

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

DECLARATION OF RESTRICTIONS (OUTPARCEL)

This Declaration of Restrictions is made and executed this 23rd day of March, 2004 by Alabaster Retail Property, L.L.C., an Alabama limited liability company (the "Owner").

WITNESSETH:

WHEREAS, Owner is the owner of the premises described on Exhibit "A" attached hereto (the "Outparcel") and is the owner of the premises known as White Stone Shopping Center in Shelby County, Alabama, ("Shopping Center"), which is described on Exhibit "B" attached hereto (the "Shopping Center Parcel"); and

WHEREAS, Owner desires to impose the restrictions on the use of the Outparcel as stated below.

NOW, THEREFORE, Owner hereby creates, establishes and imposes the following restrictions on the ownership, use, and enjoyment of the Outparcel.

1. Each grantee, tenant, or transferee from Owner, their successors and assigns (collectively called "Transferee"), and by the acceptance of a deed or lease to the Outparcel, shall be deemed to have all covenanted and agreed to all the terms and conditions of this Declaration.

2. Subject to delays as a result of force majeure, Transferee shall cause the construction of the building and any appurtenances, including parking areas and driveways, to commence within forty-eight (48) months of the acquisition of the Outparcel by the Transferee (herein called the "Acquisition Date") and, thereafter, to proceed with all reasonable diligence in construction of same and to use best reasonable efforts to open for business within twenty-four (24) months after date of commencing construction. If Transferee fails to commence construction or to complete construction within this construction timetable, as such period may be extended as a result of force majeure, Owner shall have the option of repurchasing the Outparcel from the Transferee by providing notice of its intent to do so for an amount equal to one hundred percent (100%) of the original purchase price paid for the Outparcel by the Transferee, plus the cost of improvements made by Transferee. In the event of the exercise by Owner of such right of repurchase, Transferee shall provide Owner with a title insurance policy, at Owner's expense, in the amount of the purchase price, reflecting good and marketable fee simple title to the Outparcel and improvements, without exception for any item other than those title exceptions existing at the time of the conveyance of the Outparcel and the improvements located thereon. Each party shall pay its own attorney's fees associated with any such conveyance. The closing shall take place no

longer than ninety (90) days after Owner has provided Transferee with notice of its intent to repurchase.

3. The Outparcel shall be used initially as a typical "SouthTrust Bank" for a period of at least twelve (12) months; provided in no event shall the use violate any existing restrictions of public record affecting the Outparcel, and such business and any other business conducted on the Outparcel shall be conducted in a first class, reputable manner. Subsequent to the initial use described above, the Outparcel shall be used only for commercial purposes normally carried in other similar type shopping centers, but shall not be used for any purpose which is not in harmony with the Shopping Center and shall not be used for any of the following purposes:

- (a) Any public or private nuisance;
- (b) Any noise or sound that is objectionable due to intermittence, beat frequency, shrillness, or loudness, other than the drive thru speaker;
- (c) Any obnoxious odor which shall not include odors customarily associated with normal restaurant operations;
- (d) Any noxious, toxic, or caustic or corrosive fuel or gas;
- (e) Any dust, dirt, or fly ash in excessive quantities;
- (f) Any unusual fire, explosion, or other damaging or dangerous hazard (including the storage, display, or sale of explosives or fireworks);
- (g) Any warehouse, funeral parlor, movie theater, bowling alley, or flea market;
- (h) Any assembling, manufacturing, distilling, refining, smelting, tanning, agriculture, or mining operations;
- (i) Any establishment receiving substantial revenues from selling or exhibiting pornographic materials;
- (j) Any mortuary;
- (k) Any massage parlor;
- (l) Any cafeteria, theater, bowling alley, billiard parlor, night club or other place of recreation or amusement or any business serving or selling alcoholic beverages;

- (m) Any use which violates the "Publix" Memorandum of Lease, which is recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument No. 20030210000081140; and
- (n) Any use which violates the Declaration of Restrictions, Covenants and Conditions and Grant of Easements (White Stone Shopping Center) executed by Owner, which is recorded in the Office of the Judge of Probate of Shelby County, Alabama as Instrument No. 20031124000768400 (herein "ECR").

