

THIS INSTRUMENT PREPARED BY:

H. Hampton Boles
Balch & Bingham LLP
1901 Sixth Avenue North
Suite 2600
Birmingham, Alabama 35203
(205) 251-8100

STATE OF ALABAMA)

COUNTY OF SHELBY)

ALABAMA MORTGAGE

KNOW ALL MEN BY THESE PRESENTS: that

WHEREAS, the undersigned, **COALES BRANCH, L.L.C.**, an Alabama limited liability company (hereinafter called "Mortgagor"), is, contemporaneously with the execution hereof, becoming indebted to **GERALDINE P. MCLAIN** (hereinafter jointly and severally referred to as "Mortgagee") in the aggregate sum of **SEVEN HUNDRED NINETY-NINE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$799,200.00)**, as set forth in Paragraph No. 1 below (the "Obligation");

WHEREAS, it is desired by the parties to secure the Obligation and all renewals, extensions or modifications thereof.

NOW, THEREFORE, the undersigned Mortgagor, to secure the prompt payment of the Obligation and any extensions, renewals or modifications of same, and any and all charges herein incurred by Mortgagee on account of Mortgagor, including but not limited to attorneys' fees, Mortgagor has bargained and sold and does hereby grant, bargain, sell and convey unto the said Mortgagee, and Mortgagee's heirs, successors and assigns, the following described land (the "Property") to-wit:

Property described on Exhibit A attached hereto and incorporated herein by reference.

TOGETHER with all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses and water rights, and all estates, rights, titles, and interest, in any way belonging, relating or appertaining to any of the Property hereinabove described, including the following:

Inst # 1999-01567

Mortgage (1-11-99)
337978.2

01/12/1999-01567
12:22 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
011 CRH 1232.30

Page 1

(a) All rents, profits, issues and revenues of the Property from time to time accruing, whether under leases or tenancies now existing or hereafter created, reserving to Mortgagor, however, so long as Mortgagor is not in default hereunder, the right to receive and retain the rents, issues and profits thereof;

(b) All judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the Property or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the Property or any part thereof, or to any rights appurtenant thereto, including any award for change of grade or streets; and

(c) All easements, rights of way, and rights to tie on, connect with, and use for access purposes, streets and roads on, or which may be placed on, the Property with streets and roads on the property owned or developed by Mortgagor which adjoins the Property.

TO HAVE AND TO HOLD the Property and all parts thereof unto the Mortgagee, and Mortgagee's heirs, successors and assigns forever, subject however to the terms and conditions herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Mortgagor shall pay or cause to be paid to the Mortgagee the Obligation, all without any deduction or credit for taxes or other similar charges paid by the Mortgagor, and shall pay all charges incurred herein by Mortgagee on account of Mortgagor, including, but not limited to, attorneys' fees, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, terminate and be void, but shall otherwise remain in full force and effect.

Upon the happening of any of the following events which is not cured by Mortgagor within twenty (20) days after receipt of written notice of such default from Mortgagee (i) a default in the payment of the Obligation, or of any part thereof, when due, or any renewals, extensions, or modifications thereof when due; or (ii) a default in the performance of any of the covenants, conditions or agreements in this Mortgage; or (iii) should the Mortgagor file, or have filed against it, a petition under any provision of any federal or state law pertaining to bankruptcy, insolvency, or any other law or relief of debtors, including, but not limited to, proceedings for liquidation, adjustment of debts, reorganization, or any filing of any plan, composition or arrangement under any such law, or seek or acquiesce in a general assignment or any other arrangement for the benefit of creditors, then Mortgagee may, at Mortgagee's option, declare all indebtedness, obligations, and liabilities secured hereby to be immediately due and payable, and the Mortgagor hereby vests the Mortgagee with full power and authority to sell said Property at public auction at the front door of the courthouse of the county or counties in which all or a portion of said Property is located, as Mortgagee may elect, subject to the provisions of any applicable law. The sale may be in lots or parcels or en masse as Mortgagee's agents, auctioneer or assigns deem best, for cash, to the highest bidder, after first giving notice of the time, place and terms of such sale,

