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**ATTORNMEN, SUBORDINATION AND NON-DISTURBANCE AGREEMENT**

**THIS AGREEMENT** made this 23 day of March, 1994, by and among:

**MORTGAGEE:** SouthTrust Bank of Alabama, National Association  
P. O. Box 2554  
Birmingham, Alabama 35290

**LESSEE:** Shelby County Health Care Authority  
d/b/a Shelby Medical Center  
P. O. Box 488  
Alabaster, Alabama 35007

and

**OWNER:** SMCMOB, L.L.C.  
c/o Starr Sanders Johnson  
One Chase Corporate Drive  
Suite 450  
Birmingham, Alabama 35244

**WHEREAS:**

(1) SMCMOB, L.L.C. ("Owner") is the owner of a leasehold interest in the property described in Exhibit A attached hereto and incorporated herein by reference (the "Property") pursuant to a Ground Lease between Owner and Shelby County Health Care Authority d/b/a Shelby Medical Center dated as of January 1, 1994;

(2) SouthTrust Bank of Alabama, National Association ("Mortgagee") has made a loan (the "Loan") to Owner, and such Loan is secured by a Leasehold Mortgage/Mortgage and Security Agreement on all of Owner's interest in the Property (the "Mortgage");

(3) By Building Lease Agreement dated as of January 1, 1994, (the "Lease"), the Owner, as Lessor, leased to Shelby County Health Care Authority d/b/a Shelby Medical Center (the "Lessee") a portion of the Property or the improvements located thereon ("Leased Premises") for a term of fifteen (15) years [with two (2) options to extend said lease term for additional periods of five (5) years each so that the total or aggregate number of possible lease years under said Lease is a total of twenty-five (25) years], at the rental and upon the terms and conditions set forth in said Lease;

(4) Mortgagee desires to assure the Lessee possession of the Leased Premises upon the terms and conditions set forth in the Lease for the entire original term and any optional renewal term therein provided without regard to any default under the terms of the Mortgage between Owner and Mortgagee;

(5) Lessee desires to assure Mortgagee that the Lessee will attorn to the Mortgagee under the circumstances set forth in this Agreement and under the Lease;

(6) Mortgagee desires to assure Lessee that its possession of the Leased Premises and rights under the Lease will not be disturbed so long as Lessee is not in default under the Lease or the terms of this Agreement;

(7) Lessee has agreed to subordinate the Lease and its interest therein to the Mortgage.

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SHELBY COUNTY JUDGE OF PROBATE  
007 HCD 24.50

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by each of the parties herein to the other, of other good and valuable consideration, and of the mutual promises contained herein, the receipt and sufficiency of which is hereby acknowledged by each of the parties, the Mortgagee, Lessee and Owner covenant and agree as follows:

1. **SUBORDINATION.** Anything to the contrary in the Lease notwithstanding, the Lease, and all rights of Lessee thereunder, are and shall be subject and subordinate in all respects to the Mortgage, to each and every advance made or hereafter to be made under the Mortgage, and to all renewals, modifications, consolidations, replacements and extensions of the Mortgage, provided that such subordination shall not be applicable with respect to any principal advances in excess of \$4,350,000.00, unless Lessee shall consent in writing to or other approve such advance. Notwithstanding any provisions of the Lease to the contrary, and for so long as the Mortgage and any modification or extensions thereof shall remain unsatisfied, the Mortgage, the Lease and the rights of the Lessee under the Lease shall be superior to any subsequent financing or other encumbrances with a party other than Mortgagee, its successors or assigns, with respect to the Leased Premises, and Lessee and Owner agree that each will not at any time prior to satisfaction of the Mortgage voluntarily subordinate the Lease to any mortgage or encumbrance to a party other than Mortgagee, its successors or assigns, respecting the Leased Premises which is junior in priority to the Mortgage.

