

SBA Loan # 96546250-00

PREPARED BY AND WHEN RECORDED RETURN TO:

Jason E. Gilmore, Esquire  
Gordon, Dana & Gilmore, LLC  
600 University Park Place, Ste. 100  
Birmingham, AL 35209

STATE OF ALABAMA

COUNTY OF SHELBY

**ASSIGNMENT OF RENTS AND LEASES**

THIS ASSIGNMENT, made October 3, 2018, by Gooch Development, LLC, an Alabama limited liability company, having an office at 6807 Tattersall Way, Birmingham, AL 35242 (the "Assignor") to Birmingham City Wide Local Development Company, having an office at 1500 First Avenue North #12, Birmingham, AL 35203 (the "Assignee").

**WITNESSETH:**

WHEREAS, Assignor is the fee owner of that certain real property located at and known as 6807 Tattersall Way, Birmingham, AL 35242 and the improvements thereon and more particularly described in Exhibit A attached hereto (the "Property"); and,

WHEREAS, Assignee agreed to lend Assignor, under certain circumstances, the aggregate sum of One Million Four Hundred Fifty Nine Thousand and No/100 Dollars (\$1,459,000.00) (the "Loan"); and,

WHEREAS, Assignor has executed a certain note (the "Note") this date in the principal amount of \$1,459,000.00 to evidence the Loan, and Assignor has also executed a certain mortgage (the "Mortgage") in the principal amount thereof as security for the Loan, which Mortgage encumbers the Property; and,

WHEREAS, Assignee is unwilling to accept the Note as secured by the Mortgage unless Assignor makes, executes and delivers this Assignment.

NOW, THEREFORE, in consideration of the premises and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to better secure the payment to Assignee of (i) all monies which may be advanced, due and payable to Assignee under the Loan Documents (as such term is hereinafter defined), and (ii) all monies which may be advanced by Assignee on behalf of Assignor under the terms of the Loan Documents, Assignor hereby transfers, assigns and sets over to Assignee, its successors and assigns, from and after the date hereof (including any period allowed by law for redemption after any foreclosure or other sale), primarily and on a parity with the Property, subject to the interest of ServisFirst Bank by reason of its prior Assignment of Rents and Leases, all of Assignor's right, title and interest in and to (a) all leases, including subleases, guarantees, licenses, rental contracts and other agreements, including all rights under certain lease termination and

assignment agreements, relating to the occupancy now existing or hereafter entered into and affecting the Property or any part thereof, together with all guarantees, modifications, extensions and renewals thereof which now exist or may hereafter be made (collectively the "Leases"), and (b) all rents, issues, profits, income and proceeds due or to become due from tenants of the Property, including but not limited to, rentals under all present and future Leases, together with all deposits of tenants thereunder, including, without limitation, security deposits, now or hereafter held by Assignor in connection with the Property (collectively, the "Rents").

In connection with and as part of the foregoing assignment, Assignor hereby makes the following grants, covenants, agreements, representations and warranties:

1. Subject to the limitations set forth in paragraph 3 hereof, Assignee shall have the right, power and authority to take any and all actions which Assignee deems necessary or appropriate in connection with (a) entering upon, taking possession of and operating the Property; (b) leasing all or any part of the Property; and (c) collecting all or any of the Rents and enforcing the rights of the lessor under all or any of the Leases, including, without limitation, bringing, prosecuting, defending or settling legal proceedings against tenants. Notwithstanding anything herein to the contrary Assignee shall not be obligated to perform or discharge, and Assignee does not undertake to perform or discharge, any obligation, duty or liability with respect to the Leases or the Rents under or by reason of this Assignment. This Assignment shall not operate to place responsibility for the control, care, maintenance or repair of the Property upon Assignee, or to make Assignee responsible or liable for any waste committed on the Property by any tenant or other person, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property.

