

## **AGREEMENT NOT TO CONVEY OR ENCUMBER**

**THIS AGREEMENT NOT TO CONVEY OR ENCUMBER** ("this Agreement") is entered into on May 25, 2004 by **Bridlewood Farms, L.L.C.**, a limited liability company (the "Borrower"), and **AMSOUTH BANK** (the "Lender").



20040607000305220 Pg 1/10 38.00  
Shelby Cnty Judge of Probate, AL  
06/07/2004 14:09:00 FILED/CERTIFIED

### **Recitals**

A. The Borrower and the Lender have entered into that certain Revolving Credit and Security Agreement dated as of the date hereof (the "Credit Agreement"), pursuant to which the Borrower has requested and the Lender has agreed to make a loan to the Borrower in the principal amount of \$1,500,000.00 (the "Loan"), as evidenced by that certain Promissory Note dated as of the date hereof in said principal amount.

B. In order to induce the Lender to enter into the Credit Agreement and to make the Loan to the Borrower, the Borrower has agreed to execute and deliver this Agreement to the Lender with respect to the real estate more particularly described on Exhibit A hereto (the "Property").

### **Agreement**

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and to induce the Lender to extend credit to the Borrower under the Credit Agreement and the other Credit Documents, the Borrower and the Lender hereby agree as follows:

1. **Rules of Construction**. This Agreement is subject to the rules of construction set forth in the Credit Agreement.

2. **Definitions**. As used in this Agreement, capitalized terms that are not otherwise defined herein shall have the respective meanings defined for them in the Credit Agreement and the following terms are defined as follows:

(a) Unless otherwise defined herein, terms used in this Agreement that are defined in Article 9 of the Alabama Uniform Commercial Code have the meanings defined for them therein.

(b) Property means the real property described on Exhibit A hereto.

3. **No Encumbrances or Dispositions**. From the date hereof until (i) payment in full of all sums now or hereafter due and payable to the Lender under the Credit Agreement, this Agreement or any other Credit Document and (ii) the termination of this Agreement by the Lender in writing, unless the Lender shall otherwise consent in writing, the Borrower shall not, whether directly, indirectly, voluntarily or involuntarily:

(a) encumber any of the Property, or permit any of the Property to be encumbered, with any kind of Lien;

(b) sell, transfer or otherwise dispose of, by operation of law or otherwise, or grant any option, warrant or other right with respect to, any of the Property;

(c) enter into any agreement with any other party pursuant to which the Borrower agrees not to encumber or otherwise dispose of any of the Property; or

4. **Representations and Warranties.** The Borrower represents and warrants to the Lender that (a) the Borrower is the holder of record and sole beneficial owner of all of the Property, free of Liens and adverse claims of any kind; ( to the best of the Borrower's knowledge, no consent, authorization or other action by, and no notice to or filing with, any other person (including any stockholder, partner or creditor of the Borrower and any Governmental Authority) is required for (i) the execution and delivery of this Agreement by the Borrower, or (ii) the exercise by the Lender of the rights, powers and remedies granted to it under this Agreement.

5. **Further Assurances.** Upon request of the Lender, the Borrower shall duly execute and deliver, or cause to be duly executed and delivered, to the Lender such further instruments and do and cause to be done such further acts as may be reasonably necessary or proper in the opinion of the Lender or its counsel to carry out more effectively the provisions and purposes of this Agreement.

6. **Attorney-in-Fact.** The Borrower hereby constitutes and appoints the Lender, or any other person whom the Lender may designate, as the Borrower's attorney-in-fact, at the Borrower's sole cost and expense, effective upon the existence of any Event of Default, with full authority in the place and stead of the Borrower and in the name of the Borrower or otherwise, from time to time in the Lender's discretion to take any action (a) that the Borrower has agreed, but has failed, to take under this Agreement, (b) that the Lender in its sole discretion deems necessary or advisable to maintain, preserve or protect the security intended to be afforded by this Agreement, or (c) that the Lender may deem necessary or advisable to accomplish the purposes of this Agreement and the other Credit Documents.

7. **Severability.** If all or any portion of this Agreement shall be held to be invalid, illegal or unenforceable in any respect or in any jurisdiction, then such invalidity, illegality or unenforceability shall not affect any other provision hereof, and such provision shall be limited and construed in such jurisdiction as if such invalid, illegal or unenforceable provision or portion thereof were not contained herein.

8. **Notices.**

(a) Any request, demand, authorization, direction, notice, consent or other document provided or permitted by this Agreement shall be given in the manner, and shall be effective at the time, provided in the Credit Agreement.



(b) Five Business Days' written notice to the Borrower as provided above shall constitute reasonable notification to the Borrower when notification is required by law; provided, however, that nothing contained in the foregoing shall be construed as requiring five Business Days' notice if, under applicable law and the circumstances then existing, a shorter period of time would constitute reasonable notice.

