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Shelby Cnty Judge of Probate, AL  
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**AFTER RECORDING, RETURN TO:**

Andersen, Tate & Carr, P.C.  
1960 Satellite Boulevard, Suite 4000  
Duluth, Georgia 30097  
(TJA/14667.60325)

**ASSIGNMENT OF LEASES AND RENTS**

This AGREEMENT, made and entered into as of the 29th day of March, 2016, by and between **POWELL LAND INVESTMENTS, LLC**, a Georgia limited liability company (hereinafter referred to as "Borrower"), and **UNITED COMMUNITY BANK**, a Georgia banking corporation (hereinafter referred to as "Lender").

**WITNESSETH:**

FOR AND IN CONSIDERATION of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, in hand paid by Lender, the receipt and sufficiency of which are hereby acknowledged, Borrower does hereby (i) grant, transfer and immediately and absolutely assign to Lender, its successors and assigns, all of the right, title and interest of Borrower in and to the rents (and payments in lieu of rents), income and profits arising from the Premises (as hereinafter defined) and (ii) collaterally assign, grant and transfer to the Lender all of Borrower's remaining interests as "Landlord" or "Lessor" in and to those certain lease agreements, tenant contracts and rental agreements, including, without limitation, those certain leases described on Schedule "1" attached hereto and made a part hereof (the "Key Leases") (together with any and all extensions, renewals and modifications thereof and guarantees of the performance of obligations of any tenant or lessee thereunder) (hereinafter collectively referred to as the "Leases" and said tenants or lessees thereunder hereinafter collectively referred to as "Tenants" or individually as "Tenant" as the context requires), now or hereafter executed by or on behalf of Borrower, as "Landlord" or "Lessor" therein, and others as "Tenant" or "Lessee" therein, conveying or demising all or any portion of the space in the improvements now or hereafter located on that certain tract or parcel of land (hereinafter referred to as the "Premises") lying and being in Shelby County, Alabama, the Premises being more particularly described in Exhibit "A" attached hereto and by this reference incorporated herein and made a part hereof.

This Assignment is made in connection with the following described indebtedness and obligations (hereinafter referred to as the "Indebtedness"):

(a) Any and all indebtedness and obligations evidenced by that certain Promissory Note of even date herewith, executed by Borrower, payable to the order of Lender in the original principal sum of **THREE HUNDRED TEN THOUSAND AND NO/100THS DOLLARS (\$310,000.00)** (hereinafter referred to as the "Note") with interest thereon at the rates therein specified, together with any and all renewals, modifications, consolidations, amendments and extensions of the Note and the indebtedness evidenced by the Note;

(b) Any and all indebtedness and obligations evidenced and secured by that certain Mortgage and Security Agreement (hereinafter referred to as the "Mortgage") of even date herewith, executed by Borrower in favor of Lender, to be recorded in the official records of Shelby County, Alabama, together with all modifications and amendments thereto;

(c) Any and all advances made by Lender to protect or preserve the security created by this Assignment, or to protect or preserve the Premises or the lien of the Mortgage on the Premises, or for taxes or insurance premiums as provided in the Mortgage; and

(d) The full and prompt payment and performance of each obligation, covenant and agreement of Borrower contained herein or in the Note, the Mortgage, or any other document or instrument evidencing, securing or relating to the indebtedness secured thereby (the Note, the Mortgage, and said other instruments and documents being hereinafter collectively referred to as the "Loan Documents").

Borrower and Lender agree that (i) an extension or extensions may be made of the time of payment of all or any part of the Indebtedness; (ii) the terms of the Note, the Mortgage, this Assignment, or any other Loan Document may be modified; (iii) additional security may be given by Borrower; and (iv) any of the Leases may be released herefrom, all without altering or affecting the security interest created by this Assignment and without altering or releasing the obligations of Borrower under the Note, the Mortgage, this Assignment or the other Loan Documents.

Should the Indebtedness be paid according to the tenor and effect thereof when the same shall become due and payable, then this Assignment shall be canceled and surrendered as hereinafter provided.