2. **RIGHT OF MORTGAGEE TO CURE DEFAULTS.** If any default shall occur under the Lease on the part of the Owner, which would give Lessee the right (or under which Lessee might claim the right) to cancel or terminate the Lease, Lessee shall promptly give notice thereof to Mortgagee, and Mortgagee shall have thirty (30) days from the date of such notice to cure any such default, or if such default is not reasonably capable of being cured in such period of time, Mortgagee shall have the right within such time to commence remedying such default and shall proceed diligently to complete the same. In the event any such default is so cured, the Lease shall not be deemed to be in default, and Lessee's duties thereunder shall continue unabated. Nothing herein shall be deemed to be a duty on the part of Mortgagee to cure any such default, but only a right on its behalf.

3. **LESSEE TO ATTORN TO MORTGAGEE.**

(a) In the event that the Mortgagee shall succeed to the interest of Owner under such Lease, the Lease shall continue with the same force and effect as if the Mortgagee, as Lessor, and the Lessee had entered into a Lease for a term equal to the then unexpired term of the Lease, containing the same terms, conditions and covenants as those contained in the Lease, including, but not limited to, any rights of renewal therein, and the Lessee shall be bound to the Mortgagee under all of the provisions of the Lease for the remaining term thereof with the same force and effect as if the Mortgagee were the Lessor under the Lease, and the Lessee hereby attorns and agrees to attorn to the Mortgagee as its landlord, such attornment to be effective and self-operative without the execution of any further instruments on the part of either of the parties hereto immediately upon the succession of Mortgagee to the interest of Owner under the Lease. The Lessee shall be under no obligation to pay rent to the Mortgagee until the Lessee receives written notice from the Mortgagee that an Event of Default under any of the loan documents relating to the Loan has occurred, or that it has succeeded to the interest of the Owner under the Lease. The Owner and Lessee agree that, upon receiving such notice from Mortgagee, Lessee shall pay all rents directly to Mortgagee without any duty to inquiry as to the validity of such notice and without any liability therefor to Owner. Nothing contained herein shall in any manner limit or restrict the right of Mortgagee to have a receiver appointed or to seek any other appropriate relief or remedy under any one or more of the loan documents relating to the Loan. The respective rights and obligations of the Lessee and the Mortgagee upon such attornment and their relationship shall be as tenant and landlord respectively, for the remaining term of the Lease, including any renewal periods set forth in said Lease;



(b) Lessee agrees that it shall not, without the express consent of Mortgagee, prepay any minimum rental under the Lease to Owner in excess of one (1) month's advance minimum rental; and

(c) In the event that the Mortgagee shall succeed to the interest of the Owner under the Lease, the Mortgagee agrees to be bound to the Lessee under all of the terms, covenants and conditions of the Lease; provided, however, that Mortgagee shall not be:

- (i) liable for any act or omission of any prior landlord (including the Owner); or
- (ii) subject to any offsets which the Lessee might have or thereafter have against any prior landlord (including the Owner); or
- (iii) bound by any prepayment of more than one (1) month's minimum rental under the Lease to any prior landlord (including the Owner); or
- (iv) bound by an amendment, modification or surrender of the Lease made without its consent.

4. **MORTGAGEE'S RIGHT TO PROCEED AGAINST LESSEE.** In the event the Mortgagee shall succeed to the interest of the Owner under the Lease, the Mortgagee will have the same remedies by entry, action or otherwise for the nonperformance of any agreement contained in the Lease, for the recovery of rent, for the doing of any waste or for any other default, as Owner had or would have had the succession not taken place, and this right shall exist whether or not the Lease is formally terminated; in any such action, Lessee waives the necessity of Owner being made a party to such proceeding.

5. **NON-DISTURBANCE PROVISIONS.** In the event the Mortgage shall be foreclosed, or in the event Mortgagee otherwise succeeds to the interest of the Owner under the Lease, and provided that Lessee is not then in default under the Lease, the Lease shall not terminate on account of such foreclosure or other such succession, by operation of law or otherwise, so long as the Lessee continues to pay the rents reserved in the Lease and otherwise does not become in default under the Lease.