2. Subject to the limitations set forth in paragraph 3 hereof, Assignee shall have the right, power and authority to use and apply any Rents received hereunder (a) for the payment of any and all costs and expenses incurred in connection with enforcing or defending the terms of this Assignment or the rights of Assignee hereunder, and collecting any Rents; and (b) for the operation and maintenance of the Property and the payment of all costs and expenses in connection therewith including, without limitation, the payment of (i) rentals and other charges payable by Assignor under any ground lease affecting the Property, (ii) interest, principal or other amounts with respect to any and all loans secured by mortgages on the Property, including, without limitation, the Mortgage, (iii) taxes, assessments, water charges and sewer rents and other governmental charges levied, assessed or imposed against the Property or any part thereof, (iv) insurance premiums, (v) costs and expenses with respect to any litigation affecting the Property, the Leases or the Rents, (vi) wages and salaries of employees, commissions of agents and attorneys' fees, and (vii) fees, charges and expenses whatsoever relating to the Loan, and/or the Property. After the payment of all such costs and expenses and after Assignee shall have set up such reserves as it, in its sole discretion, shall deem necessary for the proper management of the Property, Assignee shall apply all remaining Rents collected and received by it to the reduction of the indebtedness secured by the Mortgage. Exercise or non-exercise by Assignee of the rights granted in this Assignment, or collection and application of Rents, by Assignee or its agent shall not be a waiver of any default by Assignor under this Assignment, the Mortgage, any note referred to therein or any other document or agreement relating thereto (the "Loan Documents"). Subject only to the provisions of Paragraph 8 hereof, no action or failure to act by Assignee with respect to any of the obligations of Assignor evidenced by the Loan Documents, to any security or guarantee given for the payment or performance thereof, or to any



other document or instrument evidencing or relating to such obligations, shall in any manner affect, impair or prejudice any of Assignee's rights and privileges under this Assignment or discharge, release or modify any of Assignor's duties or obligations hereunder. This Assignment is intended by Assignor and Assignee to create, and shall be construed to create, an absolute assignment to Assignee, subject only to the terms and provisions hereof, and not as an assignment as security for the performance of the obligations evidenced by the Loan Documents, or any other indebtedness of Assignor.

3. Assignor shall have a revocable license to collect and receive the Rents and to retain, use and enjoy such Rents. Such license may be revoked by Assignee, without notice to Assignor, upon the occurrence of (a) an Event of Default, as defined in the Note or Mortgage, or (b) a default, after notice by Assignee of its agreements and obligations under this Assignment. Unless and until such license is so revoked, Assignor agrees to apply the proceeds of Rents to the payment of debt service on the Property and of taxes, assessments, water rates, sewer rents, and to operation and maintenance charges relating to the Property which are due and payable at the time of collection of such proceeds of Rent before using such proceeds for any other purpose. Assignor shall (a) observe and perform faithfully every obligation which Assignor is required to perform under the Leases; (h) enforce, or secure the performance of, at its sole cost and expense, every obligation to be performed by the landlord and the (except in the prudent course of business) Lessees (hereinafter defined) under the Leases; (c) promptly give notice to Assignee of any notice of default received by Assignor from any Lessee under the Leases, and any notice of default given by Assignor to any and all Lessees, together with a copy of such notice; (d) not collect any Rents for more than one month in advance of the time when the same shall become due, or anticipate any payments under any of the Leases, except for bona fide security deposits not in excess of an amount equal to one (1) months' rent (notwithstanding the foregoing, some security deposits may be larger than one month's rent); (e) except with Assignee's prior written consent, not further assign any of the Leases or the Rents; (f) except with Assignee's prior written consent (other than in the prudent course of business), not waive, condone or in any manner discharge any tenants from their obligations under the Leases; (g) except with Assignee's prior written consent (other than in the prudent course of business), not cancel, abridge or accept surrender or termination of any of the Leases; (h) except with Assignee's prior written consent (other than in the prudent course of business), not modify or amend, by sufferance or otherwise, any of the Leases or any of the terms, provisions or covenants thereof; (i) comply with all laws, rules, orders, ordinances and requirements of all governmental authorities relating to the Property; (j) deliver copies of all Leases to Assignee; (k) appear in and defend against, at Assignor's sole cost and expense, any action or proceeding arising under, or in any manner connected with the Leases, the Rents or the obligations, duties or liabilities of the lessor, tenants or guarantors thereunder; (l) not enter into any new Lease in contravention of the provisions of the Mortgage or any other Loan Document; and (m) not violate any of the provisions of the Note, the Mortgage, or any of the other Loan Documents.

