

This instrument prepared by
and to be returned to:
Timothy D. Davis, Esq.
Sirote & Permutt, P.C.
2311 Highland Avenue South
P. O. Box 55727
Birmingham, Alabama 35255-5727
(205) 930-5100

STATE OF ALABAMA)
COUNTY OF SHELBY)

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES is made as of the 15th day of August, 2002, by **ANTHONY S. SERIO**, a married man, **and LAWRENCE L. SERIO, JR.**, a married man (being one and the same as Lawrence L. Serio), both individual residents of the State of Alabama (hereinafter each singularly referred to as a "Borrower" and collectively as "Borrowers") in favor of **SOUTHTRUST BANK**, an Alabama banking corporation (the "Lender").

RECITALS:

This Assignment is made as additional security for the payment of indebtedness due by Borrowers to Lender in the principal amount of Two Hundred Thirty-Three Thousand Fifty-Two and 78/100 Dollars (\$233,052.78) (the "Loan"), or such portion thereof as has been disbursed from time to time under the provisions of a Loan Agreement between Borrowers and Lender dated as of February 28, 2002, as amended by that certain First Amendment to Loan Agreement dated as of August 15, 2002 (as so amended and as the same may be further amended from time to time, the "Loan Agreement"), with interest thereon as evidenced by a Promissory Note of even date herewith in said amount executed and delivered by Borrowers to Lender (as the same may be amended from time to time, and together with any and all promissory notes given in extension or renewal of, or in substitution or replacement for, such promissory note, the "Note"), and as additional security for the full and faithful performance by Borrower of all the terms and conditions of the Loan Agreement, the Note, and each of the other "Loan Documents" (as defined in the Loan Agreement),

including, without limitation, that certain Mortgage and Security Agreement of even date herewith (as the same may be amended from time to time, the "Mortgage") executed and delivered by Borrowers to Lender on the property described in Exhibit "A" (the "Property") to secure the payment of the Note.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and as an inducement to the Lender to make the Loan to Borrowers, but subject to any prior interest granted by Borrowers to Lender pursuant to that certain Assignment of Rents and Leases dated as of February 28, 2002, executed by Borrowers in favor of Lender and recorded in the Office of the Judge of Probate of Shelby County, Alabama, on March 5, 2002, in Instrument No. 2002-10429 (hereinafter, together with any and all amendments thereto at any time made, the "First Assignment"), Borrowers do hereby sell, assign, transfer and set over unto Lender, its successors and assigns, all of the Borrowers' interest (the "Landlord's Interest") in and to all leases presently existing or hereafter made, whether written or verbal, or any letting of, or agreement for the use or occupancy of, any part of the Property and the improvements located or to be located thereon, and each modification, extension, renewal and guarantee thereof (collectively, the "Assigned Leases"), including, without limitation, all the rents, issues, and profits now due and which may hereafter become due (collectively, the "Rents") under or by virtue of the Assigned Leases, together with all claims and rights to the payment of money at any time arising in connection with any rejection or breach of any of the Assigned Leases under Section 365 of the Bankruptcy Code, 11 U.S.C. § 365 (and any successor or replacement provision), including without limitation, all rights to recover damages arising out of such breach or rejection, all rights to charges payable by a tenant or trustee in respect of the leased premises following the entry of an order for relief under the Bankruptcy Code in respect of a tenant and all rentals and charges outstanding under the Assigned Lease as of the date of entry of such order for relief.

