

THIS INSTRUMENT PREPARED BY:
BETHANY SNEED
HARRISON & GAMMONS, P.C.
2430 L & N Drive, Huntsville, AL 35801
256-533-7711 SC20209 (Montevallo)

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

ASSIGNMENT OF LEASES AND RENTS

THIS ASSIGNMENT OF LEASES AND RENTS made this the 7th day of October, 2020, by **THE BROADWAY GROUP, LLC, an Alabama limited liability company**, whose address is 216 West Side Square, Huntsville, Alabama 35801 (hereinafter sometimes referred to as “Assignor” and/or as “Borrower”) to **TRUSTMARK NATIONAL BANK, a national banking association**, whose address is 12050 County Line Road, Madison, Alabama, 35756 (hereinafter referred to as “Lender”);

WITNESSETH;

WHEREAS, Assignor as Borrower is justly indebted to Lender in the original principal amount of ONE MILLION THREE HUNDRED TWENTY THOUSAND AND NO/100 (\$1,320,000.00) DOLLARS (the “Loan”); and,

WHEREAS, to evidence and secure the Loan, Borrower has made, executed and delivered to Lender a secured note in the amount of the Loan (the “Note”), as may be modified, amended, supplemented, extended or consolidated in writing; and,

WHEREAS, to secure the Note, Borrower has executed a Real Estate Mortgage, Security Agreement and Notice of Fixture Filing dated of even date herewith in the amount of the Loan (the “Mortgage”) encumbering and creating a lien on Borrower’s interest in that certain real property located in the County of **SHELBY**, State of Alabama, as more particularly described in Exhibit “A” attached hereto and made a part hereof, including but not limited to the improvements now or hereafter thereon and the easements, rights and appurtenances thereunto belonging, all as more particularly described in the Mortgage and hereinafter called the “Premises”; and

WHEREAS, said Mortgage being recorded in Instrument No. 20201007000455300, in the records of the Office of the Judge of Probate of SHELBY County, Alabama; and,

WHEREAS, Assignor is now or may become in the future the lessor/landlord under certain lease agreements covering all or any portion of the Premises described in Exhibit "A" (the "Leases" or the "Lease Agreements"); and,

WHEREAS, a list of existing lease agreements regarding the Premises described in Exhibit "A", if any, are summarized on Exhibit "B" attached hereto and made a part hereto; and,

WHEREAS, Lender has required, as a condition to the making of the Loan hereinbefore described, the following assignment of the Assignor's interest in the Lease Agreements to more fully secure the payment and performance by Assignor as the Borrower of the Note executed in favor of Lender.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor agrees to the following terms and conditions:

1. ASSIGNMENT. Assignor does hereby absolutely and directly (and not merely collaterally) assign, bargain, sell, transfer, convey, set over and deliver unto Lender, all Assignor's present and future rights, title and interest as the lessor/landlord in and to the Leases and the Rents, together with all advance payments, security deposits and other amounts paid or payable to or deposited with the Assignor under any of the Leases, as well as all other leases, tenancies, rental arrangements, subleases, and guarantees of the performance or obligations of any tenants thereunder affecting the Premises, or any part thereof, now existing or which may be executed at any time in the future until payment in full of all principal, interest and other sums due under the Note, and all amendments, extensions and renewals of said leases, subleases, and guarantees and any of them, all of which are hereinafter sometimes called the "Leases," and all rents or other income or payments, regardless of type or source of payment (including but not limited to common area maintenance charges, lease termination payments, purchase option payments, refunds of any type, prepayment of rents, settlements of litigation or settlements of past due rents) which may now or hereafter be or become due or owing under the Leases, and any of them, or on account of the use of the Premises, all of which are hereinafter called the "Rents". It is intended hereby to establish a present and complete transfer and direct and absolute assignment of all the Leases and all rights of the lessor/landlord thereunder and all the Rents unto Lender, with the right, but without the obligation, to collect all of said Rents, which may become due thereunder. Assignor agrees to deposit with Lender copies of all Leases of all or any portion of the Premises.