Borrower and Lender hereby further covenant and agree as follows, in addition to and not in substitution for or in derogation of any other covenants contained in the Mortgage or the other Loan Documents:

## ARTICLE I

1.01 Warranties of Borrower. Borrower hereby warrants unto Lender that:

(a) Borrower is the absolute owner of the entire lessor's interest in the Leases;



(b) Borrower has made no assignment of any of the rights of Borrower under any of the Leases, other than this Assignment;

(c) Borrower has neither done any act nor omitted to do any act which might prevent Lender from, or limit Lender in, exercising its remedies under any of the provisions of this Assignment;

(d) Borrower has not accepted payment of rental under any of the Leases for more than one (1) month in advance of the due date thereof;

(e) So far as is known to Borrower, there is no default by any Tenant under the terms of any of the Leases;

(f) Borrower is not prohibited under any agreement with any other person or any judgment or decree from (i) the execution and delivery of either this Assignment or any of the Leases; (ii) the performance of each and every covenant of Borrower under either this Assignment or the Leases; or (iii) the meeting of each and every condition contained in this Assignment;

(g) No action has been brought or, so far as is known to Borrower, is threatened, which in any way would interfere with the right of Borrower to execute this Assignment and perform all of Borrower's obligations contained in this Assignment and in the Leases; and

(h) The Key Leases are in full force subject to occupancy by the tenants thereunder.

1.02 Covenants of Borrower. Borrower hereby covenants with Lender that:

(a) Borrower will (i) fulfill, perform and observe each and every condition and covenant of Borrower contained in any of the Leases in accordance with the provisions thereof; (ii) at no cost or expense to Lender, enforce the performance and observance of each and every covenant and condition of each of the Leases to be performed or observed by the Tenant thereunder; and (iii) appear in and defend or settle any action growing out of, or in any matter connected with, any of the Leases or the obligations or liabilities of Borrower as the "Landlord" or "Lessor" thereunder or of the Tenant or any guarantor thereunder;

(b) Borrower shall not, without the prior written consent of Lender, (i) enter into, modify or amend the Key Leases, or modify or enter into, amend any of the other tenant leases, in any material respect without the prior written consent of Lender; (ii) terminate or accept the surrender of any of the Leases unless the Tenant thereunder shall have materially defaulted; (iii) waive or release any Tenant from the performance or observance of any material obligation or condition of its Lease; (iv) permit to be made any prepayment of any installment of rent or fees under the Leases for more than one (1) month in advance (except for security deposits); or (v) consent to any subletting or assignment by any Tenant without the prior written consent of Lender, to the extent Borrower's consent is



required by the terms of such Tenant's Lease, provided that Lender shall not unreasonably withhold its consent to any such assignment or subletting to the extent Borrower's consent to such assignment or subletting may not be unreasonably withheld under the terms of such Tenant's Lease;

(c) Borrower shall not execute any further assignment of the income, rents, issues or profits, or any part thereof, from the Premises unless Lender shall first consent to such assignment and unless such assignment shall expressly provide that it is subordinate to this Assignment or any assignment concerning the Indebtedness;

(d) Borrower shall furnish to Lender, within ten (10) days after a request by Lender to do so, a sworn statement setting forth the name of all lessees and tenants of the Premises, the terms of their respective leases, tenant contracts or rental agreements, the space occupied, and the rentals payable thereunder, and stating whether to Borrower's knowledge any defaults, off-sets or defenses exist under or in connection with any of said leases, tenant contracts or rental agreements. Any and all leases, tenant contracts and rental agreements affecting the Premises and executed after the date hereof shall provide for giving by the lessees or tenants thereunder of certificates with respect to the status of such leases, tenant contracts or rental agreements, and Borrower shall exercise Borrower's right to request such certificates within five (5) days of any demand therefor by Lender;

(e) Borrower shall take no action which shall cause or permit the estate of the Tenant under any of the Leases to merge with the interest of Borrower in the Premises or any portion thereof;

