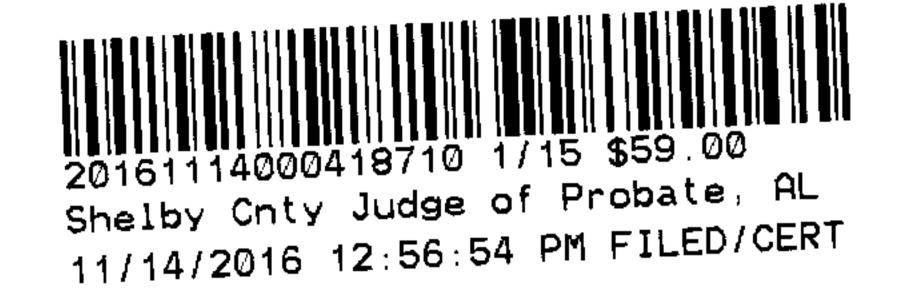
County Division Code: AL040
Inst. # 2016117753 Pages: 1 of 15
I certify this instrument filed on
11/8/2016 3:03 PM Doc: XFRL
Alan L.King, Judge of Probate
Jefferson County, AL. Rec: \$58.00

Clerk: NICOLE



Prepared by and after recording return to:

Damon P. Denney, Esq.
Burr & Forman LLP
420 North 20<sup>th</sup> Street, Suite 3400
Birmingham, Alabama 35203
(205) 251-3000

STATE OF ALABAMA )
COUNTIES OF JEFFERSON AND SHELBY )

#### ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS (this "Assignment"), is made as of November 7, 2016, by 201 OFFICE PARK, LLC, an Alabama limited liability company ("Office Park"), FIRST AVENUE DESIGN STUDIO, LLC, an Alabama limited liability company ("First Avenue"), DOUG BAKER CENTER, LLC, an Alabama limited liability company ("Doug Baker Center"), and 1805 MCCAIN, LLC, an Alabama limited liability company ("1805 McCain"; jointly and severally with Office Park, First Avenue and Doug Baker Center, "Assignors"), whose address is each 880 Montclair Road, Suite 250, Birmingham, AL 35213, as assignors, for the benefit of IBERIABANK, a Louisiana state-chartered bank, (together with any successors and assigns, "Lender"), as assignee and secured, whose address is 2340 Woodcrest Place, Birmingham, Alabama 35209.

#### RECITALS:

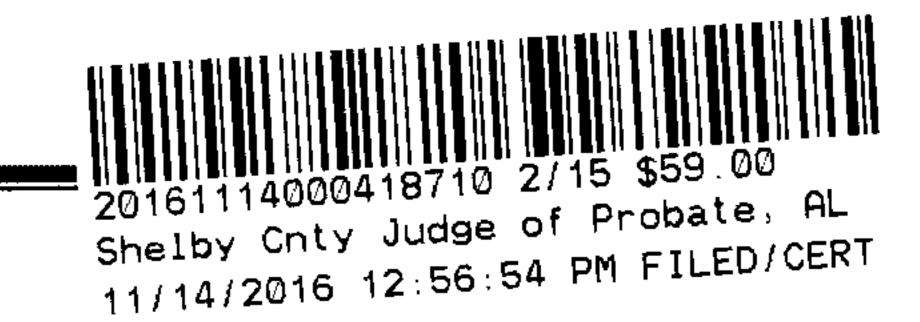
PORTFOLIO I, LLC, an Alabama limited liability company ("Holdco"; jointly and severally with Assignors, the "Borrowers") and Lender (the "Loan Agreement"), Lender has agreed to make a loan to Borrowers in the maximum principal amount of \$10,500,000.00 (the "Loan"), which Loan is evidenced by a Promissory Note of even date herewith executed and delivered by Borrowers to Lender in said amount (the "Note"). The Loan is secured in part by a Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing of even date herewith from Assignors to Lender (the "Security Instrument") encumbering the real property more particularly described in Exhibit A attached hereto and the improvements located thereon (collectively, the "Property") and, among other mortgaged property described in the Security Instrument, all buildings, structures (surface and subsurface), and other

improvements, fixtures, and equipment now existing or to be constructed or installed on the Property (the "Improvements;" the Improvements and Property are collectively referred to herein as the "Projects"). This Assignment, the Loan Agreement, the Note, the Security Instrument, and all such other documents now or hereafter evidencing, securing, or otherwise relating to the Loan, together with all extensions, modifications, replacements, renewals or amendments thereof, are collectively referred to herein as the "Loan Documents."

