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Shelby Cnty Judge of Probate, AL
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This instrument was prepared by:

Mitchell M. Purvis, Esq.
Parker, Hudson, Rainer & Dobbs LLP
1500 Marquis Two Tower
285 Peachtree Center Avenue, N.E.
Atlanta, Georgia 30303

TRI-PARTY AGREEMENT

This **TRI-PARTY AGREEMENT** (this "Agreement") is made this 4th day of January, 2005, among **BANK OF AMERICA, N.A.**, a national banking association ("Mortgagee"), **PIKE NURSERY HOLDING LLC**, a Georgia limited liability company ("Borrower"), and **PNC BANK, NATIONAL ASSOCIATION**, a national banking association, in its capacity as collateral and administrative agent (together with its successors in such capacity, "Agent") for the financial institutions that are lenders from time to time (collectively, "Lenders") under and pursuant to that certain Revolving Credit and Security Agreement among Agent, Lenders and Borrower, dated May 17, 2004 (as at any time amended, the "Credit Agreement").

Recitals:

Mortgagee is the holder of that certain agreement not to encumber real property dated January 4, 2005, recorded in the Office of the Register of Deeds, Shelby County, Alabama, Instrument number 20050114000024730 ("Security Deed"), with respect to that certain premises known as a parcel of land situated in the SW 1/4 of the NE 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and being more particularly described on Exhibit A attached hereto and by reference made a part hereof (the "Premises").

Borrower has requested that Agent and Lenders continue to extend to it certain financial accommodations on pursuant to the Credit Agreement secured by a security interest in, among other things, the following described property of Borrower, whether now existing or hereafter created or acquired by Borrower and wherever located (collectively, the "Collateral"): all of Borrower's (i) inventory (including, without limitation, raw materials, work in process and finished goods) and (ii) equipment and machinery (including, without limitation, all tools, parts, furniture, fixtures (other than Building Fixtures, as hereinafter defined), office equipment and supplies, motor vehicles and all

replacements and substitutions thereof and all additions and accessions thereto). For purposes of this Agreement, however, the term "Collateral" shall specifically exclude all Building Fixtures. As used herein, the term "Building Fixtures" shall mean and include all heating, plumbing, water-heating, lighting, refrigerating and air-conditioning fixtures, boilers, radiators, escalators, washers, mirrors, elevators, appliances, carpeting, sprinkler systems, cabinets, fire or smoke prevention or detection systems, wall coverings, awnings, signs affixed to the building and other fixtures that are an integral part of the building on the Premises and are not used as trade fixtures.

Some or all of the Collateral is now or may hereafter be located on or about the Premises.

Agent and Lenders have required the execution and delivery of this Agreement by Mortgagee as a condition to Lenders' continuing to extend financial accommodations to Borrower based on the value of the Collateral that may from time to time be located on or about the Premises.

NOW, THEREFORE, for Ten Dollars (\$10.00) in hand paid by Agent to Mortgagee and the mutual covenants and agreements hereinafter set forth, and in order to induce Agent and Lenders to extend financial accommodations to or for the benefit of Borrower in Agent's and Lenders' sole discretion and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagee covenants and agrees with Agent and Lenders as follows:

1. **Consent and Subordination.** Mortgagee consents to Agent's security interest in the Collateral. Mortgagee hereby agrees that Agent's lien and security interest in the Collateral and all proceeds thereof, whether now in existence or hereafter arising, shall be prior and superior to any and all liens which Mortgagee now has or in the future may have with respect to any of the Collateral or proceeds thereof, however and whenever arising, and Mortgagee hereby subordinates in favor of Agent any such liens which Mortgagee may have or in the future may have.
2. **Collateral to Remain as Personal Property.** Mortgagee agrees that all of the Collateral presently located on the Premises or which may hereafter be located thereon shall be and remain personal property and shall not be deemed fixtures or part of the portion of the Premises constituting realty or an appurtenance thereto; provided, however, if any of the Collateral becomes so affixed to the Premises that it becomes an integral part of the Premises, then such Collateral shall be deemed to be "Building Fixtures" for purposes of this Agreement.
3. **Agent's Right of Access and Removal.** Agent shall have the right to enter upon the Premises at any time or times to inspect the Collateral. Agent is authorized at any time to enter upon the Premises and to remove the Collateral therefrom, whether or not such removal requires a physical detachment of the Collateral from the Premises (so long as such Collateral is not an integral part of the Premises such that it is Building Fixtures) or causes injury thereto; provided, however, that, if Mortgagee shall have foreclosed upon Mortgagee's interest in the Premises under the Security Deed or otherwise become legally entitled to possession of the Premises as a result of a default by Borrower under the Security Deed of which Agent has received notice from Mortgagee, then Agent agrees to give Mortgagee verbal or written notice of Agent's intention to remove Collateral prior to such removal and Mortgagee reserves the right to accompany Agent during such removal of Collateral from the Premises; and provided, further that Agent agrees to repair any such injury to the Premises within ten (10) business days after Agent's receipt of written notice from Mortgagee of the need therefor, or, if Agent fails to so repair, to pay the reasonable costs to repair any such injury to the Premises within ten (10) business days after Agent's receipt of written notice from Mortgagee of such costs to repair, with an itemized invoice thereof. Agent shall be liable for any damages to the Premises that are caused during such inspection or removal of the Collateral by Agent or its agents, employees, or independent contractors. Agent may use the Premises to sell any of the Collateral therefrom or to store the Collateral thereon; provided, however, that