SECTION I. - **BORROWERS' REPRESENTATIONS AND WARRANTIES.** The Borrowers warrant and represent to the Lender, in order to induce the Lender both to make the Loan, and to accept this Assignment, that:

(a) the Borrowers are (or, with respect to any Assigned Leases hereafter made, will be) the sole owner and holder of the Landlord's Interest in each Assigned Lease,

(b) each of the Assigned Leases is (or, with respect to any Assigned Leases hereafter made, will be) valid and enforceable and in full force and effect, and has not been (or, with respect to any Assigned Leases hereafter made, will not be) altered, modified or amended in any manner whatsoever except as set forth in this Assignment,

(c) none of the Rents has been or, without the prior written consent of Lender, will be assigned, pledged or in any manner transferred or hypothecated, except pursuant to this Assignment and/or the First Assignment, and

(d) none of the Rents, for any period subsequent to the date of this Assignment, has been or will be collected in advance of the time when such Rents become due under the terms of the Assigned Leases.

SECTION II. - COVENANTS OF BORROWERS

The Borrowers covenant with the Lender that, except as may otherwise be expressly provided for in the Loan Agreement, the Borrowers shall (a) observe and perform all the obligations imposed upon the Landlord under each Assigned Lease; (b) not do, or permit to be done, anything to impair the security of any Assigned Lease; (c) promptly send to the Lender copies of each notice of default which the Borrowers shall send or receive under the Assigned Leases; (d) enforce the performance and observance of the provisions of each Assigned Lease; (e) not collect any of the Rents except as set forth in this Assignment and/or the First Assignment; (f) not subordinate any Assigned Lease to any mortgage [other than the Mortgage and that certain Mortgage and Security Agreement dated as of February 28, 2002, between Borrowers and Lender and recorded in the Office of the Judge of Probate of Shelby County, Alabama, on March 5, 2002, in Instrument No. 2002-10428 (hereinafter, together with any and all amendments thereto at any time made, the "First Mortgage")] or other lien or encumbrance, or permit, consent, or agree to any such subordination without the prior written consent of the Lender; (g) not alter, modify or change the terms of any Assigned Lease, nor

give any consent to exercise any option required or permitted by such terms, without the prior written consent of the Lender in each such case; (h) not cancel or terminate any Assigned Lease, or accept a surrender of any Assigned Lease; (i) not convey or transfer, and shall not suffer or permit a conveyance or transfer of, the Property, or of any interest in the Property, so as to effect directly or indirectly, approximately or remotely, a merger of the estates and rights of, or a termination or diminution of the obligations of any other party to and under any Assigned Lease; (j) not alter, modify or change the terms of any guaranty of any Assigned Lease, and shall not cancel or terminate any such guaranty, without the prior written consent of the Lender in each such case; (k) not consent to any assignment of, or subletting under, any Assigned Lease without the prior written consent of the Lender; (l) not lease or otherwise let all or any portion of the Property, without the prior written consent of the Lender; (m) at the Lender's request, execute any documentation confirming the assignment and transfer to the Lender of each Assigned Lease upon all or any part of the Property; and (n) execute and deliver, at the request of the Lender, all other further assurances, confirmations and assignments in the Property as the Lender shall, from time to time, reasonably require in order to evidence or secure the rights of the Lender pursuant to this Assignment.

SECTION III. - TERMS AND CONDITIONS OF ASSIGNMENT

3.1 Collection of Rents by Borrowers. So long as there shall not exist any default by Borrowers in the performance of any covenant or agreement of Borrowers in any Assigned Lease (each such default under any Assigned Lease being called an "Assigned Lease Default"), nor any Event of Default under and as defined in any Loan Document nor any default by the Borrowers in the performance of any covenant, agreement or obligation of the Borrowers contained herein (each of the foregoing herein being called an "Event of Default"), then the Borrowers may collect each payment of Rent at the time of, but not more than one (1) month prior to, the date provided in the applicable Assigned Lease for such payment, and may retain, use and enjoy such payment (subject to the terms of the Loan Documents), and may lease the Property or any part thereof, all subject to the provisions of this Assignment and the Loan Documents. However, in the event

of any Event of Default, then the Borrowers' rights, pursuant to this paragraph, to collect, retain, use, and enjoy each payment of Rent, and to lease the Property or any part thereof, shall terminate.

