

THIS INSTRUMENT WAS PREPARED BY:

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Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA)
SHELBY COUNTY)

ABSOLUTE ASSIGNMENT OF RENTS AND LEASES

THIS ABSOLUTE ASSIGNMENT OF RENTS AND LEASES (herein the “Assignment”) is made as of this 2nd day of July, 2014, by **J. S. LEWIS PROPERTIES, LLC**, an Alabama limited liability company, with its principal place of business located at 4904 Old Hickory Circle, Birmingham, Alabama 35244 (the “Assignor”), to and for the benefit of **ANTHONY’S REAL ESTATE, LLC**, an Alabama limited liability company, with its principal place of business located at 3037 Highway 150, Hoover, Alabama 35244 (the “Assignee”). The Assignor and the Assignee may hereinafter be referred to collectively as the “Parties” and individually as a “Party.”

W I T N E S S E T H:

WHEREAS, Assignor owns the real property (the “Real Estate”) in Shelby County, Alabama, legally described on **Exhibit A** attached hereto; and

WHEREAS, Assignor is obligated to Assignee on a loan (the “Loan”) in the principal sum of **ONE MILLION SIX HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,600,000.00)**, or so much as may from time to time be disbursed thereunder, as evidenced by that certain Promissory Note, dated of even date herewith, payable to Assignee with interest thereon (the “Note”), and secured by, among other things: (a) that certain Purchase Money Real Estate Future Advance Mortgage, Assignment of Rents and Leases and Security Agreement from Assignor in favor of Assignee, dated as of the date hereof, and recorded simultaneously herewith in Book ~~✱~~, Page _____ in the Office of the Judge of Probate of Shelby County, Alabama; (b) that certain Real Estate Loan and Security Agreement, dated of even date herewith, between Assignor and Assignee; and (c) all other documents evidencing, securing or relating to the Loan, including without limitation, this Assignment and that certain Absolute Assignment of Insurance Policy as Collateral (collectively, each instrument described under (a), (b) and (c) hereof, referred to hereinafter as the “Loan Documents”); and ~~✱~~20140703000203150

WHEREAS, Assignee requires that Assignor secure the indebtedness owed by Assignor to Assignee as described in the Note and/or Loan Documents by the execution of this Assignment (“Indebtedness”).

NOW, THEREFORE, in consideration of the Indebtedness evidenced by the Note and Loan Documents, Assignor agrees as follows:

1. **Assignment Clauses.** Assignor, intending to be legally bound and in consideration of the premises, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, does hereby sell, assign, transfer and set over unto Assignee all right, title and interest of Assignor in and to all rents, issues, income and profits of the Real Estate, and all right, title, and interest of Assignor in and to any and all leases of all or of portions of the Real Estate, whether now existing or hereafter arising, including those leases identified on **Exhibit B** hereto (hereinafter referred to as the “Leases”), and any and all amendments, modifications, extensions, replacements and renewals thereof,

and including all security deposits or interests therein now or hereafter held by Assignor and the benefit of all guarantees executed in connection with any of the Leases. This Assignment is absolute and is effective immediately; provided, however, until an Event of Default occurs under the Note and/or Loan Documents, Assignor may receive, collect and enjoy the rents, issues, income and profits accruing from the Real Estate.

2. **Representations.** Assignor represents and warrants to Assignee that: (a) it has made no prior assignment or pledge of the rents assigned hereby or of Assignor's interest in any of the Leases; (b) no default exists in any of the Leases and there exists no state of facts which, with the giving of notice or passage of time, or both, would constitute a default under any of the Leases; and (c) Assignor is the sole owner of the lessor's interest in the Leases.

3. **Negative Covenants of Assignor.** Assignor shall not, without Assignee's prior written consent which consent shall not be unreasonably withheld, execute an assignment or pledge of the rents from the Real Estate or any part thereof, or of Assignor's interest in any of the Leases, except to Assignee.