To induce Lender to make the Loan, Assignors have agreed to execute and deliver this Assignment as additional security for the payment of the Loan and the payment and performance of all Obligations (as hereinafter defined) of Borrowers under the Loan Documents.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as an inducement to Lender to make the Loan to Borrowers, Assignors hereby agree with Lender, and represent and warrant to Lender, as follows:

- Assignment. As security for the payment of the Loan, and the payment and performance of all other "Obligations" of Borrowers under and as defined in the Loan Agreement (including but not limited to all obligations under this Assignment, the Loan Agreement, the Note, and the other Loan Documents; collectively, the "Obligations"), each Assignor hereby sells, assigns, transfers, and sets over unto Lender, its successors and assigns, all of such Assignor's interest in and to each existing and future lease, sublease, rental agreement, or other occupancy agreement, whether oral or written and whether or not of record, for the use or occupancy of any portion of any Project, together with all amendments thereto and renewals and extensions thereof, and all guaranties with respect thereto, all default letters or notices, estoppel letters, rental adjustment notices, escalations notices, and other correspondence in regard thereto, and all credit reports and accounting records in regard thereto, as any such leases or agreements might hereafter be amended, extended, renewed, or supplemented with the consent of Lender as herein provided (collectively, the "Leases"), together with all rights, powers, privileges, options and other benefits of Assignors under the Leases, including, without limitation, the immediate and continuing right to make claim for, receive, and collect (and to apply the same to the payment of the Obligations) all rents (including all basic rent and additional rent), income, revenues, issues, profits, moneys, security deposits, and damages payable to or receivable by any Assignor under the Leases or pursuant to any of the provisions thereof (such rents, income, revenues, issues, profits, moneys, security deposits or damages, collectively, the "Rents"), including all Rents paid by a lessee, sublessee, tenant, subtenant, licensee, permittee, or other obligee under any of the Leases, and the right of each Assignor to enforce any guaranty of the Lease at any time existing.
- 2. <u>Absolute Nature of Assignment</u>. Assignors and Lender intend that this Assignment constitutes a present and absolute assignment of the Leases and Rents to Lender, subject to the license granted to Assignors pursuant to <u>Section 3</u> below. Notwithstanding such intend, if any future legislation shall provide, or a court of competent jurisdiction shall decree, that an assignment of leases and rents made in support of a commercial mortgage loan such as the Loan may not be absolute, then this Assignment shall be deemed amended retroactively to the minimum extent necessary to achieve compliance with applicable legal requirements.
- 3. <u>License to Collect and Use Rents</u>. Lender grants to Assignors a conditional license, subject to the Lender's rights under <u>Section 4</u> below, to collect the Rents. Each Assignor may use the Rents so collected for any lawful purpose which is consistent with the Borrowers' ongoing performance of its obligations under the Loan Documents, provided that (i) no Event of Default (as defined in the Loan Agreement) then exists and (ii) no Borrower intends to cause, nor has any reason to expect the occurrence



of, any Event of Default in respect of the Obligations due to be performed in the following calendar month. .

- 4. <u>Lender's Collection Option</u>. Upon and during the continuance of an Event of Default, the license granted to Assignors herein to collect the Rents will automatically terminate without notice, and Lender may, at its option, without waiving such Event of Default, without notice and without regard to the adequacy of the security for the Obligations, either in person or by agent or servicer, with or without bringing any action or proceeding, or by a receiver appointed by a court, enforce its interest in the Leases and Rents and take possession of the Property and have, hold, manage, lease, and operate the Property on such terms and for such period of time as Lender may deem proper, and either with or without taking possession of the Property, in its own name, demand, sue for, or otherwise collect and receive all Rents that are currently due or past due and unpaid. Each Assignor hereby authorizes and directs the lessees or any persons obligated under all Leases, upon notice from Lender of the occurrence of an Event of Default hereunder, to pay to Lender all Rents as the same become due. Any lessee or other person making such payment to Lender will be under no obligation to inquire into or determine the actual existence of any Event of Default claimed by Lender. Any Rents received or collected by Lender by virtue of this Assignment will be applied to the payment of the following in such order and proportion as Lender in its sole discretion may determine, any law, custom or use to the contrary notwithstanding:
  - (a) All reasonable and necessary expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees, and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents, and any other liens, and premiums for all insurance which Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs, or replacements permitted under the Leases, and all expenses incident to taking and retaining possession of the Property; and
    - (b) The Obligations, together with all costs and reasonable attorneys' fees.