6. **MORTGAGEE'S APPROVAL OR CONSENT.** Wherever Mortgagee's consent or approval under the Lease is required, Mortgagee agrees to not unreasonably withhold such consent, and it is understood and agreed that Mortgagee shall not be deemed to have unreasonably withheld such consent or approval, wherein Mortgagee's reasonable discretion to give such approval or consent would reduce the value, decrease the size or impair the structural integrity of the Leased Premises and/or the Property or otherwise impair the security granted under the Mortgage.

7. **LESSEE'S CERTIFICATION.** Lessee hereby confirms and certifies to Mortgagee the following:

(a) That the Lease is in full force and effect and has not been modified, altered or amended and constitutes a complete statement of the agreement between Owner and Lessee with respect to the leasing of the Leased Premises.

(b) That, as of the date hereof, Lessee has no charge, lien or claim of offset or credit against rentals or other charges coming due under the Lease, nor have rentals been prepaid except as expressly provided by the terms of the Lease.

(c) That Lessee has been notified that the Lease has been or will be assigned to Mortgagee as security for the Loan, and Lessee has no notice of a prior assignment, hypothecation or pledge of rents or the Lease.

(d) That there are no actions, either voluntary or involuntary, pending against the Lessee under the bankruptcy laws of the United States, or under the bankruptcy laws of any state.

(e) That to the knowledge of Lessee, neither Owner nor Lessee is in default under the Lease.

(f) That all rentals due or coming due under the Lease are currently paid or due to be paid to the Owner.

(g) That this certification is made with the knowledge that Mortgagee is relying on this certification in making the Loan to the Owner.

8. **LEASEHOLD MORTGAGE.** Notwithstanding any provision in the Ground Lease to the contrary, Shelby Health Care Authority acknowledges and agrees that the Leasehold Mortgage be deemed to satisfy the requirement of paragraph 11(f) of the Ground Lease and to the extent there is a conflict between the provisions of the Leasehold Mortgage and 11(f) of the Ground Lease, Shelby Health Care Authority waives the conflicting provisions and for all provisions of the Ground Lease SouthTrust shall be considered as a first lienholder and constitutes "the Lender" as defined in paragraph 11(b).

9. **SURVIVAL.** This instrument shall survive any foreclosure of the Leased Premises, or any other succession by Mortgagee to the interest of the Owner with respect to the Leased Premises, and shall remain in full force and effect until the end of the Lease term and all exercised optional extension periods, or upon satisfaction of the Mortgage and all renewals, modifications, consolidations, replacements, and extensions of the Mortgage, whichever shall first occur.

10. **LIMITATION OF MORTGAGEE'S LIABILITY.** Except for Mortgagee's breach of the terms of this Agreement or arising out of the illegal actions of Mortgagee, Lessee shall look solely to the Owner's leasehold interest in the Property for recovery of any judgment or damages from Mortgagee, its successors and assigns, and neither Mortgagee nor its successors or assigns shall have any personal liability, directly or indirectly, under or in connection with the Lease or this Agreement or any amendment or amendments to either thereof made at any time or times, heretofore or hereafter, and Lessee hereby forever and irrevocably waives and releases any and all such personal liability. The limitation of liability provided in this paragraph is in addition to, and not in limitation of, any limitation or liability applicable to Mortgagee, its successors and assigns, provided by law or by any other contract, agreement or instrument.

11. **APPROVALS.** The Owner has joined in this Agreement for the purpose of expressing its consent and agreement to be bound by the provisions hereof.

12. **NOTICES.** All notices or demands hereunder shall be sufficient if sent by United States registered or certified mail, postage prepaid, addressed as follows:

If to Mortgagee: SouthTrust Bank of Alabama, National Association  
P. O. Box 2554  
Birmingham, Alabama 35290  
ATTENTION: Hospital Finance Group

If to Lessee: Shelby County Health Care Authority d/b/a  
Shelby Medical Center  
P. O. Box 488  
Alabaster, Alabama 35007  
ATTENTION: Ms. Sylvia Sumners

If to Owner:

SMCMOB, L.L.C.  
c/o Starr Sanders Johnson  
One Chase Corporate Drive  
Suite 450  
Birmingham, Alabama 35244  
ATTENTION: Mr. James Milton Johnson

or such other address as any party may hereafter designate in writing to the other.