4. **Affirmative Covenants of Assignor.** Assignor will at its sole cost and expense (a) at all times promptly and faithfully abide by, discharge or perform all of the covenants, conditions and agreements contained in the Leases; (b) transfer and assign to Assignee any and all Leases subsequently entered into, upon the same terms and conditions as are herein contained, and make, execute and deliver to Assignee upon demand any and all instruments required to effectuate such agreement; (c) furnish to Assignee, within ten (10) days after a request by Assignee to do so, a written statement containing the names of all tenants of the Real Estate or any part thereof, the terms of their respective Leases, the spaces occupied, and the rents payable thereunder; (d) furnish Assignee promptly with copies of any notices of default which Assignor may at any time give to any tenant of the Real Estate or any part thereof; and (e) pay immediately upon demand all sums expended by Assignee under the authority hereof, together with interest thereon at the highest rate permitted by applicable law.

5. **Agreements of Assignor.**

(a) Should Assignor fail to make any payment or to do any act as herein provided for and upon thirty (30) days' written notice to Assignor, then Assignee, but without obligation so to do, and without releasing Assignor from any obligation hereof, may make or do the same in such manner and to such extent as Assignee may deem necessary to protect the Real Estate and the Leases, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the Real Estate or the Leases or the rights or powers of Assignee, and also the right to perform and discharge each and every obligation, covenant and agreement of Assignor in the Leases contained, and in exercising any such powers to incur and pay necessary costs and expenses, including reasonable attorneys' fees, all at the expense of Assignor.

(b) This Assignment shall not operate to place responsibility for the control, management, care or repair of the Real Estate upon Assignee, and Assignee shall not be obligated to perform or discharge, nor does it hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, or under or by reason of this Assignment, and Assignor shall and does hereby agree to indemnify and to hold Assignee harmless of and from any and all liability, loss or damage which it may or might incur under the Leases or under or by reason of this Assignment and of and from any and all claims and demands whatsoever which may be asserted against it by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases, except any such

claims or demands resulting from the acts or actions of Assignee. Should Assignee incur any such liability, loss or damage under the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses and reasonable attorneys' fees, then Assignor shall reimburse Assignee therefor, with interest at the highest rate permitted by applicable law, immediately upon demand.

(c) Nothing herein contained shall be construed as constituting Assignee a "mortgagee in possession" in the absence of the taking of actual possession of the Real Estate by Assignee pursuant to the provisions hereinafter contained. In the exercise of the powers herein granted Assignee, no liability shall be asserted or enforced against Assignee, all such liability being expressly waived and released by Assignor.

(d) A demand on any tenant by Assignee for the payment of the rent on any default of Assignor claimed by Assignee shall be sufficient warrant to the tenant to make future payment of rents to Assignee without the necessity for further consent by Assignor.

(e) Assignor does further specifically authorize and instruct each and every present and future tenant of the whole or any part of the Real Estate to pay all unpaid rent agreed upon in any Lease to Assignee upon receipt of demand from Assignee to pay the same, and Assignor hereby waives all right, claim or demand it may now or hereafter have against any such tenant by reason of such payment of rent to Assignee or compliance with other requirements of Assignee pursuant to this Assignment.

(f) Assignor hereby irrevocably appoints Assignee as Assignor's true and lawful attorney in fact with full power of substitution and with full power for Assignee in its own name and capacity or in the name and capacity of Assignor, from and after the occurrence and during the continuance of an Event of Default, as defined in the Note, to receive and give complete acquittances for any and all rents, issues, income and profits accruing from the Real Estate, and at Assignee's discretion to file any claim or take any other action or proceeding and make any settlement of any claims in its own name or otherwise, which Assignee may deem necessary or desirable in order to collect and enforce the payment of the rents, issues, income and profits. Tenants of the Real Estate are hereby expressly authorized and directed to pay any and all amounts due Assignor pursuant to the Leases directly to Assignee or such nominee as Assignee may designate in writing delivered to and received by such tenants, who are expressly relieved of any and all duty, liability or obligation to Assignor in respect of all payments so made.