3.2 Lender's Rights To Take Possession, Collect Rents, Etc. Upon, or at any time after, the occurrence of any Event of Default, and without in any way waiving such Event of Default or releasing the Borrowers from any obligation under this Assignment, at the Lender's option, and irrespective of whether the Lender shall have commenced a foreclosure of the Mortgage, then the Lender may revoke the right of the Borrowers to lease all or any portion of the Property and collect the Rents; and the Lender may, either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court, take possession of the Property or the Rents and have, hold, manage, lease and operate the Property on such terms and for such period of time as the Lender may in its sole discretion deem proper, and, either with or without taking possession of the Property in the Lender's own name:

(a) make any payment or perform any act which the Borrowers have failed to make or perform, in such manner and to such extent as the Lender may deem necessary to protect the security provided for in this Assignment, or otherwise, including without limitation, the right to appear in and defend any action or proceeding purporting to affect the security provided for in this Assignment, or the rights or powers of the Lender;

(b) lease the Property or any portion thereof in such manner and for such Rents as the Lender shall determine in its sole and absolute discretion; or

(c) demand, sue for, or otherwise collect and receive from all persons all Rents, including those past due and unpaid, with full power to make from time to time all alterations, renovations, repairs or replacements of and to the Property (or any part thereof) as may seem proper to the Lender and to apply the Rents to the payment of (in such order of priority as the Lender, in its sole discretion, may determine):

(1) all expenses of managing the Property, including, without limitation, the salaries, fees and wages of a managing agent and such other employees as the Lender may deem necessary or desirable,

(2) all taxes, charges, claims, assessments, water rents, sewer rents, and any other liens, and premiums for all insurance which the Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs, or replacements, and all expenses incidental to taking and retaining possession of the Property, and

(3) all or any portion of the Loan, together with

(4) all costs and attorneys' fees incurred in connection therewith.

3.3 Lender's Exercise of Rights Not a Waiver. The exercise by the Lender of any rights or powers under Section 3.2 of this Assignment, including, without limitation, the collection of the Rents, and the application of the Rents as provided in this Assignment, shall not be considered a waiver by the Lender of any default by the Borrowers under any Loan Document.

3.4 Lender Not Liable Except For Its Willful Tortious Misconduct or Bad Faith. The Lender shall not be liable for any loss sustained by the Borrowers resulting: 1) from the Lender's failure to let the Property or 2) from any other act or omission of the Lender in managing the Property, unless and to the extent such loss is caused by the willful tortious misconduct or bad faith of the Lender. Nor shall the Lender be obligated to perform or discharge, nor does the Lender hereby undertake to perform or discharge, any obligation, duty or liability under the Assigned Leases or under or by reason of this Assignment, and the Borrowers shall, and do hereby agree, to indemnify the Lender for, and to hold the Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Assigned Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against the Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Assigned Leases, unless resulting from the willful tortious misconduct or bad faith of the Lender. Should the Lender incur any such liability under any

Assigned Lease, or under or by reason of this Assignment, or in defense of any claims or demands specified above in this paragraph, then the amount of all such liability, including, without limitation, costs, expenses and attorneys' fees, shall be secured by this Assignment and the Borrowers shall reimburse the Lender for all such liability immediately upon demand by the Lender. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Property upon the Lender, nor for the carrying out of any of the terms and conditions of the Assigned Leases; nor shall it operate to make the Lender responsible or liable for any waste committed on the Property by the tenants or any other parties, nor for any dangerous or defective condition of the Property, nor for any negligence in the management, upkeep, repair or control of the Property resulting in loss, injury or death to any tenant, employee or others, unless and to the extent resulting from the willful tortious misconduct or bad faith of the Lender.