(f) Acceptance of this Assignment shall not be construed as a consent by Lender to any of the Leases and, subject to the terms of this paragraph, Lender shall not be obligated to perform or discharge any obligation of Borrower under any of the Leases, and Borrower agrees to, and does hereby indemnify and hold Lender harmless against any and all liabilities, obligations, claims, damages, penalties, costs and expenses (including without limitation, reasonable attorney's fees and expenses) which Lender may incur under any of the Leases or under or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any act or failure to act by Lender under this Assignment or any alleged obligation or undertaking to be performed or discharged by Lender under this Assignment unless any such claim or demand is caused by the gross negligence or intentional misconduct of Lender. The foregoing indemnity shall not be applicable to any such claim, liability, loss, cost, expense or damage which results from any action of Lender which occurs subsequent to the completion of a foreclosure or acceptance of a deed in lieu of foreclosure with respect to the Premises;

(g) Borrower shall authorize and direct, and does hereby authorize and direct each and every present and future Tenant of the whole or any part of the Premises to pay all rental to Lender upon receipt of written demand from Lender to so pay the same; and



(h) Upon request of Lender, Borrower shall deliver Lender certified copies of all Leases then in effect.

1.03 Covenants of Lender. By acceptance of delivery of this Assignment, Lender covenants with Borrower that:

(a) Although this Assignment constitutes a present and current assignment of all rents, issues and profits from the Premises, so long as there shall exist no Event of Default (as hereinafter defined) on the part of Borrower, Borrower shall have the right to collect, but not more than one (1) month prior to accrual, all such rents, issues and profits from the Premises (including, but not by way of limitation, all rental payments under any of the Leases) and to retain, use and enjoy such rents, issues and profits from the Premises for payment of the Indebtedness and thereafter for Borrower's own account; and

(b) Upon the filing by Lender in the official records of Shelby County, Alabama of a full satisfaction of the Mortgage without the recording of another security instrument in favor of Lender affecting the Premises, this Assignment shall likewise be canceled without the necessity of any further act by Lender.

## ARTICLE II

2.01 Event of Default. The term "Event of Default", wherever used in this Assignment, shall mean any one or more of the following events:

(a) The occurrence of any default or Event of Default under the provisions of the Note, the Mortgage, or any of the other Loan Documents after the expiration of any applicable notice and opportunity to cure period;

(b) Failure by Borrower to duly observe any covenant, condition or agreement of this Assignment, and the failure by Borrower to cure such default in accordance with the provisions of the Mortgage regarding curing of defaults after the expiration of any applicable notice and opportunity to cure period; or

(c) The breach of any warranty by Borrower contained in this Assignment, or if any representation or certification made or agreed to be made herein shall prove to be false or materially misleading.

2.02 Remedies. Upon the occurrence and continuance of any Event of Default, in addition to any and all other rights and remedies available to Lender under the Note, the Mortgage, and the other Loan Documents, and not in substitution for or derogation thereof, Lender shall become immediately entitled to all rents, income and profits arising from the Premises and may without notice to or demand on Borrower other than as may be otherwise provided herein (i) as a matter of strict right and without regard to the value or occupancy of the security, have a receiver appointed upon ex parte motion to enter upon and take possession of the Premises, collect the rents and profits therefrom and apply the same as the court may direct, such receiver to have all the rights