9. **Lender's Right to Deal with Transferee.** In the event that the ownership of any of the Property becomes vested in a person other than the Borrower, the Lender may, without notice to the Borrower, deal with such successor or successors in interest with reference to this Agreement in the same manner as with the Borrower, without in any way vitiating or discharging the Borrower's liability hereunder or under any of the other Credit Documents or being deemed a consent to such vesting.

10. **Governing Law.** This Agreement shall be construed in accordance with and governed by Title 9 of the U.S. Code and the internal laws of the State of Alabama (without regard to conflict of law principles) except as required by mandatory provisions of law and except to the extent that the validity and perfection of the Liens on the Property are governed by the laws of any jurisdiction other than the State of Alabama.

11. **Sole Discretion of Lender.** Whenever the Lender's judgment, consent or approval is required hereunder for any matter, or the Lender shall have an option or election hereunder, such judgment, the decision whether or not to consent to or approve the same, or the exercise of such option or election shall be in the sole discretion of the Lender.

12. **Matters to be in Writing.** This Agreement cannot be altered, amended, modified, terminated, waived, released or discharged except in a writing signed by the party against whom enforcement is sought.

13. **Successors and Assigns.** The provisions hereof shall be binding upon the Borrower and its successors and permitted assigns, including the successors in interest of the Borrower in and to all or any part of the Property, and shall inure to the benefit of the Lender and its successors and assigns.

14. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

15. **Submission to Jurisdiction.** The Borrower irrevocably (a) acknowledges that this Agreement will be accepted by the Lender and performed by the Borrower in the State of Alabama; (b) submits to the jurisdiction of each state or federal court sitting in Jefferson County, Alabama (collectively, the "Courts") over any suit, action or proceeding arising out of or relating to this Agreement (to enforce the arbitration provisions hereof or, if the arbitration provisions are found to be unenforceable, to determine any issues arising out of or relating to this Agreement) or any of the other Credit Documents (individually, an "Agreement Action"); (c) waives, to the fullest extent permitted by law, any objection or defense that the Borrower may now or hereafter



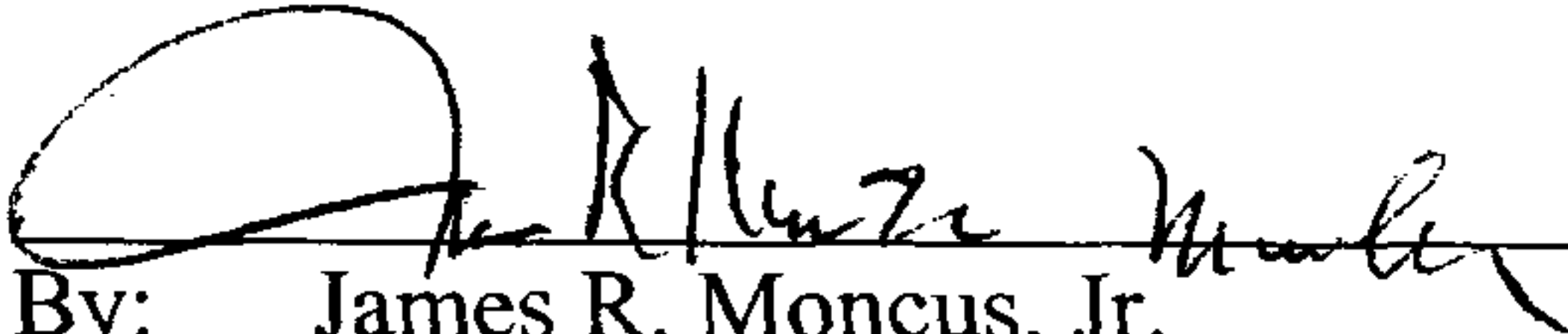
have based on improper venue, lack of personal jurisdiction, inconvenience of forum or any similar matter in any Agreement Action brought in any of the Courts; (d) agrees that final judgment in any Agreement Action brought in any of the Courts shall be conclusive and binding upon the Borrower and may be enforced in any other court to the jurisdiction of which the Borrower is subject, by a suit upon such judgment; (e) consents to the service of process on the Borrower in any Agreement Action by the mailing of a copy thereof by registered or certified mail, postage prepaid, to the Borrower at the Borrower's address designated in or pursuant to Section 10; (f) agrees that service in accordance with subsection (e) of this Section 17 shall in every respect be effective and binding on the Borrower to the same extent as though served on the Borrower in person by a person duly authorized to serve such process; and (f) **AGREES THAT THE PROVISIONS OF THIS SECTION, EVEN IF FOUND NOT TO BE STRICTLY ENFORCEABLE BY ANY COURT, SHALL CONSTITUTE "FAIR WARNING" TO THE BORROWER THAT THE EXECUTION OF THIS AGREEMENT MAY SUBJECT THE BORROWER TO THE JURISDICTION OF EACH STATE OR FEDERAL COURT SITTING IN JEFFERSON COUNTY, ALABAMA WITH RESPECT TO ANY AGREEMENT ACTIONS, AND THAT IT IS FORESEEABLE BY THE BORROWER THAT THE BORROWER MAY BE SUBJECTED TO THE JURISDICTION OF SUCH COURTS AND MAY BE SUED IN THE STATE OF ALABAMA IN ANY AGREEMENT ACTIONS.** Nothing in this Section 17 shall limit or restrict the Lender's right to serve process or bring Agreement Actions in manners and in courts otherwise than as herein provided.