together with a description of the Property to be sold, by publishing the same once a week for three (3) successive weeks in a newspaper published in the county or counties and state in which all or a portion of said Property is located. Mortgagee has full power and authority to make proper conveyance to the purchaser and to apply the proceeds of said sale: First, to the payment of the expenses of such sale including advertising, selling and conveying, including reasonable attorney's and auctioneer's fees; second, to the payment of any and all debts, obligations and liabilities hereby secured, principal and interest, whether such debts, obligations or liabilities be then due or not, and any amount that may be due the Mortgagee by virtue of any of the special liens or agreements herein declared; and, lastly, the surplus, if any, to be paid over to the party or parties appearing of record to be the owner of the Property at the time of the sale after deducting any expense of ascertaining who is such owner, or to be paid as otherwise required by law. The said Mortgagee may, at any sale made under this Mortgage, become the purchaser of said Property, or any part hereof or interest therein, like a stranger thereto, in which event the auctioneer making the sale shall make the deed in the name of the Mortgagor, and all recitals made in any deed executed under this Mortgage shall be evidence of the facts therein recited.

The parties agree to the following provisions:

1. The obligation of Mortgagor secured by this Mortgage ("Obligation") is the obligation to pay to Mortgagee the aggregate sum of \$799,200 as follows:

1.1 \$450,000 on or before January 11, 2000;

1.2 \$349,200 on or before January 11, 2001.

2. Upon request of Mortgagor and payment to Mortgagee of the sum of \$450,000 on or before January 11, 2000, Mortgagee will release from this Mortgage an aggregate of 15 acres of land from the property described on Exhibit A. Upon payment of the balance of the Obligation, \$349,200, on or before January 11, 2001, Mortgagee shall terminate and satisfy this Mortgage in its entirety by filing the appropriate satisfaction of mortgage in the appropriate public records of Shelby County, Alabama.

3. Mortgagor shall pay the Obligation in accordance with the provisions of Paragraph No. 1 above.

4. Mortgagor shall pay promptly all taxes, assessments, and other liens which are now, or may become effective against the Property and which shall be entitled to priority over the lien of this Mortgage before the same become delinquent, together with all penalties, costs, and other expenses incurred, or which may accrue, in connection therewith; provided, however, Mortgagor shall have the right to contest each and every such lien and the existence of such lien shall not constitute a default hereunder until the validity and enforceability of such lien is finally determined.

5. If it shall become necessary to employ an attorney to collect the Obligation hereby secured, or any portion thereof, or to foreclose this Mortgage by sale under the powers herein contained, or by an action at law or other judicial or administrative proceedings, then the said Mortgagor shall pay and allow a reasonable attorney's fee.

6. The provisions of this Mortgage shall inure to and bind not only the parties hereto, but also their respective heirs, executors, administrators, successors, and assigns, and each and every place where Mortgagor or Mortgagee is mentioned, the same shall include and mean its or her respective heirs, executors, administrators, successors and assigns as well as the original Mortgagor or Mortgagee, as applicable.

7. No delay or omission of the Mortgagee to exercise any right, power or remedy under this Mortgage or any other instrument, upon any default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such default, or acquiescence therein. No waiver of any default hereunder shall extend to or shall affect any subsequent or any other then existing default or shall impair any rights, powers or remedies consequent thereon.

8. All rights, powers and remedies of Mortgagee herein shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or by statute. In the event that any one or more of the terms or provisions of this Mortgage shall be invalid, illegal or unenforceable in any respect, the validity of the remaining terms or provisions shall in no way be affected, prejudiced or disturbed thereby.