4. Transferee shall pay to the Owner the sum of One Hundred Dollars (\$100.00) on January 31, 2005, as a contribution to Owner for the use of certain areas of the Shopping Center Parcel pursuant to the ECR; and on each consecutive January 31 thereafter, Transferee shall pay to Owner an amount equal to the sum of the amount due and payable for the previous January 31 plus Ten and No/100 Dollars (\$10.00); it being understood that the contribution by Transferee to Owner shall automatically increase by Ten and No/100 Dollars (\$10.00) each January 31. Notwithstanding anything to the contrary in this Declaration or in the ECR, the payment of the foregoing shall be the only payment required of Transferee for the maintenance of the common areas of the shopping center, as defined in the ECR.

5. In the event of litigation arising out of or in connection with this Declaration, each party agrees to pay its own attorneys' fees and costs of suit, including fees and costs of appeal.

6. No noxious or offensive activity shall be carried on upon the Outparcel nor shall anything be done on the Outparcel that may be or become an annoyance or nuisance to the Owner, any tenants in the Shopping Center, or their employees, customers, or other business invitees.

7. All trash and garbage on the Outparcel shall be stored in adequate containers outside of the structure on the Outparcel provided it is properly contained and such container is properly screened, all as shown on building plans and plot plan approved by Owner in writing. No trash or garbage shall be burned at any time in or about the Outparcel. If such garbage includes food and/or drink, then such trash and garbage shall be stored in a screened dumpster.

8. The Outparcel and all structures thereon shall be maintained in good order and good, clean, neat, and safe condition and all glass, including windows, doors, fixtures, and skylights shall be maintained in clean and good condition, and if broken or damaged shall be replaced promptly. The Outparcel shall be kept free of any accumulation of trash or debris.

9. No fence, wall, hedge, shrub or planting shall be placed or permitted to remain on the Outparcel except as approved by Owner.

10. Transferee shall install, preserve, and maintain on the Outparcel such shrubbery, trees, and other landscaping in an amount harmonious and consistent with the landscaping of the

Shopping Center and shall cause such landscaping to be reasonably protected from vehicular traffic. The land which is not used for construction of the building or for paving shall be properly and attractively landscaped, watered and maintained so as to keep same in a good, proper and attractive condition.

11. All signs on the Outparcel shall comply with all of the following restrictions at all times:

- (a) All signs shall be maintained in first class condition and repair and shall be in compliance with all governmental and administrative agencies, statutes, rules, regulations and ordinances;
- (b) Except as may be set forth in the approved plans and specifications, the following kinds of exterior signs are prohibited: (i) any painted sign on walls, sign bands, storefronts or store windows; (ii) any wood or plywood sign except for temporary signs; (iii) any sign made of paper, cloth, or cardboard; (iv) any sign consisting of stickers, flags, or pennants; (v) any roof-mounted sign which protrudes higher than the peak of the roof; (vi) any flashing, pulsating, moving, or animated sign and any sign emitting any sound, smoke, or odor; (vii) any portable sign on the Outparcel or on the adjacent right-of-way to the Outparcel; (viii) any exposed neon lighting or other lighting tubes, bulbs, or devices; (ix) any sign perpendicular to the facade; or (x) any banners.
- (c) The content of all signs shall be limited to letters designating the store name, a corporate logo, and, if approved by Owner, a reader board that may contain slogans, symbols, markers, prices, items for sale, or other similar items;
- (d) No more than one building mounted sign shall be permitted on any one wall or facade of the building;
- (e) Except as may be otherwise approved by Owner, the length of any building mounted sign shall not exceed the lesser of: (i) 25% of the length of the wall of the building upon which the sign is mounted, or (ii) six (6) feet, and the height of any such sign shall not exceed thirty-six (36) inches;
- (f) No sign or any portion thereof may project above a line twelve (12) inches below the top of the parapet or wall or building facade upon which it is mounted;
- (g) No more than one (1) permanently fixed, free-standing pylon sign shall be permitted on the Outparcel, which sign shall not exceed a maximum height of eighteen (18) feet above ground surface and a maximum width of six (6)

feet, the sign panel thereof shall not exceed one hundred (100) square feet on each face and such pylon sign shall be constructed only of materials and shall be of a style matching that of the pylon sign, if any, that Owner may construct on the Shopping Center; and

- (h) No sign shall be on so called "portable" or similar type sign or have any bulbs or other forms of lighting that go on and off intermittently.