3.5 Termination of Assignment. Upon payment in full by the Borrowers of the Loan, and provided that the Lender has no further obligation to the Borrowers or otherwise under the Loan Documents, then this Assignment shall become and be void and of no effect, provided, however, 1) this Assignment shall continue to secure the obligations of the Borrowers to the Lender pursuant to this Assignment as and to the extent that any payment by the Borrowers to the Lender is avoided or is required to be disgorged by the Lender, and 2) the affidavit, certificate, letter or statement of any officer, agent or attorney of the Lender showing any part of the Loan to remain unpaid, or any obligation of the Lender to exist (each such affidavit, certificate, letter or statement being called an "Lender's Certification"), shall be and constitute presumptive evidence of the validity, effectiveness and continuing force of this Assignment, and any person may, and is hereby authorized to, rely on such Lender's Certification.

3.6 Borrowers' Authorization to Tenants. The Borrowers hereby authorize and direct each tenant or any other party to any Assigned Lease, upon receipt from the Lender of written notice to the effect that an Event of Default or an Assigned Lease Default exists, to pay over to the Lender all Rents, and to continue to do so until otherwise notified by the Lender.

3.7 Release or Application of Security By Lender. The Lender: 1) may take or release other security for the payment of the Loan, 2) may release any party primarily or secondarily liable for the Loan or any part thereof, and 3) may apply any other security held by the Lender to the satisfaction of the Loan, without, in each case, prejudice to any of the Lender's rights under this Assignment.

3.8 Borrowers' Indemnity of Lender. Notwithstanding anything to the contrary in any Loan Document, the Borrowers shall indemnify and hold the Lender harmless from, and defend the Lender, at the Borrowers' sole cost and expense, against, each loss, liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements of the Lender's counsel arising out of or in connection with this Assignment (collectively, the "Losses"), and all Losses shall be payable by the Borrowers to the Lender, on demand by the Lender, and, until reimbursed by the Borrowers pursuant to the terms of this Assignment, shall be secured by this Assignment and shall bear interest at the Default Rate, as said term is defined in the Note.

3.9 No Waiver By Lender. Nothing contained in this Assignment, and no act done or omitted by the Lender pursuant to the powers and rights granted to it under this Assignment, shall be deemed to be a waiver by the Lender of its rights and remedies under the Loan Documents other than this Assignment. This Assignment is made and accepted without prejudice to any right or remedy of the Lender under the terms of such other Loan Documents.

3.10 Lender's Rights Cumulative And May Be Exercised Separately. The right of the Lender to collect the Loan, and to enforce any other security for the Loan held by the Lender, may be exercised by the Lender either prior to, simultaneously with, or subsequent to any action taken by the Lender under this Assignment.

3.11 Cooperation By Borrowers. The Borrowers will, at the cost of the Borrowers, and without expense to the Lender, do, execute, acknowledge and deliver such further acts, conveyances, assignments, notices of assignments, transfers and assurances as the Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto the Lender the property and rights assigned

by this Assignment, or intended now or hereafter to be assigned by this Assignment, or which the Borrowers may be or may hereafter become bound to convey or assign to the Lender, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment. On demand, the Borrowers will execute and deliver, and hereby authorizes the Lender to execute in the name of the Borrowers to the extent the Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien of this Assignment upon the Assigned Leases.

3.12 Notices. All notices given pursuant to this Assignment shall be given (and deemed received) in the manner set forth in the Mortgage.

3.13 Successors and Assigns. This Assignment, together with the covenants, representations and warranties contained in this Assignment, shall inure to the benefit of the Lender and each subsequent holder of the Mortgage and shall be binding upon the Borrowers, and each Borrower's heirs, legal representatives, successors and assigns and any subsequent owner of the Property (or any part thereof or interest therein).

3.14 No Oral Changes. This Assignment may only be modified, amended or changed by an agreement in writing signed by the Borrowers and the Lender, and may only be released, discharged or satisfied of record by an agreement in writing signed by the Lender. No waiver of any term, covenant or provision of this Assignment shall be effective unless given in writing by the Lender and if so given by the Lender shall only be effective in the specific instance in which given.