2. DESCRIPTION OF LEASES: The Leases to which this Assignment shall apply shall include all of the Leases which have been hereinbefore specifically described, any additional Leases which may be in existence in and upon the above described Premises at the time of the execution of this Assignment, any new Leases in and upon the Premises which shall be entered into from and after the date of the execution of this Assignment, any Lease described on Exhibit "B", and all renewals, extensions, amendments, modifications, supplemental agreements or substitute Leases which may be entered into after the date of this Assignment which shall affect in any way the Leases herein described.

3. RENTS AND PROFITS: As a part of this Assignment, the Assignor does further assign, transfer and set over to the Lender all of the rents, issues, profits, accounts, revenues, receivables, assessments and other charges which are to be collected from the Leases, including those past due and unpaid. In addition, the Assignor hereby specifically authorizes the Lender, at the Lender's option and election, to enter upon the demised Premises set out in each such Lease for the purpose of collecting rents, operating and maintaining said demised Premises and performing all other acts necessary for the operation and maintenance of said demised premises. It is the intent of the Assignor hereunder to authorize the performance by the Lender of all acts with respect to the demised Premises under the Leases which the Assignor shall be entitled to perform under each of said Lease Agreements.

4. APPLICATION OF LEASE PROCEEDS BY LENDER: The Lender shall, after payment of all reasonable and proper charges and expenses, credit the net amount of income which it may receive by virtue of this Assignment to any amounts due the Lender from the Assignor or Borrower under the terms and provisions of the Note and the Mortgage. The manner of the application of such net income and the item to which such net income shall be credited shall be within the sole discretion of the Lender and the Lender shall apply such net income to any one or more of the following items in any order in its absolute discretion:

- (a) To current principal installments or to the unpaid principal balance of the Note;
- (b) To interest as it accrues on the indebtedness;
- (c) To taxes or special assessments which constitute a lien against the Lender's security;
- (d) To ground rentals, if any;
- (e) To any obligation of the lessor under the terms of any of the leases hereinbefore described or any obligation of the Lessor under the terms of its license agreement;
- (f) To cure any default under the terms of the Note or the Mortgage or the license agreement; or,
- (g) To any costs or expenses of executing the Mortgage and any advances secured thereby.

5. ASSIGNOR TO ACT AS AGENT OF LENDER: To facilitate the collection of rents and profits due under the said Leases and the performance of Lessor's covenants required to be performed under such Leases, the Lender hereby makes, constitutes and appoints the Assignor as its true and lawful attorney and evidences its consent and ratification of the appointment by its recording of this document. Lender hereby authorizes Assignor, on behalf of Lender, to ask, demand, collect and receive from all Leases under such Leases all rentals as they accrue under the terms and provisions of said Leases and to perform on behalf of Lender all of the other lease covenants required to be performed by the Lessor under such Leases. The Lender further authorizes the Assignor to receive such rentals and to give appropriate receipts therefore, to apply or expend such rentals in payment of any of the expenses of operation of the above described Premises (including the mortgage indebtedness thereon) and to apply or expend the balance of any such rentals in whatever manner such Assignor shall elect, and Lender hereby ratifies and confirms all that the said Assignor shall lawfully do pursuant to the exercise of the authority herein granted.

In the event of a default in any of the terms, provisions or conditions of this Assignment, the Note or the Mortgage, the Lender shall have the right to revoke such power of attorney, and Lender hereby reserves such right of revocation of this power of attorney. The Lender may revoke such power of attorney

in the event of such default by giving notice thereof to the Assignor, such revocation to be effective at such time as notice is given, whether such notice is communicated orally or in writing to Assignor. Any such revocation shall be effective with respect to the lessees under all such Leases at such time as the Lender shall give written notice of such revocation to such lessees at their respective demised premises. The Assignor agrees that a written demand on any lessee in or upon the demised premises by Lender for the payment of future rents directly to the Lender shall be prima facie evidence that a revocation of the aforesaid power of attorney has occurred and shall be sufficient notice to said lessee to make future rental payments to the Lender without the necessity of any consent by the Assignor. Any such lessee shall be entitled to rely upon such written demand, and any rent so paid by such lessees to the Lender shall not be further recoverable by the Assignor from any such lessee.