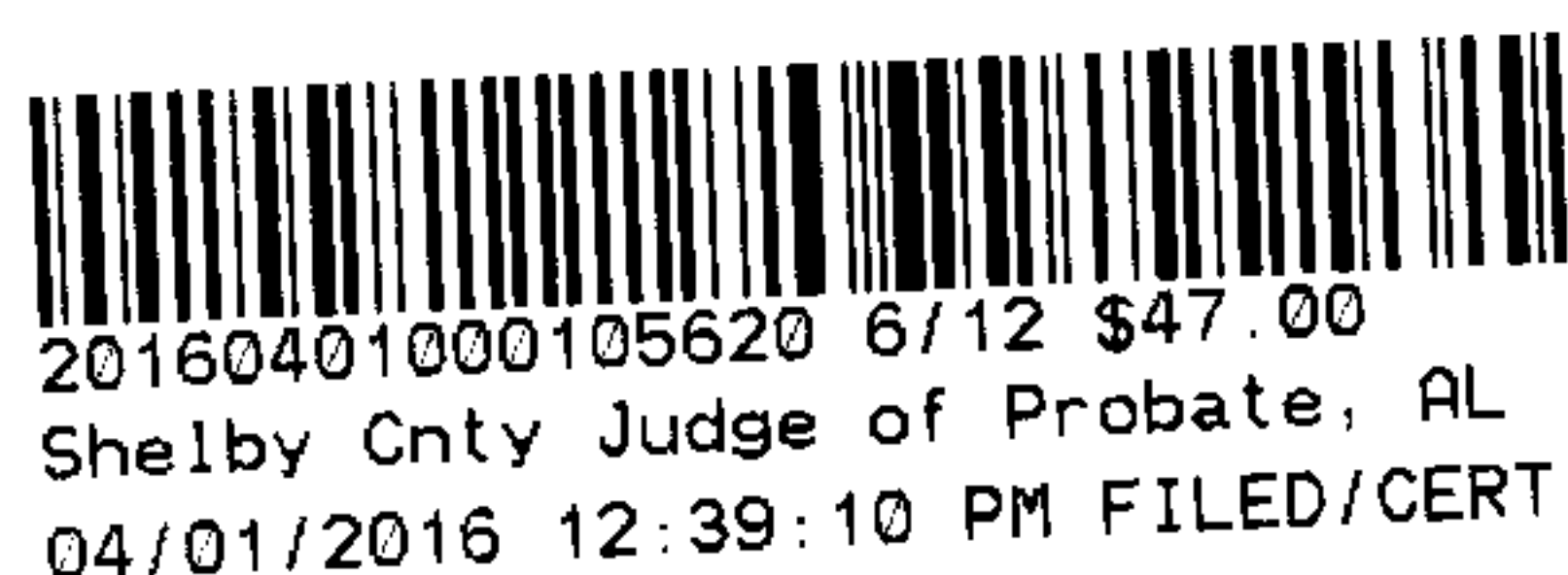


and powers permitted under the laws of the State of Alabama, all without becoming a mortgagee-in-possession; (ii) proceed itself to enter upon, take possession of and operate the Premises, or any portion thereof, without becoming a mortgagee-in-possession; (iii) proceed to perform any and all obligations of Borrower under any of the Leases and exercise any and all rights of Borrower therein contained as fully as Borrower itself could, all without regard to the adequacy of security for the indebtedness hereby secured and with or without the bringing of any legal action or the causing of any receiver to be appointed by any court or other judicial authority; (iv) make, enforce, modify and accept the surrender of any of the Leases; (v) evict the Tenant under any of the Leases or obtain tenants for other space within the Premises; (vi) fix or modify rent; and (vii) do all of the acts which Lender may deem necessary, desirable or proper to protect the security created by this Assignment. Borrower hereby acknowledges and agrees that the intent of this Assignment is to empower Lender to undertake any, all or any combination of the actions hereinabove set forth in this Paragraph 2.02 without notice to Borrower except as specifically provided herein or in the other Loan Documents. If an Event of Default shall have occurred and be continuing, Borrower does hereby specifically authorize Lender, in the name of Borrower or in the name of Lender, to sue for or otherwise collect and receive all rents, issues and profits from the Premises, including those past due and unpaid, and to apply such collected rents, issues and profits to the payment of (w) all expenses of managing the Premises, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as Lender may deem necessary or desirable, (x) all expenses of operating and maintaining the Premises, including, without limitation, all taxes, charges, claims, assessments, water rents, sewer rents, and any other liens, and premiums for all insurance which the Lender may deem necessary or desirable, (y) the cost of alterations, renovations, repairs, or replacements, and all expenses incident to taking and retaining possession of the Premises, and (z) the Indebtedness secured hereby, all in such order of priority as Lender in its sole discretion may determine. Entry upon and taking possession of the Premises and the collection of the rents, issues and profits of the Premises and the application thereof, as aforesaid, shall not operate to waive any default or event of default, or prohibit the taking of any action by Lender under the Note, the Mortgage, this Assignment or any other Loan Documents or at law or in equity to enforce payment of the Indebtedness secured hereby or to realize on any other security. No failure on the part of Lender to exercise, and no delay in exercising, any right shall be construed or deemed to be a waiver thereof.

### ARTICLE III

3.01 Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon Borrower and Lender and their respective heirs, executors, legal representatives, successors and assigns. Whenever a reference is made in this Assignment to "Borrower" or "Lender", such reference shall be deemed to include a reference to the heirs, executors, legal representatives, successors and assigns of Borrower or Lender.