In addition to the rights which Lender may have herein, upon the occurrence and during the continuation of an Event of Default, Lender, at its option, may either require Assignors to pay monthly in advance to Lender or the designee of Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of such part of the Property as may be in possession of any Assignor or may require Assignors or one or more of them to vacate and surrender possession of the Property to Lender or to such receiver and, in default thereof, Assignors or one or more of them may be evicted by summary proceedings or otherwise. For purposes of this paragraph, each Assignor grants to Lender and the designee of Lender its irrevocable power of attorney, coupled with an interest, to take any and all of the aforementioned actions and any or all other actions designated by Lender for the proper management and preservation of the Property, which power of attorney Lender agrees not to exercise unless and until the occurrence and during the continuation of an Event of Default. The exercise by Lender of the option granted it in this paragraph and the collection of the Rents and the application thereof as herein provided shall not be considered an accord and satisfaction of the Obligations (or any portion thereof) or a waiver of any Event of Default by any Assignor under the Loan Agreement, the Note, the Mortgage, the Leases, this Assignment, or any of the other Loan Documents.

5. <u>Covenants</u>. Each Assignor agrees to duly operate and maintain the Property and perform all requisites on its part to keep any and all Leases in full force and effect except as expressly permitted by the Loan Agreement. No Assignor will assign the Leases or the Rents, or any part thereof, to any other person, nor collect Rents under any Leases for a period further in advance than one (1) month or



except in the ordinary course of business without the written consent of Lender, nor do any other act whereby this Assignment may, in the opinion of Lender, be impaired in value or quality. Each Assignor represents that it has not, and agrees that it will not, enter into any fictitious lease or any lease for the purpose of avoiding creditors, and any attempt to do so will be void. Each Assignor agrees that, except as permitted by the Loan Agreement, no Assignor shall declare a default or exercise any claims, rights, or remedies under the Leases, or terminate, modify, amend, waive, or accept a surrender of, or offer or agree to any termination, modification, consent, amendment, waiver or surrender of, or give or withhold any consent with respect to, exercise any right or option or take any other action required or contemplated by, the Leases or any term or provision thereof.

- Assignors hereby agree to indemnify Lender for, and to save it Indemnification. 6. harmless from, any and all liability, loss, or damage that Lender might incur under any Leases or by virtue of this Assignment as a result of any act, or failure to act, prior to Lender becoming a mortgagee in possession and prior to foreclosure, and from any and all claims and demands whatsoever that might be asserted against Lender thereunder or hereunder. Without limiting the generality of the foregoing, each Assignor covenants that this Assignment will not operate to place responsibility for the control, care, management, or repair of the Property upon Lender, nor the carrying out of any of the terms and conditions of any Lease, nor will this Assignment operate to make Lender responsible or liable for any waste committed on the Property by the tenants or any other party, or for any negligence in the management, upkeep, repair, or control of the Property resulting in loss or injury or death to any tenant, licensee, invitee, employee, stranger, or other person. Any provision to the contrary in this Assignment notwithstanding, Assignors shall not be obligated to indemnity Lender with respect to any claims or demands arising from the willful misconduct or gross negligence of Lender from and after the date Lender takes possession of the Property through foreclosure, deed in lieu thereof, or by exercise of other remedy by Lender hereunder or pursuant to the Loan Documents.
- 7. <u>Duration</u>. This Assignment will remain in full force and effect so long as any of the Obligations remain unpaid.
- 8. <u>Document Protocols</u>. This Assignment is governed by the Document Protocols set forth in Article 11 of the Loan Agreement, which are specifically incorporated herein as if fully set forth herein.

[Assignors' signatures begin on the next page]

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Shelby Cnty Judge of Probate, AL 11/14/2016 12:56:54 PM FILED/CERT

IN WITNESS WHEREOF, Assignors have executed this instrument under seal effective as of the day and year first above written.