9. Mortgagor may sell, lease, mortgage and otherwise transfer or dispose of the Property and all improvements now or hereafter located in, on, upon or under the Property, or any part thereof, without the consent of the Mortgagee; however, such transfer shall be subject to the lien of this Mortgage. Without limiting the foregoing, Mortgagee agrees that without obtaining the consent of Mortgagee: (a) Mortgagor may improve and construct in, on, upon or under such Property such structures and other improvements as Mortgagor may, in its sole discretion, determine; (b) Mortgagor may place such other liens, mortgages, use and restrictive covenants, and encumbrances on the Property and all improvements now or hereafter located in, on, upon or under such Property, or any part thereof, as elected by Mortgagor in its sole discretion; however, such liens, mortgages, use and restrictive covenants, and encumbrances shall be subject to the lien of this Mortgage; (c) Mortgagor may convey such easements, rights of way and other rights affecting the Property as Mortgagor may determine in its sole discretion; however, such conveyances shall be subject to the lien of this Mortgage; and (d) Mortgagor may use the Property or any portion thereof for any use desired by Mortgagor in its sole discretion. Without limiting the foregoing, Mortgagor may convey easements and rights of way, including without limitation, a sewer easement, across the Property to the City of Pelham, Alabama, or to any other municipal, county, state, or governmental entity, without further approval of Mortgagee, and these easements

shall not be subject to this Mortgage. Mortgagee acknowledges that improvements, structures and other articles may be constructed or placed in, on, upon or under such Property, or part thereof.

10. In the event the Property or any part thereof is mortgaged to a third party, and the mortgagee or holder of the indebtedness secured by such mortgage ("Third Party") shall notify Mortgagee in writing of the execution of such mortgage and of the name and place for service of notice upon the Third Party, then and in such event Mortgagee hereby agrees for the benefit of such Third Party:

(a) That Mortgagee shall give to any such Third Party simultaneously with service upon Mortgagor, a duplicate of any and all notices or demands given by Mortgagee to Mortgagor from time to time, and further, that Mortgagee will not exercise any right it may have, under the provisions hereof or at law or equity, to foreclose this Mortgage without having given such Third Party at least ten (10) days' written notice of Mortgagee's intent to foreclose.

(b) That such Third Party shall have the privilege of performing any of the Mortgagor's covenants hereunder, and under the Obligation and of curing any such defaults.

(c) That Mortgagee will enter into such agreements with such Third Party as are reasonable under the circumstances and that do not adversely affect the lien of this Mortgage.

(d) That upon request by Mortgagor or any Third Party, the Mortgagee will certify as to whether any event of default; or event which except for the passage of time would constitute an event of default, exists or has occurred hereunder or under the Obligation.

11. All notices required to be given hereunder shall be in writing, certified mail, return receipt requested, to such party at the address set forth below, or at any address as such party shall specify to the other party in writing.

12. This Mortgage is given under the seal of all parties hereto, and it is intended that this Mortgage is and shall constitute and have the effect of a sealed instrument according to law.

13. Notwithstanding any provision of this Mortgage or of the Obligation to the contrary, Mortgagor's duties, liabilities and obligations under this Mortgage and the Obligation shall be without personal recourse against Mortgagor or any Member of the Mortgagor, and Mortgagee shall have no right to seek or obtain payment, performance or satisfaction of any such duty, liability or obligation arising under either of the Obligation or this Mortgage against Mortgagor or any Member of Mortgagor. Mortgagee agrees that the sole remedy for collection of any amounts secured by the Mortgage shall be the foreclosure of this Mortgage or acceptance of a deed in lieu thereof.