16. **Arbitration.** This Agreement incorporates by reference the requirements for arbitration of disputes set forth in the Credit Agreement.

**IN WITNESS WHEREOF**, the Borrower has caused this Agreement to be duly executed on this the 25th day of May, 2004.

Bridlewood Farms, L.L.C.

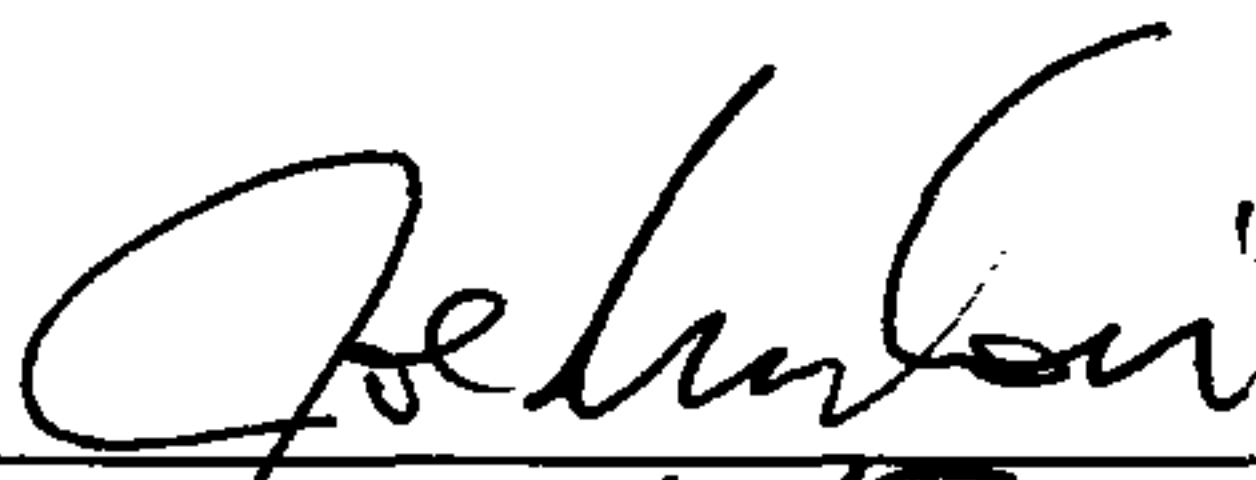
By: J-Mar Properties, L.L.C., Member

  
By: James R. Moncus, Jr.  
Its: Member

By: AM H Investment Corp., Member

  
By: Joseph P. McCormick  
Its: President

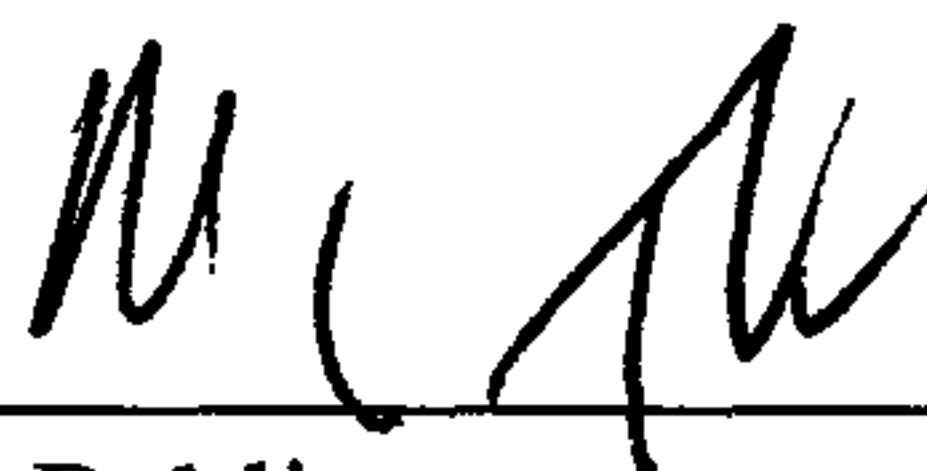
**AMSOUTH BANK**

By:   
Its: AVP

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that James R. Moncus, Jr., whose name as Member of J-Mar Properties, L.L.C., Member of Bridlewood Farms, LLC, a 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 25th day of May, 2004.