6. **Default.** Upon, or at any time after, (a) default in the performance of any covenant or agreement herein or (b) an Event of Default, as defined in the Note and/or Loan Documents, Assignee may, at its option, and without regard to the value of the Real Estate or the adequacy of the security for the Indebtedness, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, manage and operate the Real Estate or any part thereof, do any acts which Assignee deems proper to protect the Real Estate and the Leases, and either with or without taking possession of the Real Estate in the name of Assignor or in its own name, sue for or otherwise collect and receive such rents, issues, income and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including, but not being limited to, reasonable attorneys' fees, management fees and brokers' commissions, upon any Indebtedness of Assignor to Assignee described in the Note and/or Loan Documents, and in such order as Assignee may determine. Assignee reserves, within its own reasonable discretion, the right to determine the method of collection and the extent to which enforcement of collection of delinquent rents shall be prosecuted, and shall not be accountable for more money than it actually receives from the Real Estate. The entering upon and taking possession of the Real Estate or the collection of such rents, issues, income

and profits and the application thereof, as aforesaid, shall not cure or waive any default under the Note and/or Loan Documents. Assignor agrees that it will facilitate in all reasonable ways Assignee's collection of such rents and will, upon request by Assignee, promptly execute a written notice to each tenant directing the tenant to pay rent to Assignee.

7. **Assignee's Right to Exercise Remedies.** No remedy conferred upon or reserved to Assignee herein or in the Note and/or Loan Documents is intended to be exclusive of any other remedy or remedies, and each and every such remedy herein or contained in the Note and/or Loan Documents shall be cumulative and concurrent and shall be in addition to every other remedy given hereunder and thereunder or now or hereafter existing at law or in equity or by statute. The remedies may be pursued singly, successively or together against Assignor or the Real Estate at the sole discretion of Assignee. No delay or omission of Assignee to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or any acquiescence therein, and every power and remedy given by this Assignment to Assignee may be exercised from time to time as often as may be deemed expedient by Assignee.

8. **Defeasance.** As long as Assignor shall not have defaulted in the performance of any obligation, covenant or agreement herein or in the Note and/or Loan Documents, Assignor shall have the right to collect upon, but not prior to accrual, all rents, issues, income and profits from the Real Estate and to retain, use and enjoy the same. Upon the performance of all obligations, covenants and agreements herein and in the Note and/or Loan Documents, this Assignment shall become and be void and of no effect, but the affidavit of any officer or agent of Assignee showing any part of such Indebtedness remaining unpaid or showing nonperformance of any such obligations, covenants or agreements shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.

9. **Notices.** All notices, demands and requests given or required to be given by either party hereto shall be delivered in accordance with the Loan Agreement.

10. **Miscellaneous.**

(a) This Assignment may not be modified, amended, discharged or waived orally, but only by an agreement in writing and signed by the party against whom enforcement of any such modification, amendment, discharge or waiver is sought.

(b) The covenants of this Assignment shall bind Assignor, the successors and assigns of Assignor, all present and subsequent encumbrances, tenants and subtenants of the Real Estate or any part thereof, and shall inure to the benefit of Assignee, its successors and assigns.

(c) As used herein, the singular shall include the plural, as the context requires, and all obligations of each Assignor shall be joint and several.

(d) In the event any one or more of the provisions contained in this Assignment or in the Note and/or Loan Documents shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Assignee, not affect any other provision of this Assignment, but this Assignment shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

(e) This Assignment shall be governed by and construed in accordance with the laws of the State of Alabama.

(f) The terms "Assignor" and "Assignee" shall be construed to include the heirs, personal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, or corporate or other form.