6. LEASE WARRANTIES AND COVENANTS BY ASSIGNOR: With respect to each of the Leases herein assigned, Assignor hereby covenants and warrants the following:

- (a) That Assignor is the owner of the fee simple estate in the above described property and has full right and power to enter into such Lease Agreements;
- (b) That the above described Leases have been properly executed by the proper parties;
- (c) That all of the terms, provisions and conditions of each of the Lease Agreements hereinbefore specifically described are presently in full force and effect and that there are no present defaults in the performance of any of such terms and conditions;
- (d) That the Assignor has not executed a prior assignment of said Leases or rentals due thereunder which remains in full force and effect;
- (e) That the Assignor has not performed any acts or executed any instruments which might prevent the Lender from operating any of the terms or conditions of this Assignment and agreement or which would limit the Lender in such operation;
- (f) That the Assignor has not executed or granted any modification or amendment of any of the Leases hereinbefore specifically set out except as specifically enumerated herein;
- (g) That all of the said Leases hereinbefore specifically enumerated are in full force and effect according to their original terms;
- (h) That the Assignor has not collected or anticipated any rentals from any of the lessees under said Leases for a period of time in excess of one month prior to the accrual of such rental;
- (i) That the Assignor will, at the Assignor's sole cost and expense, appear in and defend any action growing out of or in any manner connected with any of the assigned Leases or the obligations or liabilities of the lessor, lessee or guarantor thereunder;
- (j) That the Assignor will fulfill or perform each and every lease covenant which is required to be fulfilled or performed by the lessor thereunder;
- (k) That the Assignor will give prompt notice to the Lender of any notice of default given by any lessee under any of the assigned Leases to the Assignor as lessor under such Lease, such notice to include a complete copy of any such lessee's notice which shall have been given;
- (l) That the Assignor will enforce at its sole cost and expense, short of termination of the Lease, the performance or observance of each and every covenant and condition required under the assigned Leases to be performed or observed by the lessees thereunder;
- (m) That the Assignor will not modify nor in any way alter the terms of any of the assigned

Leases;

- (n) That the Assignor will not terminate the term of any assigned Lease nor accept a surrender thereof unless required to do so by the terms of the Lease;
- (o) That the Assignor will not anticipate the rents or other amounts payable under such assigned Leases for a period of time greater than thirty (30) days prior to accrual;
- (p) That the Assignor will not waive or release any of the lessees under the assigned Leases from any obligation or conditions required to be performed by such lessees under the Leases; and
- (q) That the Assignor will not consent to an assignment of the lessee's interest in any of the said Leases or to a subletting under any such Lease.

It is expressly understood and agreed, however, that the Assignor may violate any of the preceding covenants or warranties without such violation constituting a default hereunder, if such Assignor shall first obtain the prior approval or consent of the Lender in writing.

7. DEBTS SECURED; TERMINATION OF ASSIGNMENT: This Assignment is made for the purpose of securing the following:

- (a) The payment of the indebtedness evidenced by the Note as set out therein, together with any and all extensions, modifications and renewals thereof.
- (b) The payment of all other sums, with interest thereon, becoming due and payable under the provisions of the Note or under the provisions of the Mortgage, and each and every other debt, liability and obligation of every nature, whether now existing or henceforth incurred or arising, and whether direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, that Assignor (or any of them if more than one Assignor) might now or at any time hereafter owe to Lender, whether individually or jointly with others.
- (c) The performance and discharge of each and every obligation, covenant and agreement of Assignor contained in this Assignment and in the Note or the Mortgage.