if Mortgagee shall foreclose under the Security Deed and shall give written notice to Agent to remove the Collateral, Agent shall have up to thirty (30) days after Agent's receipt of such notice from Mortgagee to sell or remove the Collateral. During such 30-day period, Agent shall not be required to pay rent for the privilege of leaving the Collateral on the Premises.

4. **Notices.** (a) Mortgagee shall notify Agent in writing of any default by Borrower under the provisions of the Mortgage at the same time as notice is given to Borrower, and Agent shall have the right (but is not obligated) to cure any default by Borrower under the provisions of the Security Deed on behalf of Borrower within the same period of time allowed for notice and cure by Borrower thereunder; provided, however, that in no event Agent shall have less than ten (10) business days after its receipt from Mortgagee of written notice of Borrower's default in which to cure such default if Agent elects to do so. Mortgagee shall have no liability for any failure to give, or any delay in giving any such notice to Agent.

(b) Agent shall notify Mortgagee in writing of any Event of Default under (and as defined in) the Credit Agreement as a result of which Agent accelerates Borrower's Obligations under (and as defined in) the Credit Agreement at the same time as notice of acceleration is given to Borrower. Agent shall have no liability for any failure to give, or delay in giving, any such notice to Mortgagee and the failure to give, or delay in giving, any such notice shall not limit the right of Agent to inspect or remove any Collateral.

(c) Any notice required to be given in writing to Agent or Mortgagee under this Agreement shall be sent by certified mail, postage prepaid, or by telecopier or other facsimile transmission, to the noticed party at its address below, and shall be deemed given four (4) days after mailing or on the date when received (if during normal business hours at the noticed party's notice address; otherwise on the next business day) at the noticed party's telecopier number:

If to Agent: PNC Bank, National Association
201 S. Tryon Street
Suite 900
Charlotte, North Carolina 28202
Attention: Daniel Shaw
Telecopier No.: 704-342-8450

If to Mortgagee: BANK OF AMERICA, N.A.
East Commercial Center
3700 Crestwood Parkway, Suite 1050
Duluth, Georgia 30096-5636
Fax Number: 770-717-6443

or to such other address as such party may hereafter specify in writing to the other.

5. **Power to Execute Agreement.** Mortgagee hereby certifies, represents, and warrants to Agent that Mortgagee has full power and authority to execute this Agreement, that the person(s) executing this Agreement on behalf of Mortgagee have been duly authorized to do so by Mortgagee, and that it is the sole owner and holder of the Security Deed.

6. **Miscellaneous.** This Agreement shall continue in effect for so long as Agent has an interest in the Collateral or Borrower is indebted to Agent or any Lender and shall inure to the benefit of and shall be binding upon Borrower, Agent, Lenders and Mortgagee and their respective successors and assigns. This Agreement shall be governed by the substantive laws of the State of Georgia. This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and

may not be amended except by written agreement of Borrower, Mortgagee and Agent. If there is any litigation relating to or arising out of this Agreement, the party or parties determined to be prevailing shall be entitled to recover reasonable legal fees and costs in connection with such action from the non-prevailing party or parties. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Any signature delivered by facsimile transmission shall be effective as an original signature hereto.

IN WITNESS WHEREOF, Mortgagee, Borrower and Agent have caused this Agreement to be signed, sealed, and delivered on the day and year first written above.