11. **Waiver of Jury Trial.** ASSIGNOR AND ASSIGNEE HEREBY WAIVE ANY RIGHT THAT THEY MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (a) ARISING OUT OF OR IN ANY WAY RELATED TO THE LOAN OR ANY OF THE NOTE AND/OR LOAN DOCUMENTS OR (b) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF ASSIGNEE AND/OR ASSIGNOR WITH RESPECT TO RIGHTS AND REMEDIES UNDER THE NOTE AND/OR LOAN DOCUMENTS, INCLUDING THIS ASSIGNMENT, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING INSTANCES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ASSIGNOR AND ASSIGNEE AGREE THAT EITHER PARTY MAY FILE A COPY OF THIS ASSIGNMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT OF EITHER PARTY HERETO TO IRREVOCABLY WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF ASSIGNEE TO MAKE THE LOAN AND THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN ASSIGNOR AND ASSIGNEE SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Absolute Assignment of Rents and Leases as of the date first above written.

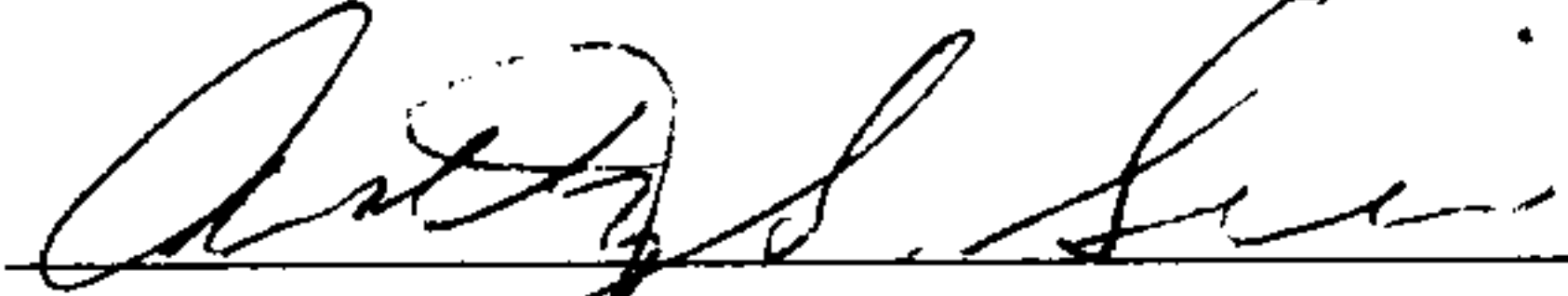
[SIGNATURES TO FOLLOW ON THE NEXT PAGE]

And

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

ASSIGNEE:

ANTHONY'S REAL ESTATE, LLC

By: 
ANTHONY S. SERIO
Its: Manager

**STATE OF ALABAMA)
JEFFERSON COUNTY)**

Before me, the undersigned, a Notary Public in and for said County in said State, hereby certify that Anthony S. Serio, whose name as Manager of Anthony's Real Estate, 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 the instrument, he, as said officer and with full authority, executed the same voluntarily for and as the act of said company on the day the same bears date.

Given under my hand and seal this the 2nd day of July, 2014.

[NOTARIAL SEAL]


Sheryl M. Childers
Notary Public for the State of Alabama
My commission expires: April 1, 2018

By: 
LAWRENCE L. SERIO
Its: Manager

**STATE OF ALABAMA)
JEFFERSON COUNTY)**

Before me, the undersigned, a Notary Public in and for said County in said State, hereby certify that Lawrence L. Serio, whose name as Manager of Anthony's Real Estate, 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 the instrument, he, as said officer and with full authority, executed the same voluntarily for and as the act of said company on the day the same bears date.

