


This Instrument was prepared by:  
Patrick, Beard, Schulman & Jacoway, P.C.  
Suite 202, Market Court  
537 Market Street  
Chattanooga, Tennessee 37402

  
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Shelby Cnty Judge of Probate, AL  
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*(ABOVE SPACE FOR RECORDER'S USE)*

**ASSIGNMENT OF RENTS AND LEASES**

THIS ASSIGNMENT OF RENTS AND LEASES ("Assignment"), made as of the 25th day of May, 2016, is by and between HIGH POINT BIRMINGHAM, LLC, a Tennessee limited liability company, whose address is 219 Broad Street, Chattanooga, Tennessee 37402, (hereinafter called "Borrower"), and PINNACLE BANK whose address is 801 Broad Street, Chattanooga, Tennessee 37402, Attn: Richard E. Nelson (hereinafter called "Lender").

Borrower, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, transfer, assign, convey, set over and deliver unto Lender all right, title and interest of the Borrower in, to and under any existing leases and management agreements, concession agreements, licenses, and similar agreements together with any and all future leases and any and all management agreements, concession agreements, licenses, and similar agreements hereinafter entered into affecting the real estate described in Exhibit A attached hereto and made a part hereof (the "Property"), and all guarantees, amendments, extensions, modifications and renewals of such leases and management agreements, concession agreements, licenses, and similar agreements and any of them, and all rents, fees and deposits of every kind and character, and all receipts, revenues, awards, income and profits which may now or hereafter be or become due or owing on account of the use of the Property or otherwise arising out of or pertaining to the Property (all of which are hereinafter referred to as the "Leases").

This Assignment is made for the purposes of securing:

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THIS ASSIGNMENT OF RENTS AND LEASES SECURES ADVANCES MADE FOR COMMERCIAL PURPOSES.





(1) The payment of the Obligations (as that term is defined in the Loan Agreement by and between Borrower and Lender dated of even date herewith), including any amendments, extensions, modifications or renewals thereof, and also including, but specifically not limited to the Modified, Extended, Renewed and Restated Promissory Note in the amount of Five Million Thirty-Two Thousand Dollars (\$5,032,000.00) and it is evidenced by the Promissory Note in the amount of One Million One Hundred Forty Thousand Dollars (\$1,140,000.00) by and between Borrower and Lender dated of even date herewith (both notes shall hereinafter be collectively referred to as the "Note"), and as described in the Construction Loan Agreement of even date herewith between Borrower and Lender (the "Loan Agreement"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

(2) The payment of all other sums, with interest thereon, becoming due and payable to Lender under the provisions of the other Security Documents and any other instrument constituting security for the Obligations, including, without limitation, the other Loan Documents.

(3) The performance and discharge of each and every term, covenant and condition of Borrower contained in the Note, the Loan Agreement, and the other Loan Documents.

Borrower covenants and agrees with Lender as follows:

(1) The sole ownership of the entire lessor's interest in the Leases is vested in Borrower, and Borrower has not, and shall not, perform any acts or execute any other instruments which might prevent Lender from fully exercising its rights under any of the terms, covenants and conditions of this Assignment. The ownership of the fee simple title to the Property is vested in Borrower.

(2) Except as otherwise permitted by the Loan Agreement, no Leases (including any guaranties of such Leases), other than on the Borrower's standard lease form approved by Lender and in the ordinary course of business or any Lease to High Point Climbing, LLC, shall be entered into by Borrower without the prior consent of the Lender.

(3) Borrower upon request, from time to time, shall furnish to Lender information with respect to all leases, including but not limited to the name of the lessee, the amount of the lease payments, the term of the lease, a copy of the lease an accounting of all payments made by lessee and such other information as may be requested by Lender.

The parties further agree as follows:

(1) This Assignment is absolute and is effective immediately. Notwithstanding the foregoing, until a Default has occurred, Borrower may receive, collect and enjoy the rents, income and profits accruing from the Property.

(2) Following the occurrence of a Default, Lender may, at its option, without notice to Borrower, receive and collect all such rents, income, and profits as they become due, from the Property and under any and all Leases of all or any part of the Property. Lender shall thereafter continue to receive and collect all such rents, income and profits, as long as such Default shall exist, and during the pendency of any foreclosure proceedings, and if there is a deficiency, during any redemption period in accordance with this Assignment and the other Security Documents.



(3) Borrower hereby irrevocably appoints Lender its true and lawful attorney with full power of substitution and with full power for Lender in its own name and capacity or in the name and capacity of Borrower, from and after any Default not having been cured, to demand, collect, receive and give complete acquittances for any and all rents, income and profits accruing from the Property, and at Lender'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 Lender may deem necessary or desirable in order to collect and enforce the payment of the rents, income and profits. Lessees of the Property are hereby expressly authorized and directed to pay any and all amounts due Borrower pursuant to the Leases directly to Lender or such nominee as Lender may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made.