Signed, sealed and delivered
in the presence of:

John M. Kyzanski.
Unofficial Witness

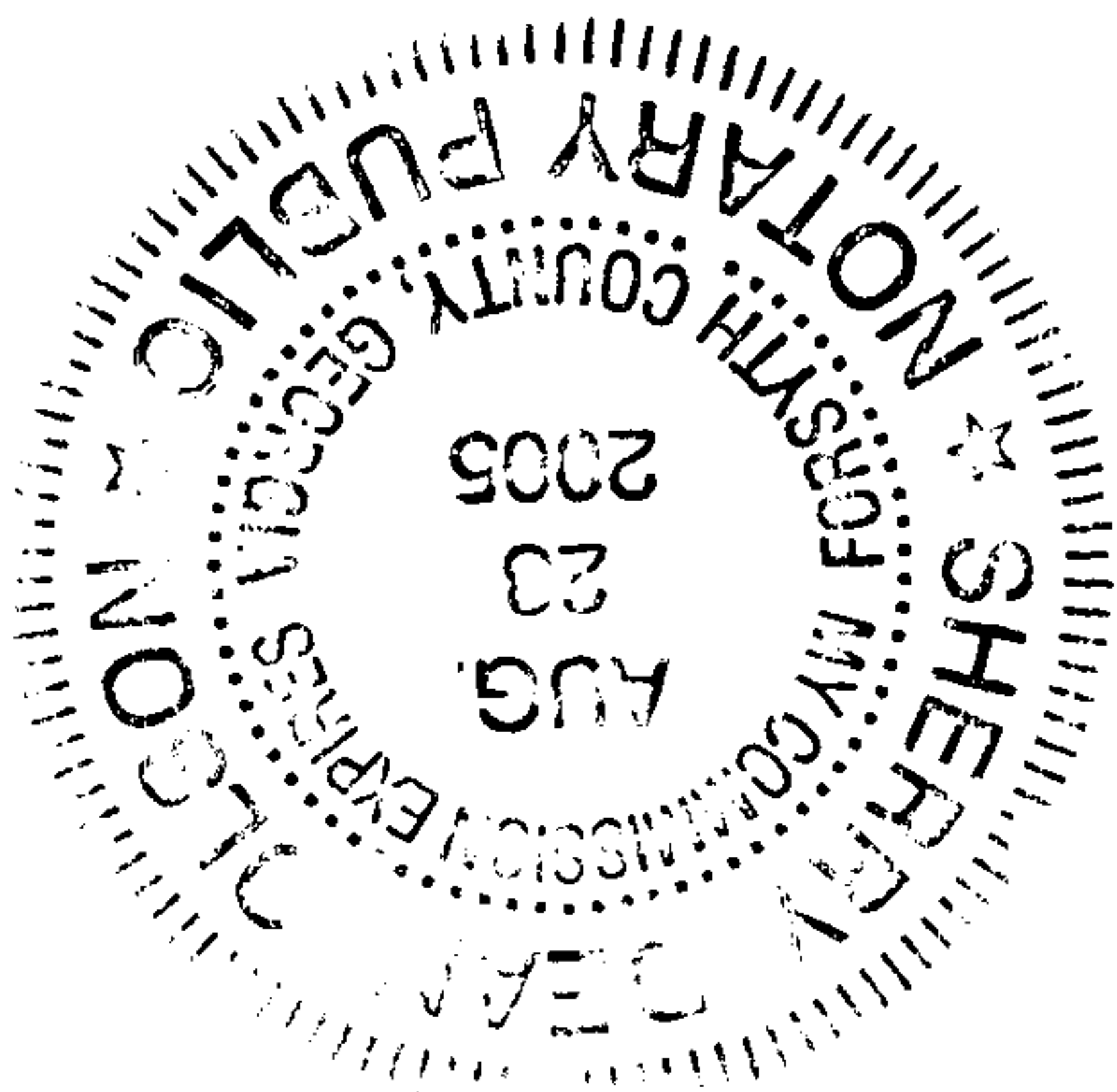
BANK OF AMERICA, N.A.
("Mortgagee")

By: Scott E. Yost
Name: Scott E. Yost
Title: SVP

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 5th day of January, 2005.
[Signature]
Notary Public
My Commission Expires: _____



Signed, sealed and delivered
in the presence of:

John M. Kozanich
Unofficial Witness

PIKE NURSERY HOLDING LLC
("Borrower")