Upon the payment in full of all indebtedness secured hereby, this Assignment shall be void and of no further effect, and the release of the Mortgage executed in favor of Lender with respect to the Premises shall constitute a release of this Assignment. For purposes of determining the remaining unpaid portion of such debt or debts, the Assignor agrees that the affidavit, certificate, letter or statement of any officer or authorized agent of the Lender showing any part of said indebtedness to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may and is hereby authorized to rely thereon.

8. LENDER'S PERFORMANCE OF LESSOR'S OBLIGATIONS: The Assignor agrees that the Lender may at any time, at its option (but without obligation to do so and without requirement of notice to or demand of the Assignor and without releasing the Assignor of any obligation herein or under the assigned leases), make, perform or do any act which is required herein to be performed by the Assignor, including specifically but without limitation the right to appear in and defend any action purporting to affect the security hereof or the rights or powers of the Lender and the right to perform any obligations of the

lessor contained in any of the assigned leases; and the Assignor further agrees that the Lender in exercising any such powers, may pay all necessary costs and expenses, may employ counsel, and may pay therefore reasonable attorney's fees, for all of which the Assignor will immediately upon demand reimburse all such sums expended by the Lender pursuant to such authority, such reimbursement to Lender to include the full sum expended together with interest thereon at the rate of seventeen (17%) percent per annum. Any such reimbursement shall be added to the indebtedness secured by this Assignment and shall be secured hereby and by the Mortgage.

9. ACCELERATION OF MATURITY: The Assignor understands and agrees that in the event Assignor shall fail to perform any of the covenants herein agreed to be performed, or in the event any of the warranties herein made are false or incorrect, or in the event Assignor otherwise defaults in any of the terms or provisions of this Assignment, the Lender as the holder of the Note may, at Lender's option, accelerate the maturity of the Note and declare the entire principal balance of the Note, together with all accrued interest and other amounts owing pursuant to this Assignment or the Mortgage, immediately due and payable.

10. DEFAULT: The Assignor agrees that in the event Assignor defaults in the payment of said indebtedness or in the performance of any of Assignor's obligations or covenants contained herein or in the Note or the Mortgage, the Lender may, at Lender's option, without notice (and irrespective of whether declaration of default under any Mortgage has been delivered to the Mortgagee thereunder) and without regard to the adequacy of the security for the indebtedness hereby secured, either in person or by agent with or without bringing any action or proceeding, or by a receiver to be appointed by a Court, take any of the following actions:

- (a) Enter upon, take possession of, and operate the premises;
- (b) Make, enforce, modify and accept the surrender of Leases;
- (c) Obtain and evict tenants;
- (d) Fix or modify rents;
- (e) Perform any acts which the Lender deems proper to protect the security hereof until all indebtedness secured hereby is paid in full; and
- (f) Sue for or otherwise collect and receive in its own name all rents, issues and profits, including those past due and unpaid and apply the same less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby in such order as the Lender may determine.

Any income received from the premises by the Lender in excess of the amount necessary to meet all obligations of the Assignor secured hereby, including any accelerated indebtedness, and of the amount estimated by the Lender to be necessary to meet such obligations for the subsequent six (6) months' period shall be paid over by the Lender to the Assignor promptly after the expiration of each six (6) months' period following the date of such entry. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the applications thereof as aforesaid shall not be deemed to cure or waive any default or to waive, modify or affect any notice of default given under the Note or the Mortgage or to invalidate any act done pursuant to any such notice.

11. COORDINATION WITH OTHER LOAN DOCUMENTS: Nothing herein contained and no act done or omitted by Lender pursuant to the powers and acts granted herein shall be deemed to be a waiver by Lender of any of its rights and remedies under the Note or the Mortgage, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by the Lender under the terms hereof. The right of the Lender to collect said indebtedness and to enforce any other security therefore owned or held by it may be exercised by the Lender either prior to, simultaneously with, or subsequent to any action taken hereunder. The remedies provided by this instrument shall be cumulative of and in addition to those provided in the Note and Mortgage, and Lender shall have the right to elect and enforce any remedy under this Assignment, whether or not it is proceeding simultaneously under any other remedy provided for under the Note, the Mortgage, or any other collateral loan document securing the Note.