3.02 Terminology. All personal pronouns used in this Assignment, whether used in the masculine, feminine or neuter gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of articles are for convenience only and neither limit nor amplify the provisions of this Assignment.





3.03 Severability. If any provision of this Assignment or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Assignment and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

3.04 Applicable Law. Borrower and Lender hereby acknowledge and agree that this Assignment and the obligations created hereunder (i) are made and intended as a contract under the laws of the State of Alabama and are to be governed by and interpreted in accordance with the laws of the State of Alabama, and (ii) are to be construed and enforced in accordance with the laws of the State of Alabama, without reference to the application of the choice of law principles thereof.

3.05 No Third Party Beneficiaries. This Assignment is made solely for the benefit of Lender and its assigns. No Tenant under any of the Leases nor any other person shall have standing to bring any action against Lender as the result of this Assignment, or to assume that Lender will exercise any remedies provided herein, and no person other than Lender shall under any circumstances be deemed to be a beneficiary of any provision of this Assignment.

3.06 No Oral Modifications. Neither this Assignment nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

3.07 Cumulative Remedies. The remedies herein provided shall be in addition and not in substitution for the rights and remedies vested in Lender in or by any of the Loan Documents or in law or equity, all of which rights and remedies are specifically reserved by Lender. The remedies herein provided or otherwise available to Lender shall be cumulative and may be exercised concurrently. The failure to exercise any of the remedies herein provided shall not constitute a waiver thereof, nor shall use of any of the remedies provided herein prevent the subsequent or concurrent resort to any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to Lender shall continue to be each and all available to Lender until the Indebtedness shall be paid in full.

3.08 Further Assurance. At any time and from time to time, upon request by Lender, Borrower will make, execute and deliver, or cause to be made, executed and delivered, to Lender and, where appropriate, cause to be recorded and/or refiled at such time and in such offices and places as shall be deemed desirable by Lender, any and all such other instruments as may, in the opinion of Lender be necessary or desirable in order to effectuate, complete or perfect, or to continue and preserve (a) the obligations of Borrower under this Assignment or (b) the interest created by this Assignment as a first and paramount interest in and to the Leases and the rents, issues and profits from the Premises. Upon any failure by Borrower so to do, Lender may make, execute, record, file, re-record and/or refile any and all such instruments for and in the name of Borrower, and Borrower hereby irrevocably appoints Lender the agent and attorney-in-fact of Borrower so to do.

3.09 Notices. All notices, requests, elections, demands and other communications permitted or required to be made herein shall be in writing, signed by the party or parties giving



such notice, request, election, or demand, and shall be effective when actually received by the addressee, regardless of the method of delivery or, if mailed, three (3) business days after the date of postmark by the United States Postal Service, sent by certified mail return receipt requested, postage prepaid, to the other party at the following address, as applicable:

Borrower: Powell Land Investments, LLC  
2421 Bagley Road  
Cumming, Georgia 30041

Lender: United Community Bank  
6600 McGinnis Ferry Road  
Johns Creek, Georgia 30097  
Attn: Jay M. Roper, Senior Vice President

or addressed to any such party at such other address within the continental United States of America as such party shall hereafter furnish by notice to the other parties given in accordance with the terms of this Paragraph 3.09; provided that no notice of change of address shall be effective until the date of receipt thereof. Rejection or other refusal to claim or accept, or the inability to deliver because of a changed address of which no notice was given as prescribed herein shall not affect the effective date of such notice, request, election, demand, or other communication sent as aforesaid. Delivery to a party or to any officer, partner, agent or employee of such party at the designated address shall constitute effective delivery for purposes hereof.

3.10 Cross-Default. An Event of Default by Borrower under this Assignment shall constitute a default under all other Loan Documents, including, without limitation, the Note and the Mortgage.