12. If Transferee goes dark and remains closed for a period of twenty-four (24) months, Owner shall have the option to repurchase the Outparcel and improvements at the fair market value of the Outparcel and improvements by delivering written notice of its intentions ("Notice") to Transferee within forty-five (45) days of the expiration of the twelve (12) month period, aforesaid. This option shall expire on March 18, 2054. The term "Fair Market Value" shall be the fair market value of the Outparcel and improvements (excluding trade fixtures and equipment) as determined hereinbelow.

- (a) Within fifteen (15) days after Owner has given Notice of conditional exercise of its right and option to purchase the Outparcel and improvements as provided above, Owner shall select and designate a qualified appraiser to determine the Fair Market Value of the Outparcel and improvements as of the date of the aforesaid Notice and shall notify the Transferee of such choice and designation. The appraiser so chosen shall independently appraise the Outparcel and improvements, completing same and rendering a report to Owner and Transferee within thirty (30) days following his/her appointment. Upon said appraisal being completed and report rendered as aforesaid, the Transferee shall have a period of fifteen (15) days to notify Owner of Transferee's acceptance or rejection of the appraisal and the Fair Market Value determination. If no notice is given by Transferee, Transferee shall be deemed to have rejected the appraisal and the Fair Market Value determination.
 - (i) If the Transferee accepts the appraisal, the parties shall continue to closing and consummation of the sale as provided hereinbelow in Section 12 (b). The parties will divide, equally, the cost of the appraiser's services. The closing and consummation of the purchase of the Outparcel and improvements (the "Closing") shall occur no later than thirty (30) days following the acceptance of Transferee of the appraisal at such time and place reasonably selected by Owner, or at such other time and place as Owner and Transferee may agree.
 - (ii) If Transferee rejects the appraisal ordered by the Owner, within fifteen (15) days after Transferee has given notice of its rejection to

Owner, Owner and Transferee shall each select and designate a qualified appraiser to determine the Fair Market Value of the Outparcel and improvements, as of the date of the notice of Transferee's rejection, and each shall notify the other of such choice and designation. The two (2) appraisers so chosen and designated shall choose a third appraiser as soon as practicable and, in any event within ten (10) days following their selection. The three (3) appraisers so chosen shall independently appraise the Outparcel and improvements, completing same and rendering their reports to each other and to Owner and Transferee within thirty (30) days following their respective appointments. Upon said appraisals being completed and reports rendered as aforesaid, the appraisal closest in value to the independent appraisal shall determine the fair market value of the Outparcel and improvements and shall be conclusive and binding upon the parties hereto. Each party will pay for the services of the appraiser chosen by it and the charges of the third appraiser will be borne equally by the parties. Should either party fail or refuse to designate an appraiser within fifteen (15) days following Transferee's notice of rejection, then and in such event the fair market value of the Outparcel and improvements will be determined by the appraiser timely designated by the other party. The Closing of the Outparcel and improvements shall occur no later than thirty (30) days following the rendering of all three (3) appraisals, at such time and place reasonably selected by Owner, or at such other time and place as Owner and Transferee may agree.

- (b) At the Closing, Transferee shall convey to Owner by statutory warranty deed, good and marketable fee simple title to the Outparcel and improvements, without exception for any item other than those title exceptions existing at the time of the conveyance of the Outparcel and the improvements located thereon by Owner to the Transferee. Notwithstanding anything contained herein to the contrary, in the event that Owner fails to close the repurchase of the Outparcel as specified above on or before one hundred and forty-five (145) days from the date of Owner's Notice, except as a result of the default of Transferee, Owner shall permanently forfeit its right to repurchase the Outparcel, and the provisions of this Section 12 shall be of no further force or effect.