(4) From and after any Default, Lender is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper to enforce this Assignment and to collect the rents, income and profits assigned hereunder, including the right of Lender or its designee to enter upon the Property, or any part thereof, with or without force and with process of law, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Borrower relating thereto. Borrower hereby grants full power and authority to Lender to exercise all rights, power and authority herein granted at any and all times after any Default that has not been cured, without further notice to Borrower, with full power to use and apply all of the rents and other income herein assigned to the payment of the costs of managing and operating the Property and of any of the Obligations of Borrower to Lender, including but not limited to the payment of taxes, special assessments, insurance premiums, damage claims, the cost of maintaining, repairing, rebuilding and restoring the improvements on the Property or of making the same rentable, attorneys' fees incurred in connection with the enforcement of this Assignment, and of principal and interest payments due from Borrower to Lender on the Note and the other Loan Documents, all in such order as Lender may determine according to provisions of the Loan Documents. Lender shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or growing out of the covenants and agreements of Borrower in the Leases. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of the Property or leasehold interest therein, or parts thereof, upon Lender, nor shall it operate to make Lender liable for the performance of any waste of the Property by any lessee under any of the Leases or any other person, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger, or for any environmental hazard on the Property.

(5) Waiver of or acquiescence by Lender in any Default by the Borrower, or failure of the Lender to insist upon strict performance by the Borrower of any covenants, conditions or agreements in this Assignment, shall not constitute a waiver of any subsequent or other Default or failure, whether similar or dissimilar.

(6) The rights and remedies of Lender under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Lender shall have under the other Loan Documents, or at law or in equity.



(7) If any term of this Assignment, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

(8) Any and all notices, elections, or demands permitted or required to be made under this Assignment shall be in writing and shall be delivered in accordance with the Loan Agreement.

(9) The terms "Borrower" and "Lender" shall be construed to include the heirs, personal representatives, successors, and assigns thereof.

(10) This Assignment may not be amended, modified, or changed nor shall any waiver of any provision hereof be effective as against Lender, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification, or discharge is sought.

(11) Upon cancellation of record of the other Security Documents, this Assignment shall automatically and without further documentation or action on the part of the parties hereto, also be cancelled, terminated and be of no further or future force and effect.

(12) BORROWER AND LENDER EACH HEREBY WAIVE ITS RIGHT TO A TRIAL BY JURY REGARDING ANY DISPUTE UNDER THIS ASSIGNMENT TO THE SAME EXTENT AS SUCH RIGHT WAS WAIVED IN THE OTHER LOAN DOCUMENTS.

This Assignment shall be governed by the laws of the State of Tennessee and shall be subject to the jurisdiction and venue provisions as set forth in the Loan Agreement.