3.15 Severability. Whenever possible, each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be unenforceable or prohibited by, or invalid under, applicable law, such provision shall be ineffective to the extent of such unenforceability, prohibition or invalidity, without invalidating the remaining provisions of this Assignment.

3.16 Entire Agreement. The Borrowers acknowledge that the Loan Documents set forth the entire agreement and understanding of the Borrowers and the Lender with respect to the Loan and that no oral or

other agreement, understanding, representation or warranty exists with respect to the Loan other than as set forth in the Loan Documents.

3.17 **No Trial By Jury.** EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, AND THE LENDER (BY ITS ACCEPTANCE OF THE MORTGAGE AND THIS ASSIGNMENT) IRREVOCABLY AND UNCONDITIONALLY WAIVES, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF, OR OTHERWISE RELATING TO, ANY OF THE LOAN DOCUMENTS HERETOFORE, NOW OR HEREAFTER EXECUTED OR DELIVERED, OR IN CONNECTION WITH THE LOAN, OR IN ANY WAY RELATED TO THIS TRANSACTION OR OTHERWISE WITH RESPECT TO THE PROPERTY OR ANY OF THE ASSIGNED LEASES.

3.18 **Amendments to Loan Documents.** The terms "Note", "Mortgage", "Loan Agreement" and "Loan Documents" shall refer to such instruments as they may hereafter be amended from time to time.

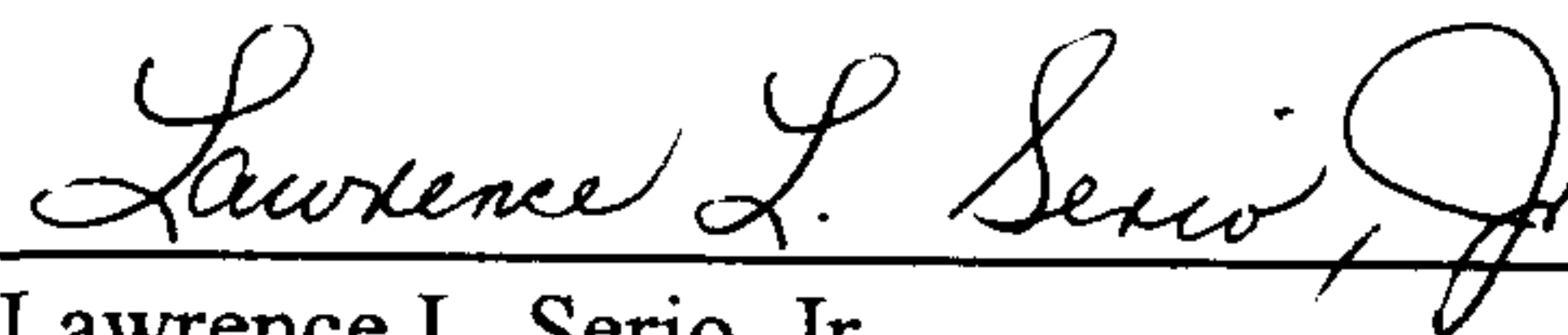
3.19 **Binding Effect.** This Assignment shall be binding upon the Borrowers, each Borrower's heirs, legal representatives, successors and assigns and subsequent owners of the Property, or any part thereof, and shall inure to the benefit of Lender, its successors and assigns and any holder of the Note.

IN WITNESS WHEREOF, each Borrower has caused this instrument to be properly executed as of the day and year first above written.

BORROWER:



Anthony S. Serio




Lawrence L. Serio, Jr.

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Anthony S. Serio, whose name 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 executed the same voluntarily as of the day the same bears date.

Given under my hand and official seal, this the 14th day of August, 2002.

_____(SEAL)
Notary Public
My Commission Expires: 2-13-02

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Lawrence L. Serio, Jr., whose name 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 executed the same voluntarily as of the day the same bears date.