13. In the event of any default by Transferee in the performance of any of its obligations, covenants, indemnities or agreements under this instrument, Owner may give notice thereof to Transferee, and if Transferee fails to cure the default within thirty (30) days thereafter (or if the same cannot be reasonably cured within thirty (30) days, fails to commence said cure within

the thirty (30) day period and proceed diligently to cure same), Owner, at its option, may enter upon Outparcel and perform on behalf of Transferee the defaulted obligation, covenant, indemnity and agreement. Transferee reserves the right to contest whether a default by Transferee exists. If, in fact, Transferee has defaulted, Transferee shall bear all reasonable costs and expenses of Owner incurred in the performance of such defaulted obligation, and the amount of such expenses plus interest thereon at fifteen percent (15%) per annum from the date of expenditure by Owner to the date of reimbursement by Transferee shall be payable by Transferee within thirty (30) days of written demand by Owner. Transferee shall also pay to Owner the reasonable costs of collection of such amounts, including reasonable attorneys' fees, if such amounts are not paid when due. Nothing in this paragraph 13 shall be deemed to limit any other remedy at law or in equity which Owner may have with respect to such default, including, without limitation, a suit or suits for injunction (whether temporary or permanent), specific performance and damages.

14. This instrument shall inure to the benefit of Owner, its successors and assigns, and shall be recorded in the public records of Shelby County, Alabama.

15. The obligations and benefits of Transferee under this instrument shall be binding upon and inure to the benefit of Transferee, its successors and assigns in and to the Outparcel, and all persons from time to time owning any interest in all or any portion of the Outparcel.

16. In no event shall this instrument be construed as combining the Outparcel and the Shopping Center Parcel into one lot for zoning purposes, it being agreed that as between the owners of the Outparcel and the Shopping Center Parcel that each parcel shall constitute a separate zoning lot and that any use of any such lot shall conform to parking and other zoning requirements without regard to the existence of this Agreement. This document does not create, and shall not be construed as creating, any easement between the Outparcel and the Shopping Center Parcel.

17. Invalidity of any one or more of the covenants, restrictions, or other terms contained herein by a judgment or court order in no way shall affect any of the other provisions which shall remain in full force and effect.

18. The covenants and restrictions created pursuant to this document shall become effective on the date hereof, shall be binding upon all parties hereto and all persons claiming by, through, or under them, and shall constitute covenants running with the land burdened thereby, and shall be binding on such land and every part thereof or improvement thereof, and their respective successors and assigns, and shall inure to the benefit of Owner. The covenants, easements, and restrictions created by this Agreement shall automatically expire on March 18, 2054. Owner, and only Owner, shall have the right to obtain injunctive relief to enjoin any violation, or the continuation of a violation, of any of the restrictions, covenants, terms and conditions of this Agreement.

Nothing herein is intended to create or shall be construed to create any rights whatsoever for the benefit of the general public in the Outparcel or the Shopping Center Parcel or in any improvements constructed thereon.

"Owner" as used herein shall mean the declarant who executes this document and its successors and assigns of the Shopping Center Parcel.

19. Each owner, grantee, lessee, and occupant of all or any portion of the Outparcel shall be deemed by the acceptance of the conveyance, grant, lease, delivery, or possession thereof, to have accepted the covenants and restrictions provided in this Agreement and to have agreed to comply with the terms stated herein and to have accepted whatever right, title, or interest in the Outparcel so received subject to all the terms and conditions of this document.

20. Any notice, request, demand, approval, consent or other communication which Owner or Transferee may be required or permitted to give to the other parties shall be in writing and shall be mailed by certified mail, return receipt requested to the other party at the address specified below, or to such other address as either party hereof shall have designated by notice to the other:

If To Owner: Alabaster Retail Property, L.L.C.
 c/o SC Management, Inc.
 Attention: Mr. Jake F. Aronov
 3500 Eastern Boulevard
 Montgomery, Alabama 36116

With Copy To: Aronov Realty Management, Inc.
 Attn: Mr. John Bemis
 3500 Eastern Boulevard
 Montgomery, Alabama 36116

If To Transferee: SouthTrust Bank
 Corporate Realty Department
 500 Office Park Drive, Suite 300
 Birmingham, AL 35213
 Attn: Jon Kral

With copy to: W. Benjamin Johnson, Esq.
 Burr & Forman, L.L.P.
 420 North 20th Street
 Suite 3100
 Birmingham, AL 35203

21. This document may be modified in whole or in part only by a written instrument executed by the then Owner and Transferee of the Shopping Center Parcel and Outparcel, respectively.