4. This Assignment shall continue in full force and effect until all sums due and payable under the Loan Documents shall have been fully paid and satisfied, together with any and all other sums which may become due and owing under this Assignment. At such time, this Assignment and the authority and powers herein granted by Assignor to Assignee shall cease and terminate, and Assignor shall assume payment of all unmatured or unpaid charges, expenses or obligations incurred or undertaken by Assignee, if any, in connection with the management of the Property.

5. Assignor hereby represents and warrants the following to Assignee: (a) to the best knowledge of Assignor, the Leases which now affect the Property are valid, subsisting and in full force and effect, and have been duly executed and unconditionally delivered by Assignor and, have been duly executed and unconditionally delivered by the tenants, subtenants, licensees and other occupants under such Leases (collectively, the "Lessees"); (b) Assignor has not executed or granted any modifications or amendments of the Leases either orally or in writing not previously exhibited to Assignee; (c) to the best of its knowledge, there are no defaults now existing under any of the Leases and, no event has occurred which, with the delivery of notice or the passage of time or both, would constitute a default or which would entitle the lessor under the Leases or the Lessees to cancel the same or otherwise avoid their obligations thereunder; (d) Assignor has not accepted advance rent under the Leases for more than thirty (30) days in advance of the time the same shall become due except for security deposits required under the Leases; and (e) Assignor has not executed an assignment or pledge of any of the Leases, the Rents or of its right, title and interest therein, except as provided in the Mortgage.

6. It is understood and agreed that nothing contained in this Assignment shall prejudice or be construed to prejudice the right of Assignee under any of the Loan Documents, without notice except as may be expressly provided for herein, to institute, prosecute and compromise any action which it would deem advisable to protect its interest in the Property, including, without limitation, an action to foreclose the Mortgage, and in such action, to move for the appointment of a receiver of the Rents, or prejudice any rights which Assignee shall have by virtue of any default under the Note, or the Mortgage, or any of the other Loan Documents. This Assignment shall survive, however, the commencement of any such action and shall continue in full force and effect in the event of any foreclosure action until a sale of the Property shall be had thereunder.

7. Assignee shall not in any way be liable to Assignor for any act done or anything omitted to be done to the Property, the Leases or the Rents by or on behalf of Assignee in good faith in connection with this Assignment except for the consequences of its own negligence or willful misconduct. Assignee shall not be liable for any act or omission of its agents, servants, employees or attorneys, provided that reasonable care is used by Assignee in the selection of such agents, servants, employees and attorneys, except if such acts or omissions are grossly negligent by Assignee. Assignee shall be accountable to Assignor only for monies actually received by Assignee pursuant to this Assignment.

8. In connection with the operation of the Premises, Assignor shall indemnify and hold Assignee harmless from and against any and all liability, loss, damage, cost or expense, including reasonable attorneys' fees, which it may incur under any of the Leases, or with respect to this Assignment other than any of such attributable to its acts and omissions or those of its employees, agents and contractors, including, but not limited to, its failure to apply Rents received by default as herein specified. In the event that Assignee incurs any such liability, loss, damage, cost or expense, the amount thereof, together with interest thereon from the date such amount was suffered or incurred by Assignee until the same is paid by Assignor to Assignee, at a rate equal to the interest rate payable under the Note, shall be payable by Assignor to Assignee immediately upon demand, or at the option of Assignee, Assignee may reimburse itself therefor out of any Rents collected by Assignee. Nothing contained herein shall operate or be construed to obligate Assignee to perform any of the terms, covenants or conditions contained in the Leases or otherwise to impose any obligation upon Assignee



with respect to any of the Leases. Rights of the Assignee granted in this Paragraph 8 are in addition to any indemnity granted elsewhere in this Assignment, the Loan Documents, or otherwise at law.