3.11 No Obligation Imposed Upon Lender. Subject to Paragraph 1.02 (f) hereof, nothing contained herein shall operate or be construed to obligate Lender to perform any of the terms, covenants and conditions contained in any of the Leases or otherwise to impose any obligation upon Lender with respect to any of the Leases including, but not limited to, any obligation arising out of any covenant of quiet enjoyment therein contained in the event the tenant, lessee, occupant, or other party under any of such Leases shall have been joined as a party defendant in any action to foreclose and the estate of such tenant, lessee, occupant, or other party shall have been thereby terminated. Unless and until Lender actually enters into and takes possession of the Premises, this Assignment shall not operate to place upon Lender any responsibility for the operation, control, care, management or repair of the Premises, and the execution of this Assignment by Borrower shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Premises is and shall be that of Borrower prior to such actual entry and taking possession by Lender or by a receiver on behalf of Lender. In the event of any such entry into and taking possession of the Premises by Lender or by a receiver on behalf of Lender, Lender's or any receiver's, as the case may be, responsibility for the operation, control, care, management and repair of the Premises shall be strictly governed by the terms of the Loan Documents.

[SIGNATURES BEGIN ON FOLLOWING PAGE]





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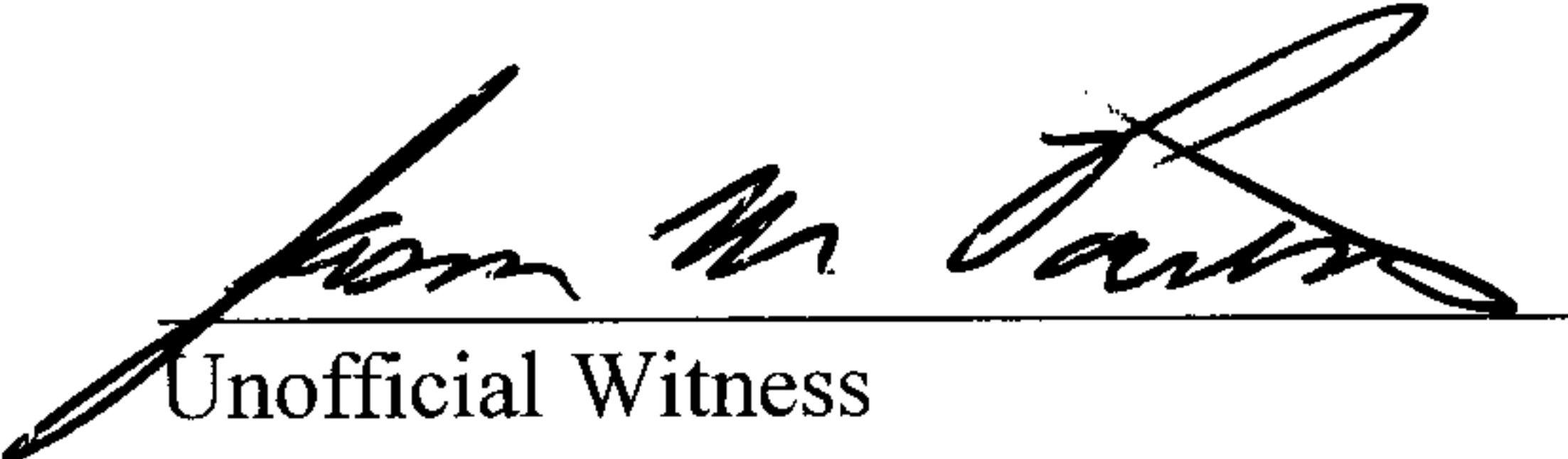


IN WITNESS WHEREOF, Borrower has executed this Assignment under seal as of the date and year first above written.

**BORROWER:**

**POWELL LAND INVESTMENTS, LLC,**  
a Georgia limited liability company


By:   
Chad V. Powell, Founding Member

  
Unofficial Witness

State of Georgia )  
County of Forsyth )