12. NON LIABILITY OF LENDER: The Lender shall not be obligated to perform or discharge any obligation under the lease, or under or by reason of this Assignment, and the Assignor hereby agrees to indemnify the Lender against and hold it harmless from any and all liability, loss or damage which it may or might incur under the Lease or under or by reason of this Assignment and of and from any and all claims, and demands whatsoever which may be asserted against Lender by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms of the Lease; should the Lender incur any such liability, loss or damage under the lease or under or by reason of this Assignment, or in defense against any such claims or demands, the amount thereof, including costs, expenses and reasonable attorney's fees, together with interest thereon at seventeen (17%) percent per annum, shall be secured hereby and by the Mortgage, and the Assignor shall reimburse the Lender therefore immediately upon demand. Nothing herein contained shall be construed as making Lender, or its successors and assigns, a mortgagee in possession or a joint venturer, nor shall it or its successors or assigns be liable because of laches or for failure to collect any of the rents, issues, profits, revenues, rights and benefits, it being expressly understood and agreed by the Assignor that the Lender shall only be required to account for such sums as are actually collected by Lender.

13. SUCCESSORS AND ASSIGNS: If Assignor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall inure to the benefit of the successors and assigns of the Lender and shall bind the Assignor's successors and/or heirs and assigns.

14. NOTICES: All notices provided for or permitted hereunder will be in writing and will be deemed to have been duly given upon (a) the date of personal delivery, (b) if sent by United States registered or certified mail, with postage prepaid, as indicated by the return receipt, (c) the date of receipt of such notice if sent by a nationally recognized express courier delivery service, or (d) the date transmitted by facsimile transmission with evidence of confirmation prior to 5:00 p.m., Central Standard Time on the date sent, otherwise the next business day following evidence of such confirmation, and addressed or sent to the parties as set forth on page 1 of this Assignment. Such addresses for the parties may be changed from time to time by either party by serving notice as herein provided.

15. CHOICE OF LAW: This Assignment shall be governed, construed, applied and enforced in accordance with the laws of the State of Alabama and the applicable laws of the United States of America.

16. **CAPTIONS AND INTERPRETATIONS:** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Agreement or any provision hereof.

17. **NUMBER AND GENDER:** Whenever the singular number is used herein and when required by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and the word "person" shall include a corporation, limited liability company, firm, partnership, joint venture, trust or estate.

18. **SEVERABILITY:** In the event that any condition or covenant herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Assignment and shall in no way affect any other covenant or conditions herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

19. **WAIVER OF JURY TRIAL:** By execution hereof, Assignor hereby knowingly, voluntarily and intentionally waive any right the Assignor may have to a trial by jury in respect to any litigation, action, or proceeding based hereon, or arising out of, under or in conjunction with the Note, the Mortgage, this Assignment, or any other loan documents or any other agreement contemplated to be executed in connection herewith, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of either party.

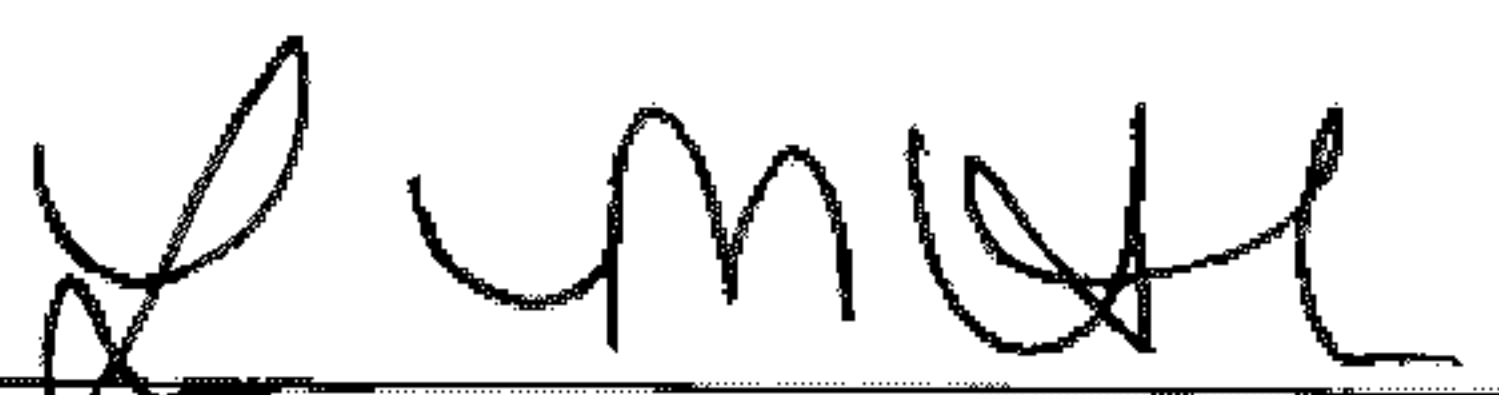
IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed on the day and year first above written.