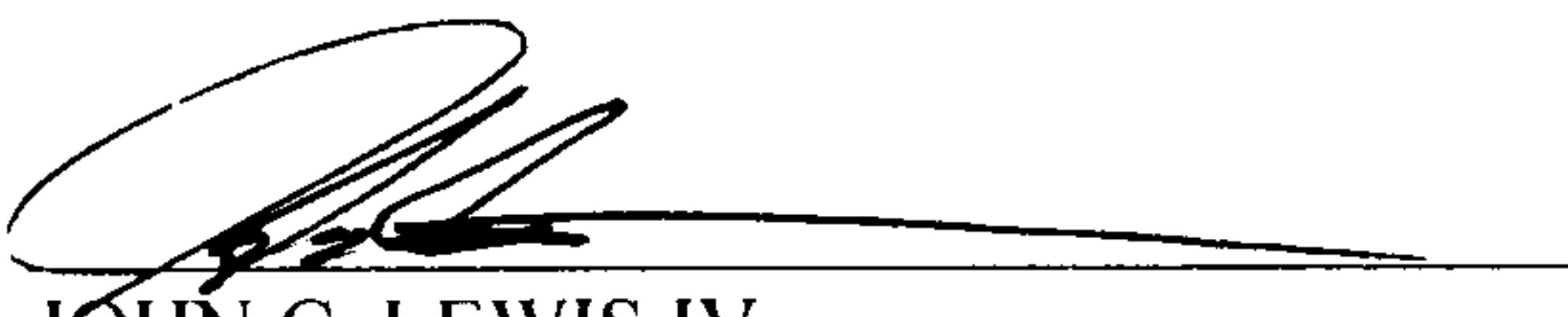
Given under my hand and seal this the 2nd day of July, 2014.

[NOTARIAL SEAL]


Sheryl M. Childers
Notary Public for the State of Alabama
My commission expires: April 1, 2018

ASSIGNOR:

J. S. LEWIS PROPERTIES, LLC

By: 
JOHN C. LEWIS IV
Its: Member

**STATE OF ALABAMA)
JEFFERSON COUNTY)**

Before me, the undersigned, a Notary Public in and for said County in said State, hereby certify that John C. Lewis IV, whose name as Member of J. S. Lewis Properties, 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 the instrument, he, as said Member and with full authority, executed the same voluntarily for and as the act of said company on the day the same bears date.

Given under my hand and seal this the 2nd day of July, 2014.

[NOTARIAL SEAL]


Sheryl M. Childers
Notary Public for the State of Alabama
My commission expires: April 1, 2018

By: 
SUSAN S. LEWIS
Its: Member

**STATE OF ALABAMA)
JEFFERSON COUNTY)**

Before me, the undersigned, a Notary Public in and for said County in said State, hereby certify that Susan S. Lewis, whose name as Member of J. S. Lewis Properties, 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 the instrument, she, as said Member and with full authority, executed the same voluntarily for and as the act of said company on the day the same bears date.

Given under my hand and seal this the 2nd day of July, 2014.

[NOTARIAL SEAL]


Sheryl M. Childers
Notary Public for the State of Alabama
My commission expires: April 1, 2018

EXHIBIT A

LEGAL DESCRIPTION

The following described real property located in Shelby County, Alabama:

A parcel of land situated in the NE 1/4 of the NW 1/4 of Section 13, Township 20 South, Range 3 West in Shelby County, Alabama and being more particularly described as follows:

Commence at the NE corner of the South 1/2 of the NE 1/4 of the NW 1/4 of Section 13, Township 20 South, Range 3 West; thence North 82 deg. 58 min. 11 sec. West a distance of 1083.08 feet to the POINT OF BEGINNING; thence continue along the last described course a distance of 193.87 feet to a point on the Easterly right of way line of U.S. Highway No. 31; thence South 32 deg. 31 min. 16 sec. West along said right of way line a distance of 190.00 feet to a point on the Northerly right of way line of Canyon Park Drive; thence South 57 deg. 28 min. 44 sec. East along said right of way line a distance of 175.00 feet; thence North 32 deg. 31 min. 16 sec. East a distance of 273.44 feet to the Point of Beginning; being situated in Shelby County, Alabama.

Said parcel also being described as Lot 11 of the proposed Canyon Park Subdivision.

EXHIBIT B

LEASES

Lease made this 2nd day of July, 2014, by and between J. S. Lewis Properties, LLC (hereinafter called "Landlord") whose mailing address is 4904 Old Hickory Circle, Birmingham, Alabama 35244, and John's Car Wash, Inc. (hereinafter called "Tenant") whose mailing address is 2941 Pelham Parkway, Pelham, Alabama 35124.