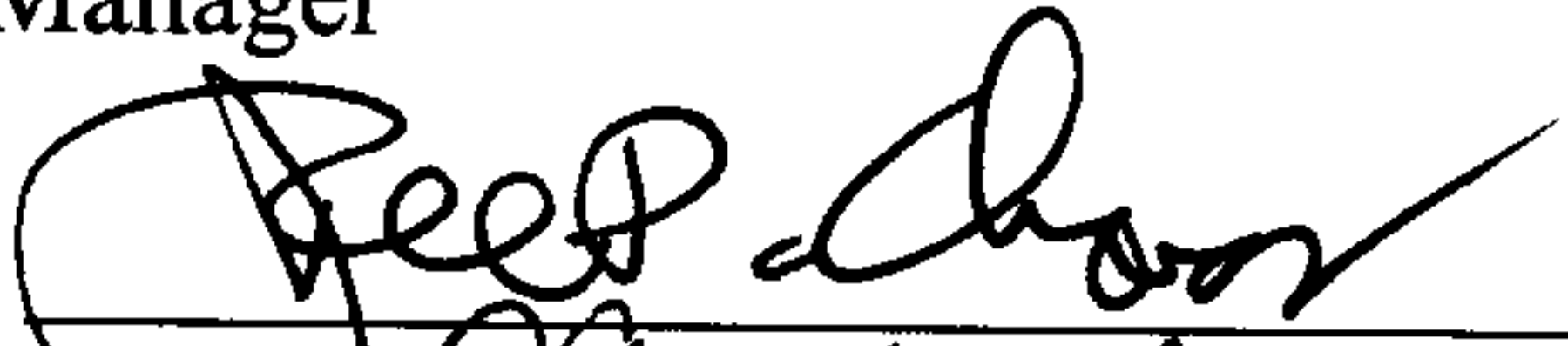
22. This document shall not restrict any party's right to assign or convey its interest in its parcel or in this document to a mortgagee as additional security or collateral security. However, any and all mortgages granted to mortgagees on any parcel shall be subordinate and subject to this document and any person foreclosing any such mortgage or acquiring title to a parcel affected thereby shall do so subject to all of the terms of this document. Upon receipt of a written request by any party or by such mortgagee, all other parties shall thereafter send any such mortgagee, or the requesting party copies of all notices given in accordance with any provisions of this document. Once any such party or its mortgagee has so notified the other parties, no notices sent hereunder by any other party shall be binding on said mortgagee unless and until such mortgagee receives a copy thereof; provided, however, that such notices shall be effective as between the other parties in accordance with the terms and conditions contained in this document. Any notice given by or to any such mortgagee shall be given by the means set forth herein, and shall be deemed given, as provided in this document.

23. The provisions hereof are in addition to, and do not modify, amend, or abrogate, any covenants and restrictions now appearing of public record affecting title to the Outparcel, including but not limited to the ECR.

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

ALABASTER RETAIL PROPERTY, L.L.C.,
an Alabama limited liability company

By: SC Management, Inc.,
an Alabama corporation
Its Manager

By: 
Its: President

[ACKNOWLEDGEMENT BEGINS ON NEXT PAGE]

STATE OF ALABAMA)
 :
COUNTY OF MONTGOMERY)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Mike F Aronov whose name as President of SC Management, Inc., an Alabama corporation, acting as Manager of Alabaster Retail Property, 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 officer and with full authority, executed the same voluntarily for and as the act of said corporation, acting as Manager of said limited liability company.

Given under my hand and official seal this 23rd day of March, 2004.