[Remainder of Page Intentionally Left Blank. Signatures to Follow.]

ASSIGNOR:

THE BROADWAY GROUP, LLC, an Alabama
limited liability company

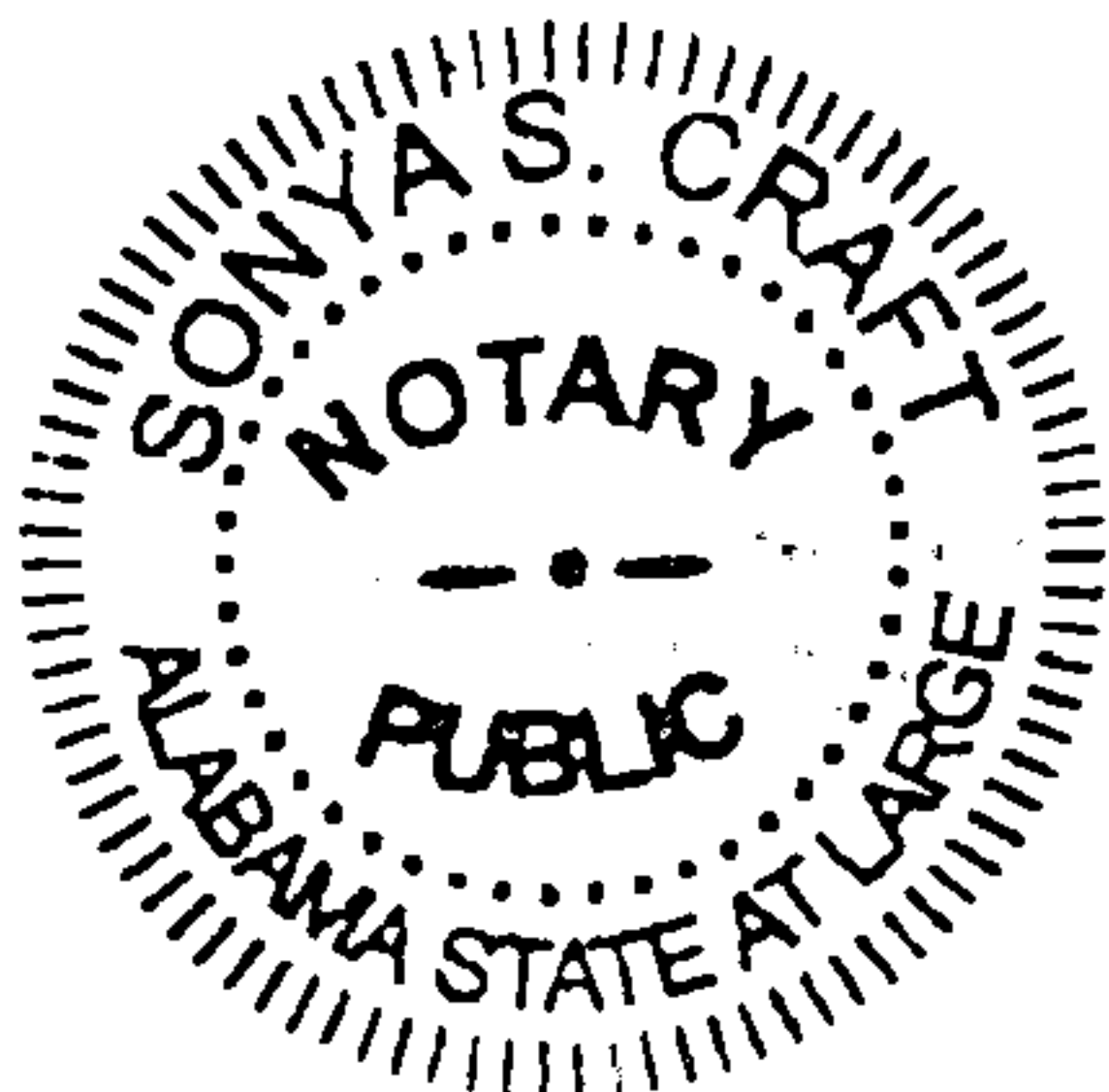
BY: BROADWAY MANAGEMENT, LLC, an
Alabama limited liability company, Its Manager