> 201 OFFICE PARK, LLC, an Alabama limited liability company

By: OWN ALABAMA PORTFOLIO I, LLC, an Alabama limited liability company Its Sole Member

Title: Authorized Member

By: Founders Investment Properties, LLC, an Alabama limited liability company

Its Manager

Printed Mame: Andrew L. Sink

STATE OF ALASAMA

COUNTY OF JEFFERSON

I, the undersigned Notary Public in and for said County, in said State, hereby certifies that Andrew L. Sink, whose name as Authorized Representative of Founders Investment Properties, LLC, an Alabama limited liability company, the sole Manager of Own Alabama Portfolio I, LLC, an Alabama limited liability company, the sole Member of 201 OFFICE PARK, 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 said instrument, he as such Authorized Representative and with full authority, executed the same voluntarily for and as the act of said limited liability company acting in its capacity as aforesaid.

Given under my hand and official seal, this 34 day of November, 2016.

Munal Merkerson McCavaly

Notary Public

My Commission Expires: 1.13.20

### FIRST AVENUE DESIGN STUDIO, LLC, an Alabama limited liability

By: OWN ALABAMA PORTFOLIO I, LLC, an Alabama limited liability company Its Sole Member

> By: Founders Investment Properties, LLC, an Alabama limited liability company

> > Its Manager

By: Printed Marne: Andrew L. Sink

Title: Xuthorized Member

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned Notary Public in and for said County, in said State, hereby certifies that Andrew L. Sink, whose name as Authorized Representative of Founders Investment Properties, LLC, an Alabama limited liability company, the sole Manager of Own Alabama Portfolio I, LLC, an Alabama limited liability company, the sole Member of FIRST AVENUE DESIGN STUDIO, LLC, an Alabama limited liability, 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 Authorized Representative and with full authority, executed the same voluntarily for and as the act of said limited liability company acting in its capacity as aforesaid.

Given under my hand and official seal, this 3rd day of November, 2016.

NOTARY

Notary Public
My Commission Expires: 1.13.20

Shelby Cnty Judge of Probate, AL

DOUG BAKER CENTER, LLC, an Alabama limited liability company

By: OWN ALABAMA PORTFOLIO I, LLC, an Alabama limited liability company Its Sole Member

By: Founders Investment Properties, LLC, an Alabama limited liability company

Its Manager

Title: Authorized Member

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned Notary Public in and for said County, in said State, hereby certifies that Andrew L. Sink, whose name as Authorized Representative of Founders Investment Properties, LLC, an Alabama limited liability company, the sole Manager of Own Alabama Portfolio I, 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 said instrument, he as such Authorized Representative and with full authority, executed the same voluntarily for and as the act of said limited liability company acting in its capacity as aforesaid.

Given under my hand and official seal, this 3d day of November, 2016.

NOTARY Seal Norial Seal States of the States

Merkerson McCurdy
Notary Public
My Commission Expires: 1.13.20

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Shelby Cnty Judge of Probate, AL 11/14/2016 12:56:54 PM FILED/CERT

1805 MCCAIN, LLC, an Alabama limited liability company

By: OWN ALABAMA PORTFOLIO I, LLC, an Alabama limited liability company Its Sole Member

> By: Founders Investment Properties, LLC, an Alabama limited liability company

> > Its Manager

By: Printed Mame: Andrew L. Sink

Title: Authorized Member

STATE OF ALABAMA

COUNTY OF JEFFERSON\_)

I, the undersigned Notary Public in and for said County, in said State, hereby certifies that Andrew L. Sink, whose name as Authorized Representative of Founders Investment Properties, LLC, an Alabama limited liability company, the sole Manager of Own Alabama Portfolio I, LLC, an Alabama limited liability company, the sole Member of 1805 MCCAIN, 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 said instrument, he as such Authorized Representative and with full authority, executed the same voluntarily for and as the act of said limited liability company acting in its capacity as aforesaid.

Given under my hand and official seal, this 30 day of November, 2016.