9. Upon request of Assignee, Assignor shall, at its sole cost and expense, execute and deliver to Assignee such further instruments as Assignee may deem necessary to effect this Assignment and the covenants of Assignor contained herein. Assignor, at its sole cost and expense, shall cause such further instruments to be recorded in such manner and in such places as may be required by Assignee.

10. Assignor shall pay all recording and filing fees in respect of this Assignment and any agreements, instruments and documents made pursuant to the terms hereof or ancillary hereto, as well as any and all taxes which may be due and payable on the recording of this Assignment and any taxes hereafter imposed on this Assignment. Should Assignor fail to pay the same, all such recording and filing fees and taxes may be paid by Assignee on behalf of Assignor and the amount thereof, together with interest at the rate provided for in the Note, from the date of payment through the date of reimbursement hereunder, shall be payable by Assignor to Assignee immediately upon demand, or at the option of Assignee, Assignee may reimburse itself therefor out of Rents collected by Assignee.

11. Failure of Assignee to avail itself of any of the terms, covenants and conditions of this Assignment shall not be construed or deemed to be a waiver of any of its rights hereunder. The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of but are in addition to, and shall not be affected by the exercise of, any other rights and remedies which Assignee shall have under or by virtue of law or equity, the Note, the Mortgage, or any of the other Loan Documents (collectively, the "Other Rights"). The rights and remedies of Assignee hereunder may be exercised concurrently with any of the Other Rights.

12. Nothing in this Assignment shall be construed to give any person other than Assignee and its successors and assigns any legal or equitable right, remedy or claim under this Assignment and this Assignment shall be held to be for the sole and exclusive benefit of Assignee and its successors and assigns.

13. All notices, demands, consents, approvals or requests made or given pursuant to this Agreement must be in writing and sent to the parties at their addresses and in the manner set forth in the Mortgage.

14. All of the representations, warranties, covenants, agreements and provisions in this Assignment by or for the benefit of Assignee shall bind and inure to the benefit of its successors and assigns.

15. This Assignment may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

16. This Assignment shall be governed by, construed and enforced in accordance with the laws of the State of Alabama.

17. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

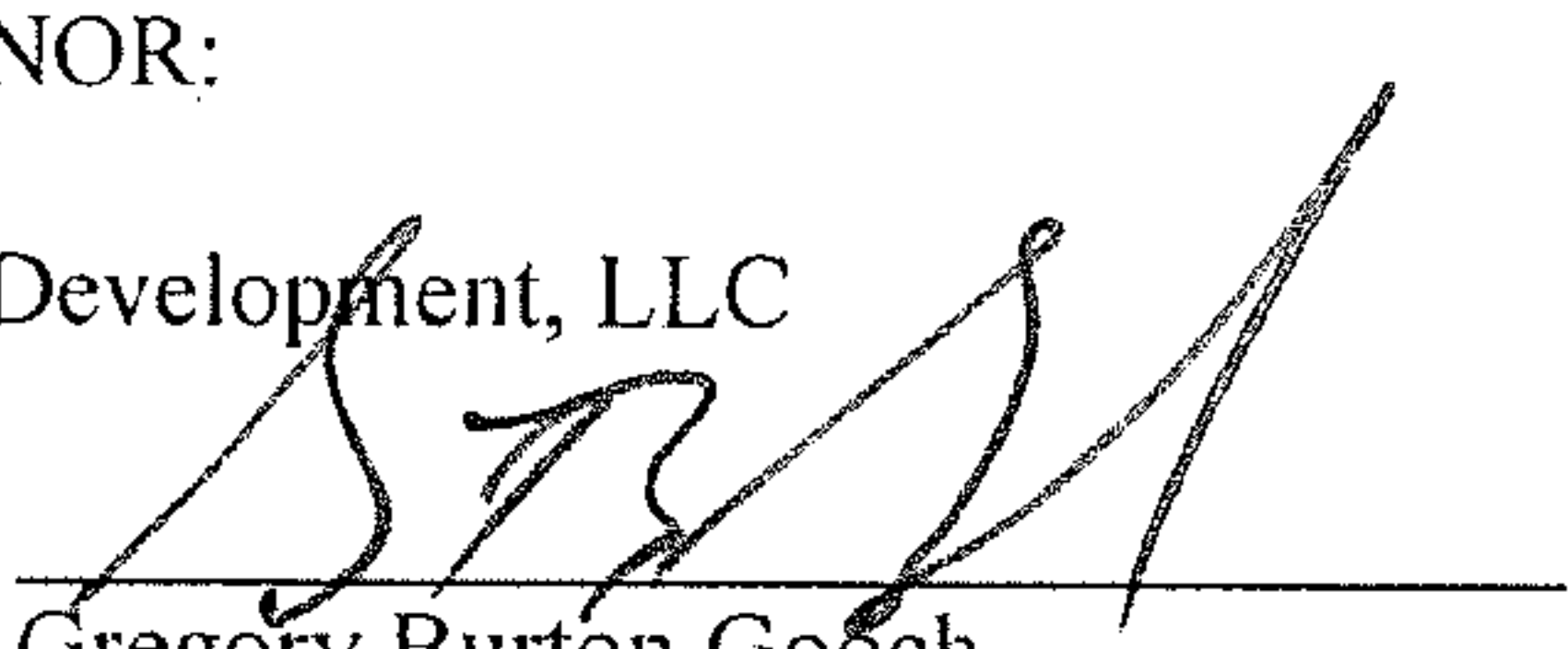
b) Birmingham City Wide Local Development Company or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No Borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

c) Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

ASSIGNOR:

Gooch Development, LLC

By:

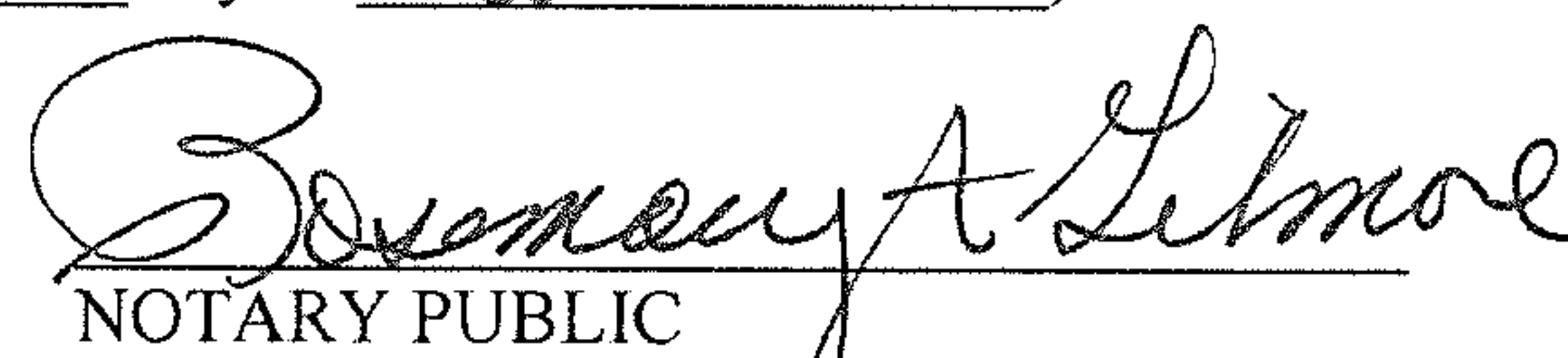
  
Gregory Burton Gooch  
Sole Member

STATE OF ALABAMA

COUNTY OF JEFFERSON

I, the undersigned Notary Public in and for said County, in said State, hereby certify that Gregory Burton Gooch, Sole Member of Gooch Development, LLC, an Alabama limited liability company, whose name is signed to the foregoing, and who is known to me, acknowledged before me on this day that, being informed of the contents of the foregoing, he, in his said capacity and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 3<sup>rd</sup> day of October, 2018.