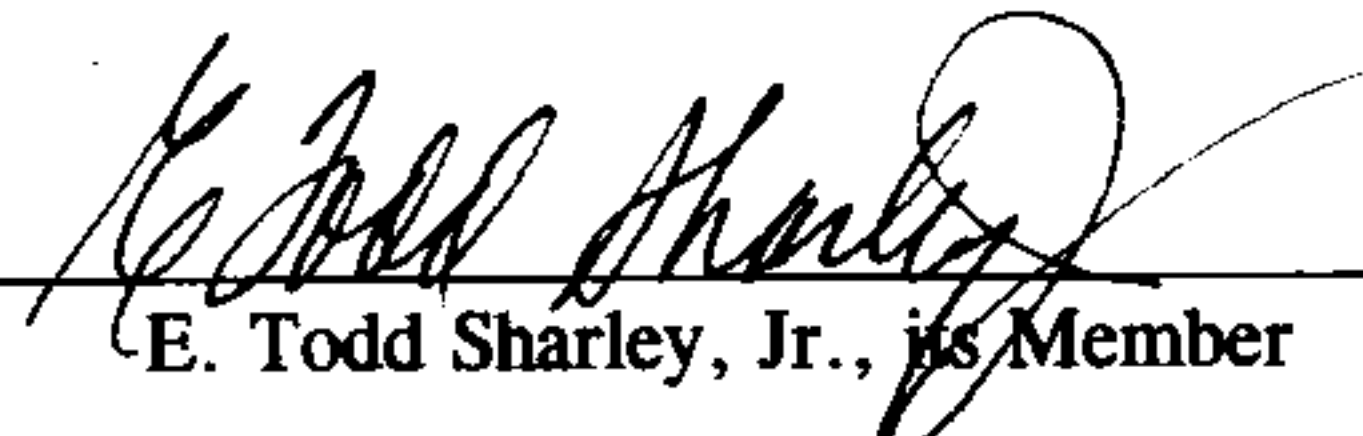
IN WITNESS WHEREOF, the said Mortgagor has caused this instrument to be executed on this the 11th day of January, 1999.

MORTGAGOR:

COALES BRANCH, L.L.C.



Witness

By 

E. Todd Sharley, Jr., its Member

Mortgagee's Address:

Geraldine P. McLain
McLain Commercial Real Estate
P. O. Box 2199
Huntsville, Alabama 35804

Mortgagor's Address:

Coales Branch, L.L.C.
Attn: Mr. E. Todd Sharley, Jr.
2450 SouthTrust Tower
Birmingham, Alabama 35203

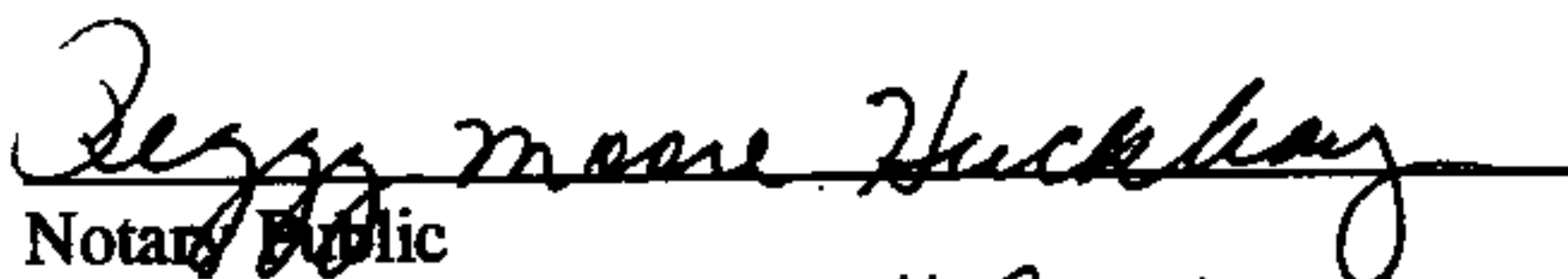
STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, Peggy Moore Huckbay, a Notary Public in and for said County in said State, hereby certify that E. Todd Sharley, Jr., whose name as Member of Coales Branch, 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 the 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 this the 11th day of January, 1999.

[Notarial Seal]