By:  (SEAL)
Lisa M. Hawkins, Authorized Agent

STATE OF ALABAMA)
 :
COUNTY OF MADISON)

I, the undersigned, a Notary Public in and for said county and in said state, hereby certify that, **LISA M. HAWKINS**, whose name as Authorized Agent of BROADWAY MANAGEMENT, LLC, an Alabama limited liability company in its capacity as Manager of THE BROADWAY GROUP, LLC, an Alabama limited liability company is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that being informed of the contents of the conveyance, she, as such Authorized Agent, and with full authority, executed the same voluntarily for and as the authorized acts of said entities on the day the same bears date.

Given under my hand and seal of office this the 7th day of October, 2020.



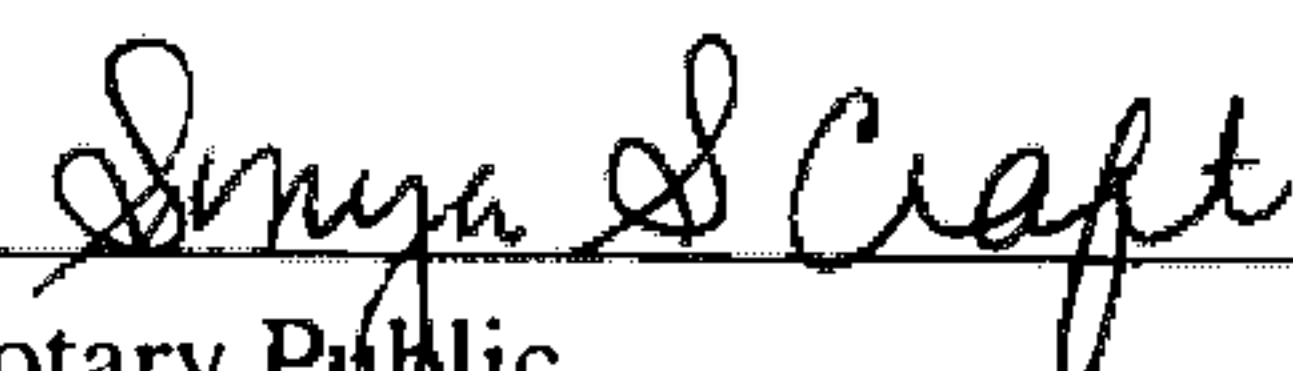

Notary Public
My Commission Expires: 9/6/2022

EXHIBIT "A"