Given under my hand and official seal, this the 14th day of August, 2002.

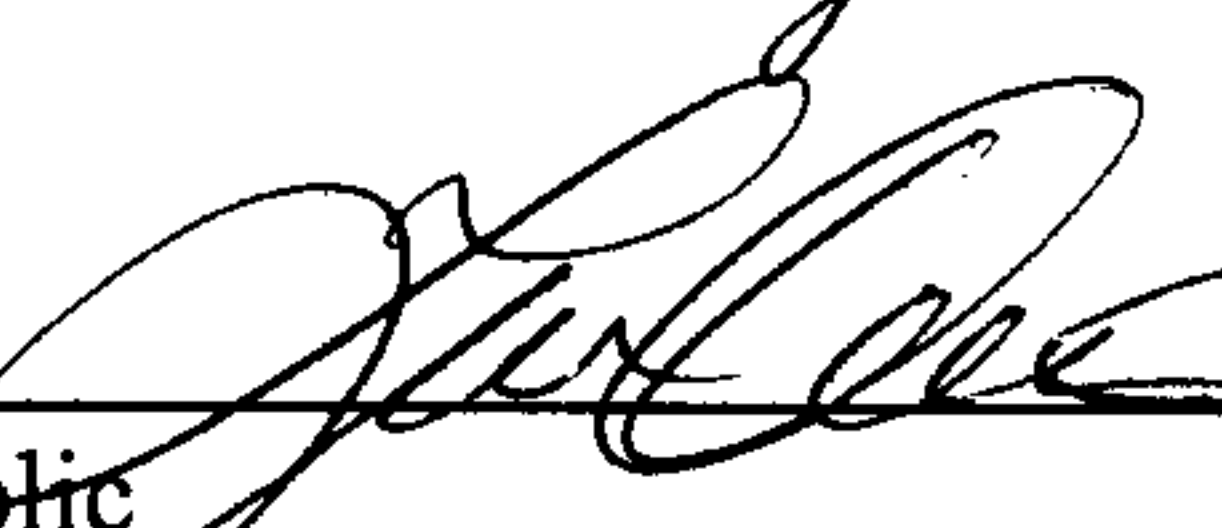
_____(SEAL)
Notary Public
My Commission Expires: 2-13-02

EXHIBIT "A"

DESCRIPTION OF PROPERTY

A parcel of land located in the North 1/2 of the SW 1/4 of Section 31, Township 19 South, Range 2 West, more particularly described as follows:

Commence at the NE corner of the SW 1/4 of the NW 1/4 of said Section 31; thence in an Easterly direction, a distance of 452.73 feet; thence $86^{\circ} 31' 40''$ right, in a Southerly direction, a distance of 1321.78 feet; thence $47^{\circ} 06'$ right, in a Southwesterly direction, a distance of 250.20 feet, said point being the approximate center line of an existing road; thence $100^{\circ} 04' 45''$ left in a Southeasterly direction along said approximate center line, a distance of 80.05 feet to the point of beginning; thence continue along last described course, a distance of 300.36 feet to the beginning of a curve to the right, having a radius of 965.17 feet; thence $1^{\circ} 41' 30''$ right, to chord of said curve, in a Southeasterly direction along said approximate center line of said existing road, a chord distance of 56.99 feet; thence $123^{\circ} 34' 03''$ right from said chord, in a Southwesterly direction, a distance of 583.82 feet to a point on the Easterly right of way line of U.S. Highway 31 South, said point being on a curve having a radius of 2010.08 feet; thence $97^{\circ} 33' 22''$ right to chord of said curve to the left, in a Northwesterly direction along said right of way, a chord distance of 311.77 feet; thence $85^{\circ} 12' 35''$ right from said chord, in a Northeasterly direction, a distance of 338.31 feet to the point of beginning. Situated in Shelby County, Alabama.