Notary Public
My commission expires: 11-20-2000

EXHIBIT A

PARCEL 1

Part of the South 1/2 of the Southeast 1/4 of Section 13 and part of the Northwest 1/4 of the Northeast 1/4 of Section 24 both in Township 20 South, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Beginning at an existing iron rebar being the locally accepted Southwest corner of the Southwest 1/4 of the Southeast 1/4 of said Section 13, run in a Southerly direction along the West line of the Northwest 1/4 of the Northeast 1/4 of said Section 24, for a distance of 680.28 feet; thence turn an angle to the left of $90^{\circ}54'52''$ and run in an Easterly direction for a distance of 41.68 feet; thence turn an angle to the left of $75^{\circ}54'48''$ and run in a Northeasterly direction for a distance of 2.51 feet to a point of beginning of a curve, said curve being concave in a Southeasterly direction and having a central angle of $50^{\circ}46'21''$ and a radius of 134.74 feet; thence turn an angle to the right and run in a Northeasterly direction along the arc of said curve for a distance of 119.40 feet to the point of ending of said curve; thence run in a Northeasterly direction along line tangent to the end of said curve for a distance of 247.29 feet to an existing iron rebar; thence turn an angle to the right of $25^{\circ}08'27''$ and run in an Easterly direction for a distance of 784.64 feet to an existing iron rebar being on the West right of way line of Interstate 65 Highway being on a curve, said curve being concave in an Easterly direction and having a central angle of $1^{\circ}38'40''$ and a radius of 5854.58 feet; thence turn an angle to the left ($85^{\circ}28'05''$ to the chord of said curve) and run in a Northerly direction along the West right of way line of said Interstate 65 Highway and along the arc of said curve for a distance of 168.02 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left ($9^{\circ}41'36''$ from the chord of last mentioned curve) and run in a Northwesterly direction for a distance of 104.06 feet to an existing iron rebar set by Laurence D. Weygand and being on the West right of way line of Interstate 65 Highway and being on a curve, said curve being concave in an Easterly direction and having a central angle of $10^{\circ}59'24''$ and a radius of 5874.46 feet; thence turn angle to the right ($17^{\circ}00'31''$ to the chord of said curve) and run in a Northerly direction along the arc of said curve and along the West right of way line of said Interstate 65 Highway for a distance of 1126.79 feet to an existing concrete right of way monument; thence turn an angle to the right of $16^{\circ}59'$ from the chord of last mentioned curve and run in a Northeasterly direction along the West right of way line of said Interstate 65 Highway for a distance of

83.24 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of $117^{\circ}20'06''$ and run in a Westerly direction for a distance of 66.95 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of $91^{\circ}25'16''$ and run in a Southerly direction for a distance of 28.0 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of $103^{\circ}32'45''$ and run in a Northwesterly direction for a measured distance of 648.43 feet to an existing iron rebar set by Laurence D. Weygand being in the centerline of an existing creek; thence run in a Southeasterly; Southerly and Southwesterly direction meandering along the centerline of said creek for a distance of 1600 feet, more or less, to a point on the South line of the Southwest 1/4 of the Southeast 1/4 of said Section 13; thence turn an angle to the right and run in a Westerly direction along the South line of said Southwest 1/4 of Southeast 1/4 of said Section 13 for a distance of 68.52 feet, more or less, to the point of beginning.

PARCEL 2

A tract of land situated in Section 24, Township 20 South, Range 3 West, Shelby County, Alabama and more particularly described as follows:

Commence at the Northwest corner of the Northeast 1/4 of Section 24; thence run in a Southerly direction along the West line of said 1/4 section, a distance of 566 feet to the point of beginning in the center of Coales Branch; thence continue in a Southerly direction along said West line a distance of 115 feet; thence an angle left of $90^{\circ}54'52''$ and run in an Easterly direction along the South line of the Gene McLain Property a distance of 41.68 feet; thence an angle right of $104^{\circ}05'12''$ and run in a Southwesterly direction a distance of 362.79 feet to the beginning of a curve to the right, said curve having a radius of 289.62 feet and subtending a central angle of $21^{\circ}24'$; thence run in a Southwesterly direction along the arc of said curve a distance of 108.17 feet; thence on tangent to curve, continue in a Southwesterly direction a distance of 346.91 feet to the beginning of a curve to the right, said curve having a radius of 327.26 feet and subtending a central angle of $18^{\circ}48'$; thence run in a Southwesterly direction along the arc of said curve a distance of 107.38 feet; thence on tangent to curve continue in a Southwesterly direction a distance of 426.81 feet to the beginning of a curve to the left, said curve having a radius of 126.96 feet and subtending a central angle of $31^{\circ}23'16''$; thence run in a Southwesterly direction along the arc of said curve a distance of 69.55 feet to a point on the Northeasterly right of way line of Shelby County Highway No. 52; thence right and run in a Northwesterly direction along said right of way line a distance of 240 feet, more or less, to the center of Coales Branch; thence run in a Northeasterly direction along the centerline of and meanderings of Coales Branch as shown by traverse a distance of 2097 feet, more or less, to the point of beginning.