Legal Description

STATE OF ALABAMA
COUNTY OF SHELBY

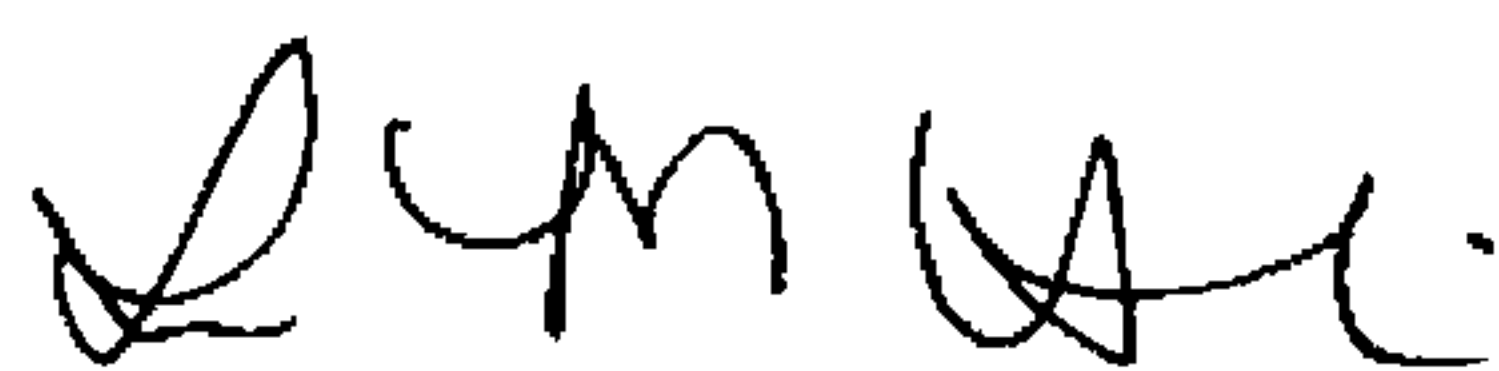
THAT CERTAIN LOT OR SQUARE OF LAND LYING SOUTH OF AND ADJOINING THE DEPOT GROUNDS OF THE SOUTHERN RAILWAY HERETOFORE KNOWN AS AND CALLED THE S. H. MCCAULEY HOME LOT; THE SAME MEASURING 275 FEET, MORE OR LESS, ALONG SAID DEPOT GROUNDS AND RUNNING BACK 310 FEET, MORE OR LESS; THE SAME BEING SITUATED IN THE TOWN OF MONTEVALLO, AND IN THE SW $\frac{1}{4}$ OF THE NW $\frac{1}{4}$ OF SECTION 3, TOWNSHIP 24, RANGE 12 EAST AND BEING THE SAME PROPERTY CONVEYED TO JOHN T. MCGAUGHY BY FANNIE C. MCDONOUGH AND JOHN W. MCDONOUGH BY DEED DATED 1ST DAY OF SEPTEMBER, 1910; ALSO BEING KNOWN AS BLOCK 7 ACCORDING TO MAP OF S. D. BROWN. LESS AND EXCEPT THAT PORTION CONTAINED IN ALABAMA 25 RIGHT-OF-WAY.

EXHIBIT "B"

All contract rights and leases, now existing or hereafter executed on the property described on Exhibit "A", contracts for engineering work, contracts for construction of improvements and utilities, all drawings, plans and specifications described in said engineering or construction contracts, all permits executed or acquired in connection with the acquisition and development of the property, together with any changes, additions, extensions, revisions, modifications thereof pertaining to the property more particularly described on Exhibit "A" attached hereto and made a part hereof by reference, together with any other such agreements concerning the use and occupancy by third parties of any part of the property described on Exhibit "A", including all renewals, extensions, amendments, supplement agreements or substitutions thereof.

THE BROADWAY GROUP, LLC, an Alabama
limited liability company

BY: BROADWAY MANAGEMENT, LLC, an
Alabama limited liability company, Its Manager

By:  (SEAL)
Lisa M. Hawkins, Authorized Agent



Filed and Recorded
Official Public Records
Judge of Probate, Shelby County Alabama, County
Clerk
Shelby County, AL
10/07/2020 02:08:50 PM
\$52.00 CHERRY
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Allen S. Bayl