  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_

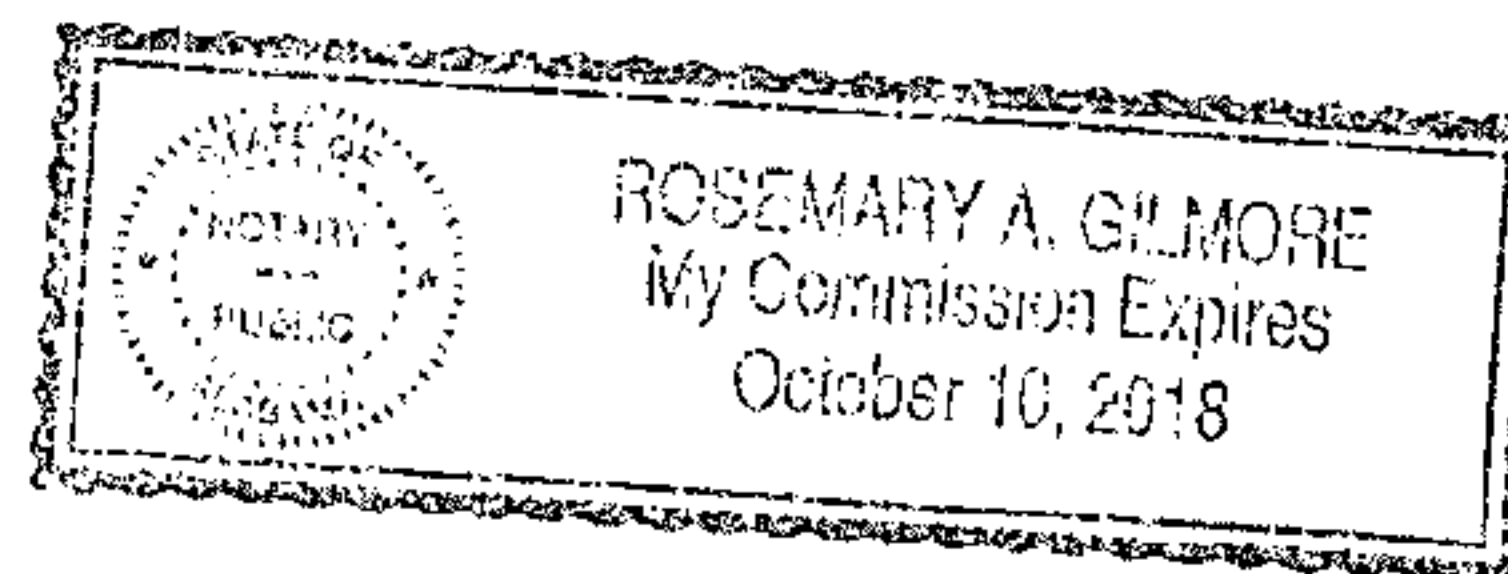


EXHIBIT A

Lot 2-B, according to the Survey of Tattersall Park Resurvey No. 1, as recorded in Map Book 48, page 8, in the Probate Office of Shelby County, Alabama.

TOGETHER WITH easement rights granted in that certain Access Easement dedicated in Map Book 48, page 8, in the Probate Office of Shelby County, Alabama.

TOGETHER WITH access and other easements and privileges set forth in Greystone Commercial Declaration of Covenants, Conditions and Restrictions as recorded in Real 314, page 506, First Amendment to Declaration as recorded in Instrument 1996-531, Second Amendment to Declaration as recorded in Instrument 1996-532, Third Amendment to Declaration as recorded in Instrument 2000-38942, Assignment of Developers as recorded in Instrument 2001-35832, Confirmation of Approval as recorded in Instrument 20020911000436060, Assignment of Developers rights as recorded in Instrument 20160512000163130, in the Probate Office of Shelby County, Alabama, including an access easement to that certain road lying between said Lot 2 and Lot 1 as shown on Map Book 14, page 79, and referred to as Greystone Way on Map Book 48, page 8.

TOGETHER WITH rights in and to easements granted in that certain Restrictive Use and Reciprocal Easement Agreement as recorded Instrument 20170921000343260, in the Probate Office of Shelby County, Alabama.



Filed and Recorded  
Official Public Records  
Judge of Probate, Shelby County Alabama, County  
Clerk  
Shelby County, AL  
10/04/2018 02:09:32 PM  
\$33.00 CHERRY  
20181004000355180

*Allen S. Bayl*