13. **BINDING EFFECT.** This Agreement and all of the covenants, terms, conditions and obligations herein contained are covenants running with the land and binding thereon and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns and successors in title to the Leased Premises and successors in title to the Property.

IN WITNESS WHEREOF, the parties hereto have caused this Attornment Agreement to be executed effective on the day and year first above written.

WITNESS:

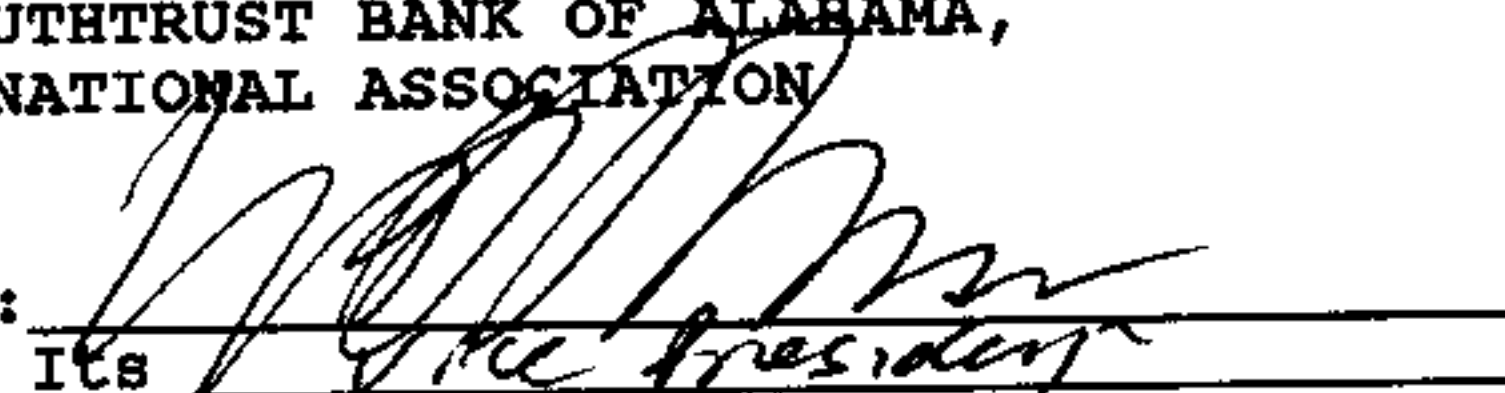


MORTGAGEE:

SOUTHTRUST BANK OF ALABAMA,  
NATIONAL ASSOCIATION

By:

Its



LESSEE:

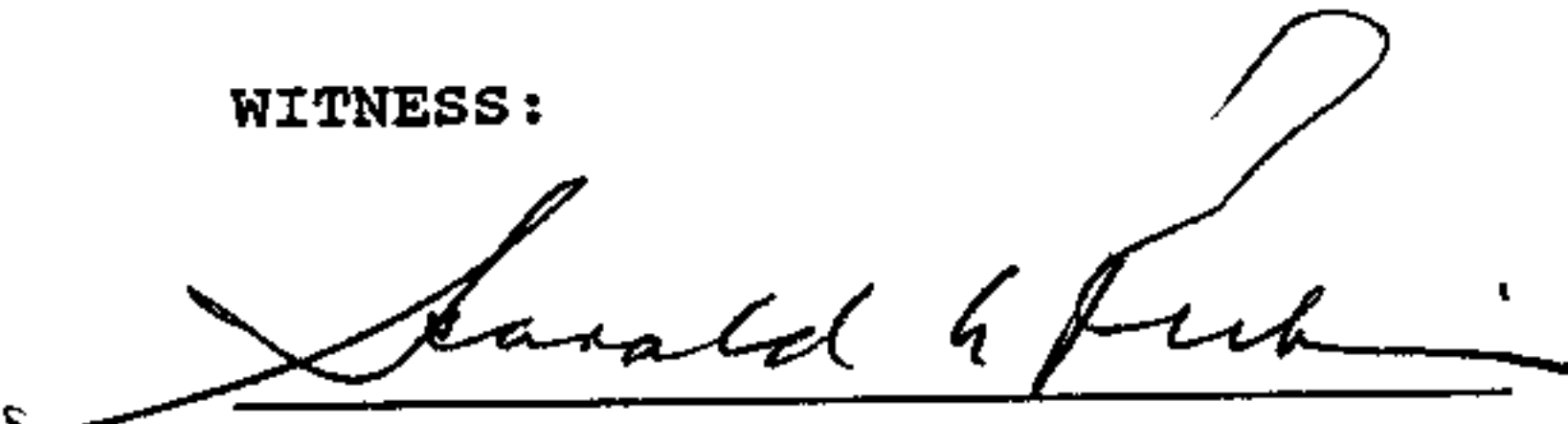
SHELBY COUNTY HEALTH CARE AUTHORITY  
D/B/A SHELBY MEDICAL CENTER

By:

Its



WITNESS:

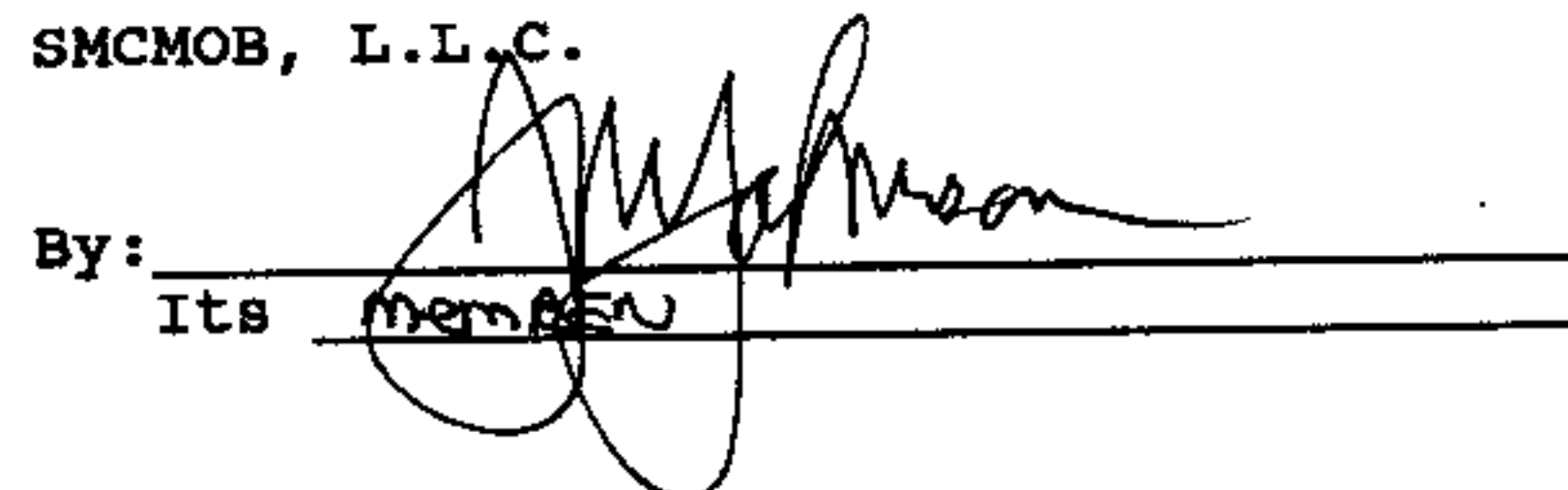


OWNER:

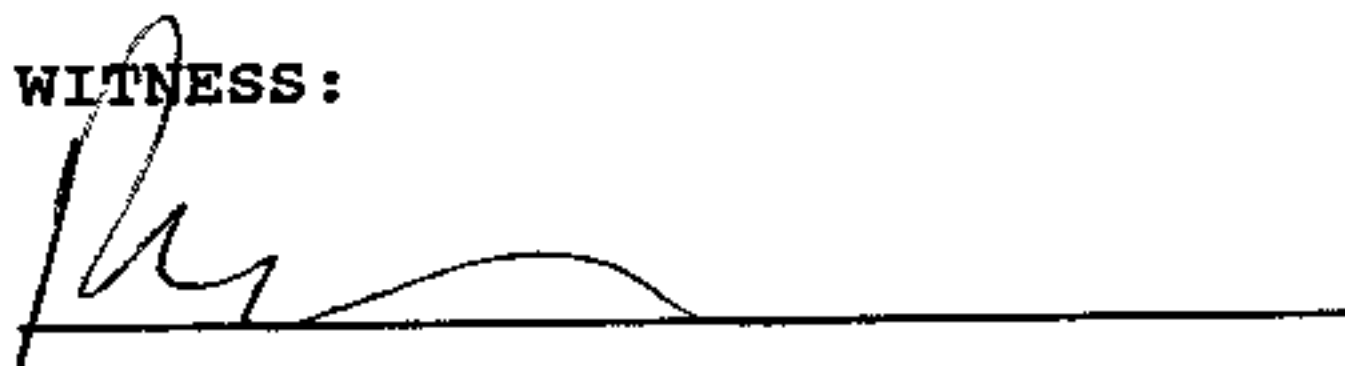
SMCMOB, L.L.C.

By:

Its



WITNESS:



STATE OF Alabama )  
COUNTY OF Jefferson )

I, the undersigned, a Notary Public in and for said county in said State, hereby certify that William B. Robertson, whose name as Vice President of SouthTrust Bank of Alabama, National Association, a national banking association, 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 officer and with full authority, executed the same voluntarily for and as the act of said banking association.

Given under my hand and official seal, this the 5<sup>th</sup> day of April, 1994.

(SEAL)

Cheryl A. Robinson  
Notary Public  
My Commission Expires: 7-10-95



STATE OF ALABAMA )  
COUNTY OF Shelby )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Paul P. Saiter, whose name as Chairman of Shelby County Health Care Authority d/b/a Shelby Medical Center, a public corporation, 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 \_\_\_\_\_ and with full authority, executed the same voluntarily for and as the act of said \_\_\_\_\_.

Given under my hand and official seal, this the 23 day of MARCH, 1994.

(SEAL)

Deliah J. Rutch  
Notary Public  
My Commission Expires: MY COMMISSION EXPIRES MAY 8, 1995

STATE OF ALABAMA )  
COUNTY OF Shelby )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that James Milton Johnson, whose name as Member of SMCMB, L.L.C., 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 member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal, this the 23 day of MARCH, 1994.

(SEAL)

Deliah J. Rutch  
Notary Public  
My Commission Expires: MY COMMISSION EXPIRES MAY 8, 1995

K:\CORP\SOUTHTRU\SMC\DOC\ATT-SUB. EST

## EXHIBIT A

### Parcel A:

A tract of land situated in the SW 1/4 of the NW 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of the SW 1/4 of the NW 1/4 of Section 36, Township 20 South, Range 3 West, Shelby County, Alabama, said corner being marked by a one and one-half inch crimped pipe, and run in an Easterly direction along the accepted North line of said 1/4 1/4 section a distance of 316.16 feet to a one inch crimped pipe, thence deflect 88 deg. 34 min. 47 sec. and run to the right in a Southerly direction a distance of 604.16 feet to a point, thence deflect 97 deg. 24 min. 49 sec. and run to the right in a Northwesterly direction a distance of 140.68 feet to the point of beginning of herein described tract; thence deflect 90 deg. 00 min. 00 sec. and run to the left in a Southwesterly direction a distance of 189.17 feet to a point; thence turn an interior angle of 90 deg. 00 min. 00 sec. and run to the right in a Northwesterly direction a distance of 102.94 feet to a point; thence turn an interior angle of 90 deg. 00 min. 00 sec. and run to the right in a Northeasterly direction a distance of 189.17 feet to a point, thence turn an interior angle of 90 deg. 00 min. 00 sec. and run to the right in a Southeasterly direction a distance of 102.94 feet to the point of beginning; being situated in Shelby County, Alabama.

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