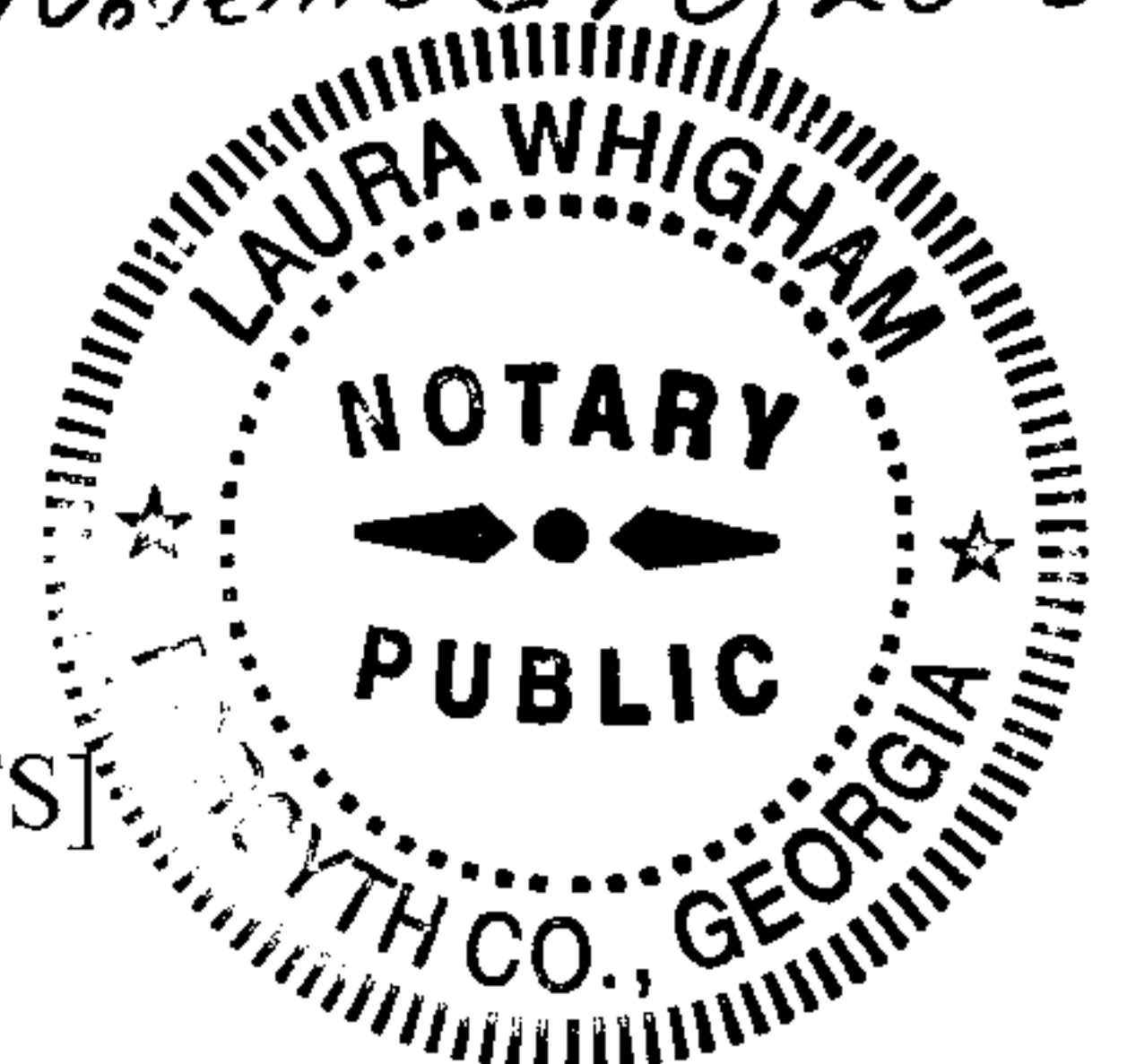
I, the undersigned Notary Public in and for said County, in said State, hereby certify that Chad V. Powell, whose name as Founding Member of POWELL LAND INVESTMENTS, LLC, a Georgia limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such Manager and with full authority, executed the same for and as the act of said limited liability company.

Given under my hand and official seal this 27 day of March, 2016.

  
NOTARY PUBLIC  
My Commission Expires: November 20, 2016

[NOTARY SEAL]

[SIGNATURE PAGE TO ASSIGNMENT OF LEASES AND RENTS]





## **SCHEDULE 1**

All present and/or future tenants under leases, either written or oral, of all or portions of Premises.



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**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lot 22, according to the Survey of Clayton's Addition to Oak Mountain Business Park Lots 22 and 23, as recorded in Map Book 30, Page 125, in the Probate Office of Shelby County, Alabama.

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