of 26.83 feet to a point; thence $90^{\circ} 00'$ to the right (angle measured to tangent) in a Southeasterly direction a distance of 60.00 feet to a point on a curve to the right having a radius of 610.14 feet and a central angle of $18^{\circ} 38' 19''$; thence $90^{\circ} 00'$ to the left (angle measured to tangent) in a Northeasterly direction along the arc of said curve a distance of 198.48 feet to the P.R.C. (point of reverse curve) of a curve to the left having a radius of 319.43 feet and a central angle of $25^{\circ} 30' 50''$; thence in a Northeasterly direction along the arc of said curve a distance of 142.24 feet to a point; thence $114^{\circ} 13' 54''$ to the right (angle measured to tangent) in a Southerly direction a distance of 117.17 feet to a point; thence $82^{\circ} 08' 06''$ to the left in a Southeasterly direction a distance of 65.46 feet to a point; thence $70^{\circ} 57' 13''$ to the left in a Northeasterly direction a distance of 61.84 feet to a point; thence $99^{\circ} 29' 07''$ to the right in a Southeasterly direction a distance of 57.08 feet to a point; thence $19^{\circ} 26' 40''$ to the right in a Southeasterly direction a distance of 73.28 feet to a point; thence $0^{\circ} 38' 40''$ to the right in a Southeasterly direction a distance of 81.94 feet to a point; thence $25^{\circ} 42' 01''$ to the left in a Southeasterly direction a distance of 50.71 feet to a point; thence $24^{\circ} 37' 55''$ to the right in a Southeasterly direction a distance of 94.93 feet to a point; thence $17^{\circ} 49' 50''$ to the right in a Southeasterly direction a distance of 52.74 feet to a point; thence $74^{\circ} 12' 26''$ to the right in a Southwesterly direction a distance of 83.74 feet to a point on the South line of the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West; thence $145^{\circ} 18' 42''$ to the left in an Easterly direction along the South line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 263.33 feet to the point of beginning.

PARCEL II

A 20 Foot Force Main Easement as recorded in Instrument #1999-32576 in the Office of the Judge of Probate of Shelby County, Alabama, being situated in the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West and run in a Westerly direction along the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 251.69 feet to the Point of Beginning of the centerline of the 20 foot easement herein described. Thence $62^{\circ} 53' 55''$ to the left in a Southwesterly direction along said centerline a distance of 396.07 feet more or less to a point 10 feet North of the Northeasterly Right-of-way line of U.S. Highway No. 280 (said centerline lies 10 feet Southeast of and parallel with the Southeast line of Lot 2, Andress Survey as recorded in Map Book 18, Page 118, in the Office of the Judge of Probate of Shelby County, Alabama); thence $90^{\circ} 05' 04''$ to the left along said centerline and 10 feet Northeast of and parallel with the Northeasterly Right-of-way line of said U.S. Highway No. 280 a distance of 115.5 feet more or less to the center of an existing sanitary sewer manhole, said point being the Point of Ending of the centerline of the 20 foot easement herein described.

Together with the right of ingress and egress over and across Greenhill Parkway, a dedicated roadway, as recorded in Map Book 20, Pages 115, and 116 and in Map Book 25, Page 144.