LESS AND EXCEPT the parcel of property described below and designated as "Excepted Parcel":

EXCEPTED PARCEL

Part of the S 1/2 of the SE 1/4 of Section 13 and part of the NW 1/4 of the NE 1/4 of Section 24, both in Township 20 South, Range 3 West, Shelby County, Alabama being more particularly described as follows:

From the most Northerly corner of Lot 47, Hidden Creek as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 23, Page 97, run in a Southeasterly direction along the common line between Lots 46 and 47 in said Hidden Creek for a distance of 129.0 feet to the most Easterly corner of said Lot 47; thence turn an angle to the right of 101 degrees 33 minutes 47 seconds and run in a Southwesterly direction for a distance of 18.22 feet; thence turn an angle to the left of 157 degrees 13 minutes 39 seconds and run in a Northeasterly direction for a distance of 157.0 feet, more or less, to a point in the centerline of an existing creek being the point of beginning; thence continue in a Northeasterly direction along last mentioned course for a distance of 86.23 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 123 degrees 51 minutes 17 seconds and run in a Southerly direction for a distance of 85.74 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 29 degrees 44 minutes 15 seconds and run in a Southeasterly direction for a distance of 139.62 feet to an existing iron rebar set by Laurence D. Weygand and being on the centerline of an existing 50 foot wide Plantation Pipeline easement; thence turn an angle to the left of 62 degrees 48 minutes 23 seconds and run in an Easterly direction along the centerline of said 50 foot Plantation Pipeline easement for a distance of 99.89 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 0 degrees 46 minutes 41 seconds and run in an Easterly direction along the centerline of said 50 foot Plantation Pipeline easement for a distance of 535.46 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 0 degrees 44 minutes 59 seconds and run in an Easterly direction along the centerline of said 50 foot Plantation Pipeline easement for a distance of 133.83 feet to an existing iron rebar set by Laurence D. Weygand and being on the West right of way line of I-65 Highway, said West right of way line of I-65 Highway being on a curve and said curve being concave in an Easterly direction and having a central angle of 6 degrees 16 minutes 16 seconds and a radius of 5874.46 feet; thence turn an angle to the right (98 degrees 46 minutes 18 seconds to the chord) and run in a Southerly direction along the West right of way line of said I-65 Highway for a distance of 642.97 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right (86 degrees 33 minutes 48 seconds from the chord of last mentioned curve) and run in a Westerly direction for a distance of 108.30 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right 8 degrees 19 minutes 07 seconds and run in a Westerly direction for a distance of 50.53 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 8 degrees 19 minutes 07 seconds and run in a Westerly direction for a distance of 195.0 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 3 degrees 17 minutes 03 seconds and run in a Westerly direction for a distance of 50.08 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 3 degrees 17 minutes 03 seconds and run in a Westerly direction for a distance of 97.50 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 90 degrees and run in a Southerly

direction for a distance of 7.0 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 90 degrees and run in a Westerly direction for a distance of 147.50 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 90 degrees and run in a Northerly direction for a distance of 10.33 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 90 degrees and run in a Westerly direction for a distance of 101.42 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 89 degrees 11 minutes 13 seconds and run in a Southerly direction for a distance of 8.44 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the right of 90 degrees 29 minutes 18 seconds and run in a Westerly direction for a distance of 151.68 feet to an existing iron rebar set by Laurence D. Weygand; thence turn an angle to the left of 90 degrees and run in a Southerly direction for a distance of 12.74 feet to the right of 90 degrees and run in a Westerly direction for a distance of 129.0 feet, more or less, to a point in the centerline of Coales Branch Creek; thence turn an angle to the right and run in a Northerly direction along the centerline of the meanderings of Coales Branch Creek for a distance of 856 feet, more or less, to the point of beginning.

Inst. # 1999-01567

01/12/1999-01567
12:22 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE
011 CRH 1232.30