[NOTARY SEAL]

Elizabeth K. Blitzer
Notary Public
My commission expires: 9-29-2007

This instrument was prepared by:
Jeffrey W. Blitz, Esq.
Rushton, Stakely, Johnston & Garrett, P.A.
Post Office Box 270
Montgomery, Alabama 36101-0270
(334) 206-3100

Aronov/Alabaster/SouthTrust Outparcel/Declaration of Restrictions (3-16-04)
2940-0289
031620041136

EXHIBIT "A"

(Legal Description - Outparcel)

A parcel of land situated in the NE ¼ of the NW ¼ of Section 14, Township 21 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at a 3" iron pipe found at the northwest corner of said Section 14; thence, run South 89°03'42" East along the north boundary of said Section 14 a distance of 1538.52 feet to a point on the southeast right-of-way of Alabama Highway No. 119 (variable right-of-way); thence, run South 25°20'17" West along said right-of-way a distance of 134.10 feet to the POINT OF BEGINNING; thence, depart said right-of-way and run South 67°21'17" East a distance of 253.16 feet; thence, run South 25°30'31" West a distance of 217.20 feet; thence, run North 64°29'29" West a distance of 252.23 feet to a point on the southeast right-of-way of said Alabama Highway No. 119; thence, run North 25°20'17" East along said right-of-way a distance of 204.56 feet to the POINT OF BEGINNING.

Said parcel contains 53,256 square feet (1.223 acres).

EXHIBIT "B"

(Legal Description - Shopping Center Parcel)

A parcel of land situated in the NW ¼ of the NW ¼ and the NE ¼ of the NW ¼ of Section 14, Township 21 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

Commence at a 3" iron pipe found at the northwest corner of said Section 14; thence, run South 89°03'42" East along the north boundary of said Section 14 a distance of 1538.52 feet to a point on the southeast right-of-way of Alabama Highway No. 119 (variable right-of-way); thence, run South 25°20'17" West along said right-of-way a distance of 338.65 feet to the POINT OF BEGINNING ; thence, depart said right-of-way and run South 64°29'29" East a distance of 252.23 feet; thence, run North 25°30'31" East a distance of 43.00 feet; thence, run South 64°29'29" East a distance of 162.19 feet; thence, run North 25°30'31" East a distance of 173.45 feet; thence, run North 08°58'33" West a distance of 19.25 feet; thence, run South 80°40'52" East a distance of 53.00 feet; thence, run South 25°30'31" West a distance of 121.10 feet; thence, run South 19°29'29" East a distance of 49.50 feet; thence, run South 64°29'29" East a distance of 65.50 feet; thence, run South 19°29'29" East a distance of 21.92 feet; thence, run South 25°30'31" West a distance of 91.50 feet; thence, run South 64°29'29" East a distance of 20.00 feet; thence, run South 25°30'31" West a distance of 56.90 feet; thence, run South 42°35'05" East a distance of 48.50 feet; thence, run South 64°29'29" East a distance of 95.65 feet; thence, run South 25°30'31" West a distance of 448.51 feet; thence, run North 85°10'00" West a distance of 253.49 feet; thence, run North 64°29'29" West a distance of 161.91 feet; thence, run South 70°30'31" West a distance of 33.92 feet; thence, run South 25°30'31" West a distance of 202.71 feet; thence, run South 14°58'05" East a distance of 58.42 feet to a point on the north right-of-way of Shelby County Road No. 26 (80-foot right-of-way); thence, run North 83°11'42" West along said right-of-way a distance of 82.27 feet; thence, depart said right-of-way and run North 25°30'31" East a distance of 373.53 feet; thence, run North 19°29'29" West a distance of 7.07 feet; thence, run North 64°29'29" West a distance of 241.38 feet to a point on the southeast right-of-way of said Alabama Highway No. 119; thence, run North 25°20'17" East along said right-of-way a distance of 124.09 feet; thence, run North 47°08'22" East along said right-of-way a distance of 26.93 feet; thence, run North 25°20'17" East along said right-of-way a distance of 175.00 feet; thence, run North 14°01'41" East along said right-of-way a distance of 152.97 feet; thence, run North 25°20'17" East along said right-of-way a distance of 73.98 feet to the POINT OF BEGINNING.

Said parcel contains 444,558 square feet (10.206 acres).

ALL BEARINGS DERIVED FROM STATE PLANE COORDINATES (ALABAMA WST ZONE) GRID NORTH.

3/31/03