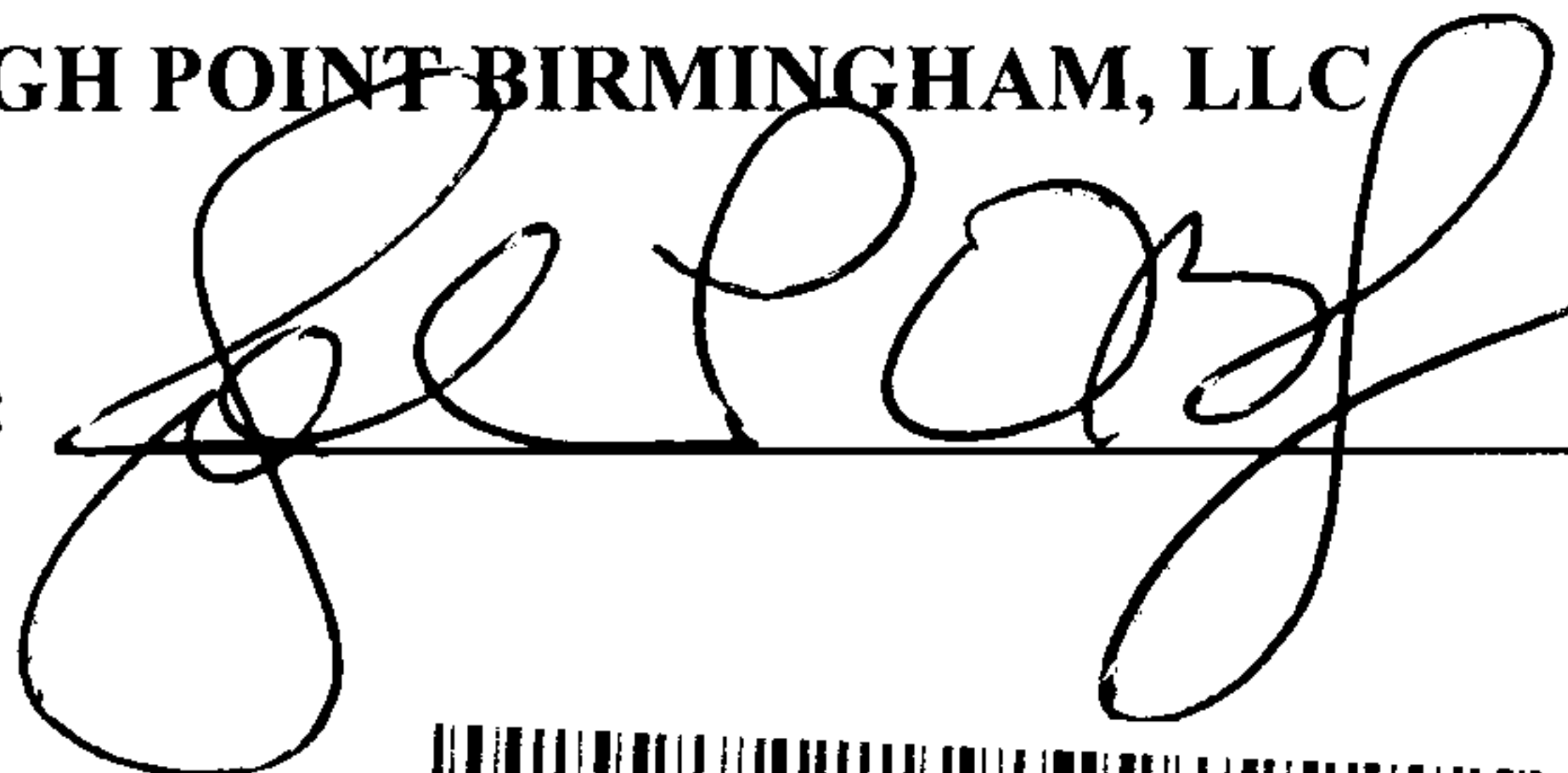
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IN WITNESS WHEREOF, Borrower has executed this Assignment as of the day and year first above written.


**BORROWER:**

**HIGH POINT BIRMINGHAM, LLC**

By: \_\_\_\_\_




STATE OF TENNESSEE           )  
  )  
COUNTY OF HAMILTON        )