PUBLIC

Notary Public
My Commission Expires: 1,13.20

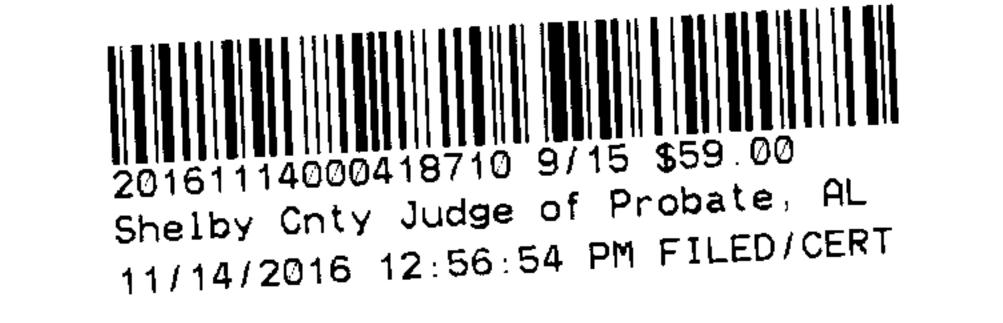
Shelby Cnty Judge of Probate, AL

### EXHIBIT A

### ASSIGNMENT OF LEASES AND RENTS

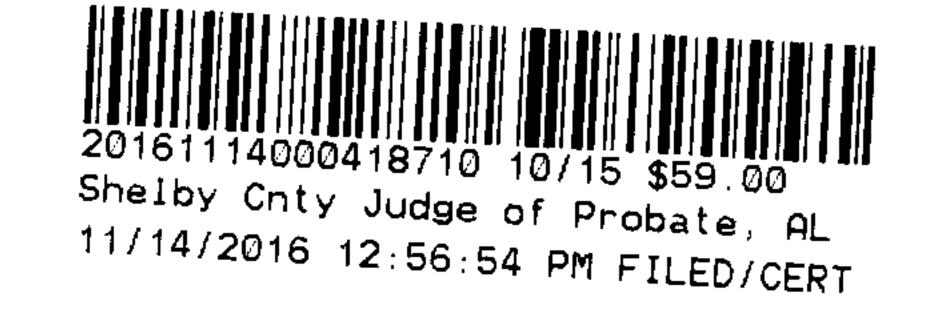
Legal Description

(SEE ATTACHED)



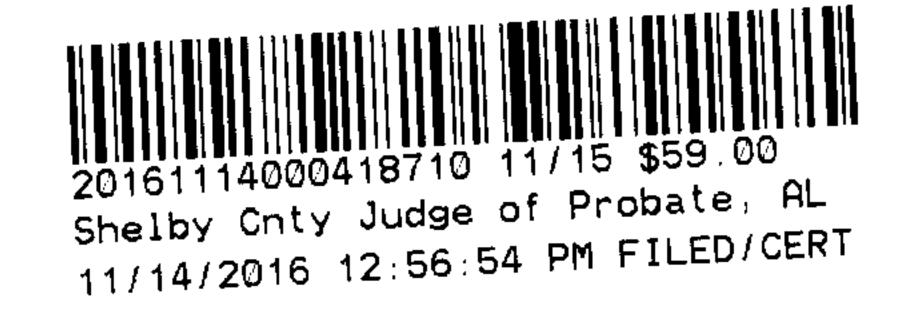
# EXHIBIT A-1 Office Park Legal

Lot 1, according to the Survey of First Addition to Office Park, as recorded in Map Book 80, Page 45, in the Probate Office of Jefferson County, Alabama, Birmingham Division.



# EXHIBIT A-2 First Avenue Legal

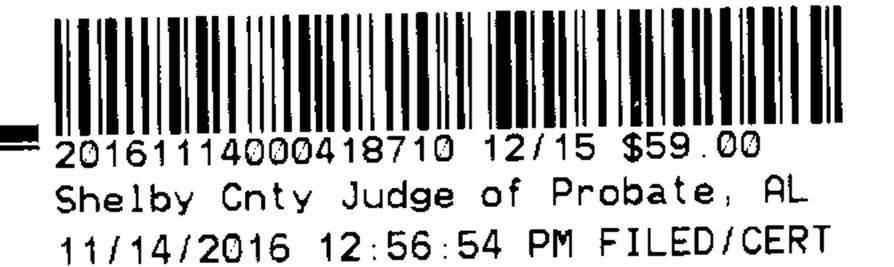
Lot 1, according to the Lakeview Land Resurvey Number 2, a Non-Residential Subdivision, as recorded in Map Book 216, Page 17, in the Probate Office of Jefferson County, Alabama.