By: Drew Garner
Name: Drew Garner
Title: CFO + SECRETARY

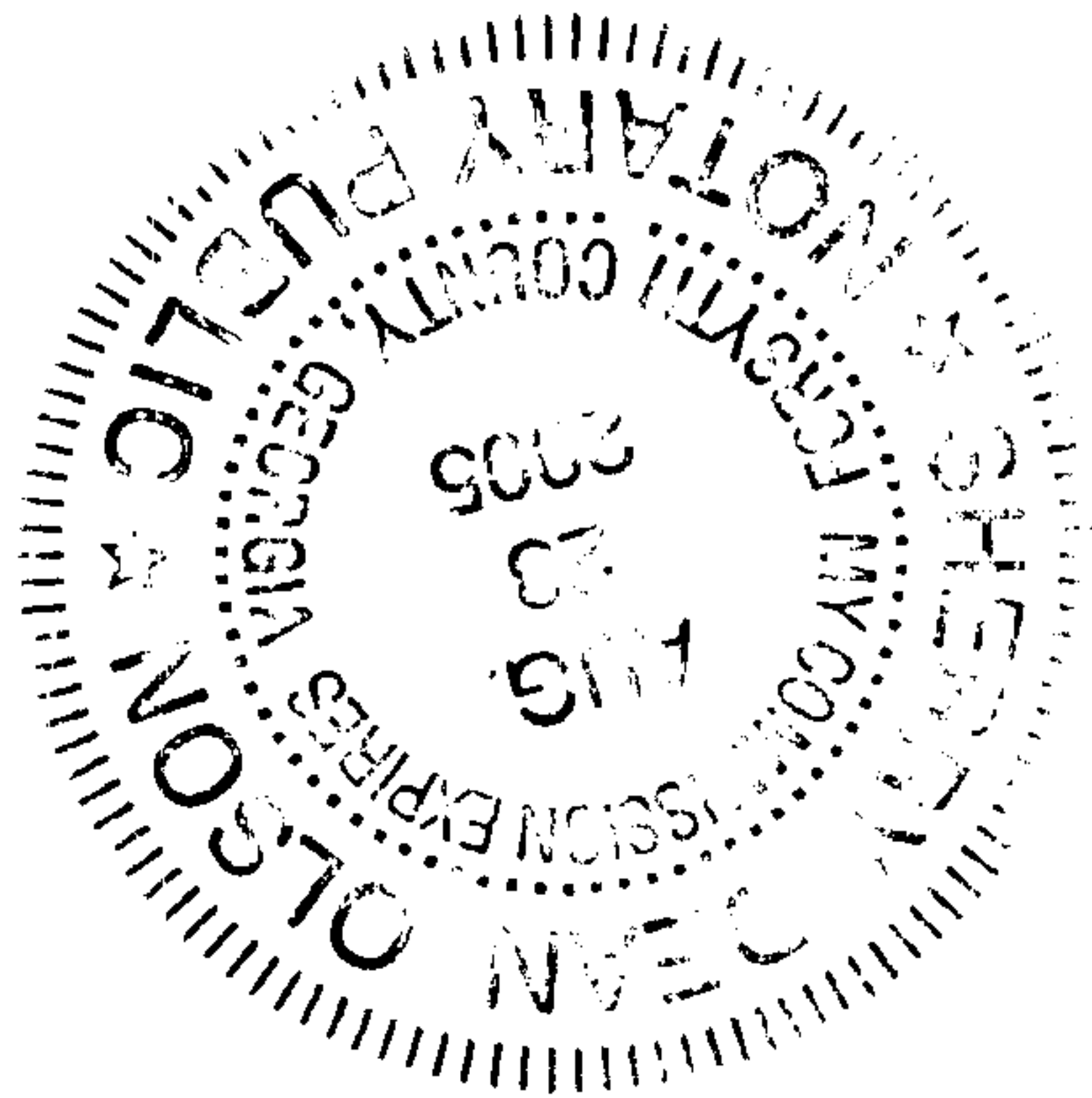
STATE OF GEORGIA)
Cowdett COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that R. Andrew Garner, whose name as Chief Financial Officer and 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 corporation 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: _____



Signed, sealed and delivered
in the presence of:

Melinda E. Breunler
Unofficial Witness

PNC BANK, NATIONAL ASSOCIATION,
as Agent

By: [Signature]

Name: Dan Shaw

Title: V.P.

STATE OF ~~GEORGIA~~) North Carolina
Mecklenburg COUNTY)

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Dan Shaw, whose name as Vice President of PNC Bank, National Association, 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 12th day of January, 2005.

Stephanie O'Madigan
Notary Public

My Commission Expires: Aug. 22, 2005



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EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

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.

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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.