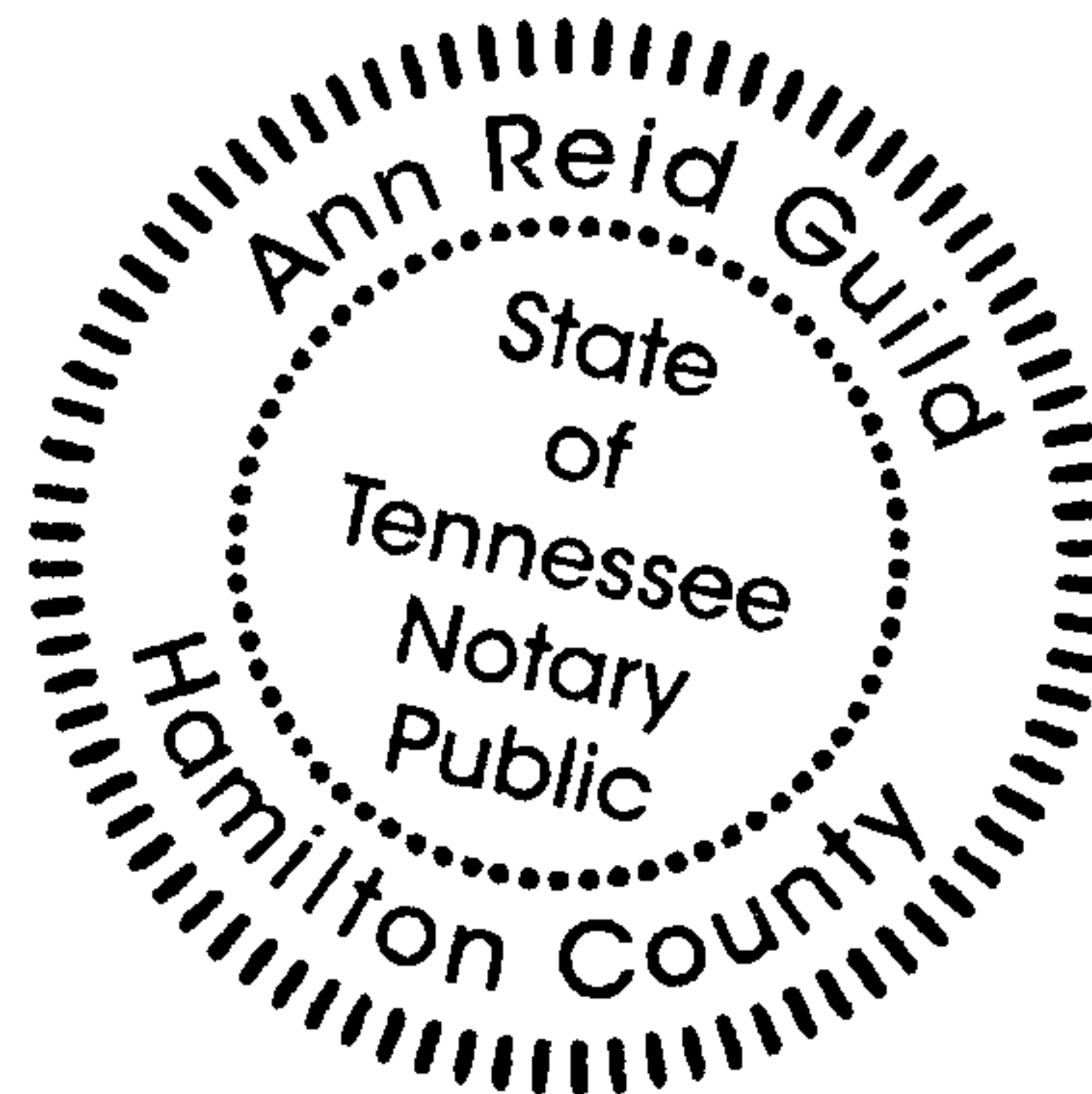
  
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Before me, the undersigned, a Notary Public of said County and State, personally appeared **John P. O'Brien, Jr.**, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself to be the manager of HIGH POINT BIRMINGHAM, LLC, a Tennessee limited liability company, the within named bargainor, and that he as such manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by personally signing the name of the limited liability company by himself as manager.

Witness my hand and seal, at Office, as of the 25<sup>th</sup> day of May, 2016.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 4/8/2018





**EXHIBIT A**



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**LEGAL DESCRIPTION**

Commence at the Northwest corner of the Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West and run South along the West line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  section to the Southwest corner of said Northwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West; thence 60 degrees 52 minutes to the left in a Southeasterly direction a distance of 536.00 feet to a point; thence 90 degrees 00 minutes to the left and run in a Northeasterly direction for a distance of 516.00 feet to the point of beginning; thence 70 degrees 30 minutes to the left and run in a Northwesterly direction for a distance of 304.00 feet to a point; thence 38 degrees 15 minutes to the left and run in a Northwesterly direction for a distance of 142.71 feet to a point on the Easterly right of way line of Dewberry Drive, said point being on a curve to the right, said curve having a radius of 160.00 feet and a central angle of 22 degrees 42 minutes 25 seconds; thence 108 degrees 34 minutes 46 seconds to the right (angle measured to tangent of said curve) and run in a Northeasterly direction in the arc of said curve to the right and along said right of way line for a distance of 63.41 feet to the P.C.C. (point of compound curve) of a curve to the right said curve having a radius of 250.52 feet and a central angle of 41 degrees 05 minutes 04 seconds; thence Northeasterly in the arc of said curve and along said right of way line for a distance of 179.63 feet to the P.T. (point of tangent) of said curve; thence Northeasterly in the tangent to said curve and along said right of way line for a distance of 50.00 feet to the P.C. (point of curve) of a curve to the left, said curve having a radius of 167.05 feet and a central angle of 67 degrees 25 minutes; thence Northeasterly in the arc of said curve to the left and along said right of way line for a distance of 196.55 feet to the P.T. (point of tangent) of said curve; thence Northeasterly in the tangent to said curve and along said right of way line for a distance of 69.37 feet to a point on the Southwesterly right of way line of U.S. Highway No. 280; thence 100 degrees 55 minutes 30 seconds to the right and run in a Southeasterly direction along said right of way line for a distance of 145.00 feet to a point; thence 7 degrees 07 minutes 30 seconds to the left and run in a Southeasterly direction along said right of way line for a distance of 12.90 feet to a point; thence 90 degrees 00 minutes to the right and run in a Southwesterly direction for a distance of 480.00 feet to the point of beginning.

Situated in Shelby County, Alabama. **NOW KNOWN AS:**

Lot 2, according to the Survey of Dewberry's Subdivision, as recorded in Plat Book 9, Page 11, in the Probate Office of Shelby County, Alabama.

Together with that non-exclusive right of way for ingress and egress as recorded in Real Volume 7, Page 461.