## EXHIBIT A-3 Doug Baker Center Legal

Lot 3 of The Village at Lee Branch Sector 1 – Phase 2, as recorded in Map Book 33, page 58, being a resubdivision of Lot 5A of The Village at Lee Branch Sector 1 – Revision 1 as recorded in Map Book 31, pages 130A & 130B, in the Probate Office of Shelby County, Alabama, being more particularly described as follows:

Commence at an iron pin found at the Northeast corner of the Northeast quarter of the Southwest quarter of Section 5, Township 19 South, Range 1 West, Shelby County, Alabama; thence proceed South 88° 49' 06" West along the North line of said Northeast quarter of Southwest quarter for 66.55 feet to the Southwest corner of Lot 2 of "THE VILLAGE AT LEE BRANCH, SECTOR 1, REVISION 1" as recorded in Map Book 31, pages 43A and 43B in the Office of The Probate Judge, Shelby County, Alabama; thence proceed North 01° 10' 54" West along the West line of said Lot 2 for 119.95 feet to the Southeast corner of Lot 3A of "A RESUBDIVISION OF THE VILLAGE AT LEE BRANCH" as recorded in Map Book 31, pages 130A and 130B in the Office of the Judge of Probate, Shelby County, Alabama; thence proceed South 89° 04' 30" West along the South line of said Lot 3A for 180.92 feet to a point; thence proceed North 56° 26' 42" West along the Southwest line of said Lot 3A for 93.23 feet to a point of the Southerly right of way margin of Doug Baker Boulevard; thence proceed South 33° 33' 18" West along said Southerly right of way margin for 84.38 feet to a point at the beginning of a curve to the right, said curve being tangent to the last described course and having a central angle of 26° 21' 14", a radius of 537.50 feet and a chord which bears South 46° 43' 54" West for 245.06 feet; thence proceed Southwesterly along said Southerly right of way margin and along the arc of said curve for 247.23 feet to the POINT OF BEGINNING of the herein described parcel; thence leaving said Southerly right of way margin of Doug Baker Boulevard, proceed South 31° 05' 10" East for 30.50 feet to a point; thence proceed South 38° 02' 48" East for 32.43 feet to a point; thence proceed South 40° 50' 32" East for 119.19 feet to a point; thence proceed North 49° 09' 28" East for 66.50 feet to a point at the beginning of a curve to the right, said curve being tangent to the last described course and having a central angle of 90° 00' 00", a radius of 4.50 feet and a chord which bears South 85° 50' 32" East for 6.36 feet; thence proceed Easterly along the arc of said curve for 7.07 feet to the end of said curve; thence proceed South 40° 50' 32" East and tangent to the last described curve for 16.00 feet to a point; thence proceed North 49° 09' 28" East for 124.46 feet to a point at the beginning of a curve to the right, said curve being nontangent to the last described course and having a central angel of 04° 24' 48", a radius of 560.10 feet and a chord which bears North 32° 11' 48" East for 43.13 feet; thence proceed Northeasterly along the arc of said curve for 43.14 feet to a point at the beginning of a curve to the left, said curve being non-tangent to the last described curve and having a central angel of 78° 01' 30", a radius of 99.53 feet and a chord which bears North 05° 13' 13" West for 125.30 feet; thence proceed Northerly along the arc of said curve for 135.53 feet to the end of said curve; thence proceed North 46° 33' 26" West and non-tangent to the last described curve for 15.10 feet to a point at the beginning of a curve to the left; said curve being nontangent to the last described course and having a central angle of 08° 13' 03", a radius of 211.21 feet and a chord which bears North 52° 19' 56" West for 30.27 feet; thence proceed Northwesterly along the arc of said curve for 30.29 feet to the end of said curve; thence proceed North 56° 26' 42" West and tangent to the last described curve for 25.04 feet to a point; thence proceed South 33° 30' 26" West for 28.37 feet to a point; thence proceed North 56° 29' 34" West for 10.03 feet to a point; thence proceed North 70° 31' 43" West for 20.62 feet to a point on a curve to the right, said curve being non-tangent to the last described course and having a central angel of 15° 36' 23", a radius of 547.50 feet and a chord which bears South 41° 15' 30" West for 148.67 feet; thence proceed Southwesterly along the arc of said curve for 149.13 feet to a point; thence proceed North 42° 24' 14" West for 10.00 feet to a point on the Southerly right of way margin of Doug Baker Boulevard, said Southerly right of way margin being in a curve to the right, said curve begin non-tangent to the last described course and having a central angel of 10° 49' 11", a radius of 537.50 feet; and a chord which bears South 54° 29' 55" West for 101.35 feet;



thence proceed Southwesterly along the arc of said curve and along said Southerly right of way for 101.50 feet to the POINT OF BEGINNING.

### TOGETHER WITH THE FOLLOWING APPURTENANT RIGHTS:

Agreement of covenants, conditions and restrictions and grant of easements as recorded in Official Records Instrument No. 20040624000345530, as amended by that certain First Amendment to Agreement of Covenants, Conditions and Restrictions and Grant of Easements as recorded in Official Records Book 20130913000372210, in the Office of the Judge of Probate, Shelby County, Alabama.

Declaration of Easements and Restrictions as recorded in Official Records Instrument No. 20040601000288850, as amended in Official Records Instrument No. 20040624000345520, in the Office of the Judge of Probate, Shelby County, Alabama.

20161114000418710 13/15 \$59.00 Shelby Cnty Judge of Probate, AL 11/14/2016 12:56:54 PM FILED/CERT

## EXHIBIT A-4 1805 McCain Legal

One parcel of land located in the NE ¼ of Section 25, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows: Commence at the NE corner of the NE ¼ of said Section 25; thence S 0 deg-00'00" W along the east line of said Section a distance of 305.77'; thence N 88 deg-47'10" W a distance of 154.47'; thence S 0 deg-00'00" W a distance 139.65' to the POINT OF BEGINNING; thence continue along last described course a distance of 107.0'; thence S 45 deg-00'00" W a distance of 97.93'; thence S 0 deg-00''00" W a distance of 54.28'; thence N 88 deg-47'10" W a distance of 243.57' to the easterly R.O.W. line of McCain Parkway (50' R.O.W.); thence N 1 deg-32''02" E along said R.O.W. line a distance of 173.69' to the beginning of a curve to the right having a radius of 365.0' and a central angle of 4 deg-31'51" and subtended by a chord which bears N 3 deg-47'57" E a distance of 28.86'; thence along the arc of said curve and said R.O.W. line a distance of 28.86'; thence leaving said R.O.W. line N 85 deg-42'54" E a distance of 307.06' to the POINT OF BEGINNING. Containing 1.40 acres, more or less.



### EXHIBIT A-5 1805 McCain Legal

A parcel of land located in the NE ¼ of the NE ¼ of Section 25, Township 20 South, Range 3 West, Shelby County, Alabama, more particularly described as follows

Commence at the NE corner of the NE ¼ of said Section 25; Thence South 0 deg. 00 min. 00 sec. West along the east line of said Section a distance of 305.77 feet, thence North 88 deg. 47 min. 10 sec. West a distance of 154.47 feet to the Point of Beginning; thence North 0 deg 00 deg. 00 sec. East a distance of 40.75 feet; Thence North 88 deg. 47 min. 10 sec. West a distance of 233.99 feet to a point on the easterly right of way line of McCain parkway (50' R.O.W.), said point also lying on a curve to the right having a radius of 302.04 feet, a central angle of 14 deg. 08 min. 44 sec. and subtended by a chord which bears South 22 deg. 06 min. 20 sec. West a chord distance of 74.38 feet, thence along the arc of said curve and said right of way line a distance of 74.57 feet to the end of aforesaid curve and the beginning of a curve to the left having a radius of 365.00 feet, a central angle of 23 deg. 06 min. 49 sec. and subtended by a chord which bears South 17 deg. 37 min. 17 sec. West a chord distance of 146.25 feet; thence along the arc of said curve and said right of way line a distance of 147.24 feet; thence leaving said right of way line, North 85 deg. 42 min. 54 sec. East a distance of 307.06 feet; thence North 0 deg. 00 min. 00 sec. East a distance of 139.65 feet to the Point of Beginning.



Shelby Cnty Judge of Probate, AL 11/14/2016 12:56:54 PM FILED/CERT