\_\_\_\_\_  
Notary Public

[AFFIX SEAL]

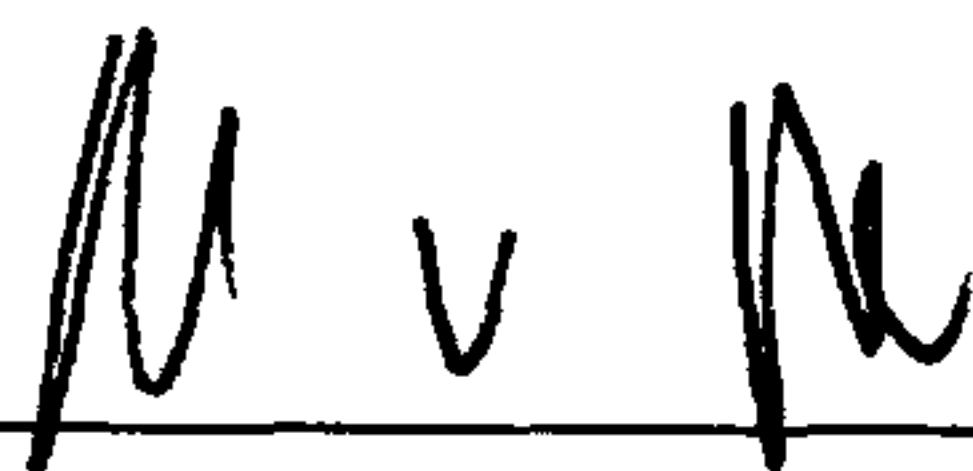
**My Commission Expires 5/21/2008**

My Commission Expires:\_\_\_\_\_

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Joseph P. McCormick, whose name as President of AMH Investment Corp., Member of Bridlewood Farms, LLC, a 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 officer and with full authority, executed the same voluntarily for and as the act of said corporation as a member of said limited liability company.

Given under my hand and official seal, this 25th day of May, 2004.



\_\_\_\_\_  
Notary Public

[AFFIX SEAL]

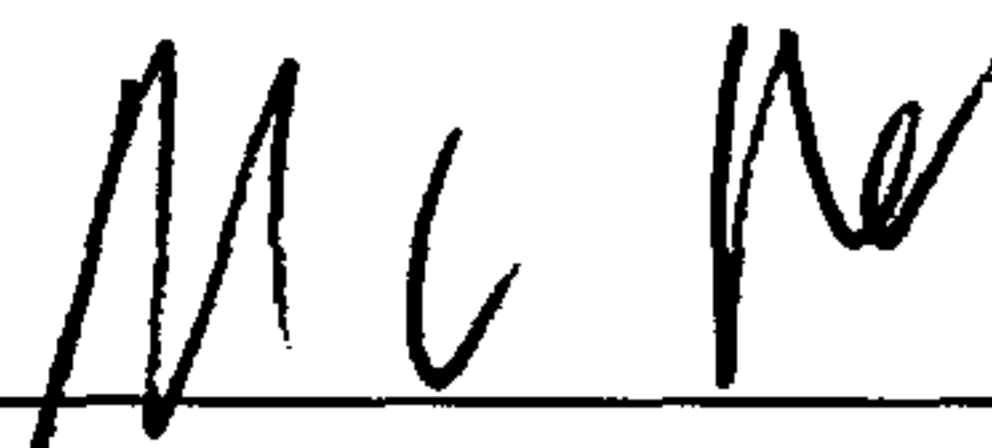
**My Commission Expires 5/21/2008**

My Commission Expires:\_\_\_\_\_

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON )

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Joe Medori, whose name as Assistant Vice-President of AmSouth Bank, 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 Bank.

Given under my hand and official seal, this 25<sup>th</sup> day of May, 2004.

  
\_\_\_\_\_  
Notary Public

[AFFIX SEAL]

My Commission Expires: \_\_\_\_\_

My Commission Expires 5/21/2008



EXHIBIT "A"

Legal Description of Property

**Shelby County Parcel**

East ½ of Northeast ¼; Southeast ¼ of Northeast ¼; Northwest ¼ of Northeast ¼ and East ½ of Northwest ¼, East of road, Section 20, Township 24, Range 12 East, Shelby County, Alabama.

Less and except part sold to Thomas L. Butler and Belinda P. Butler in Inst. No. 2003-23253.

**Chilton County Parcel**

**Parcel I**

All the SW ¼ of the NW ¼ of Section 21, Township 24 North, Range 12 East, Chilton County, Alabama, which lies South of the 50-foot easement to a road known as Freeman Road and which lies south and East of the Jim A. and Mary A. Robertson property as described in Book 594, Page 284, in the Probate Office of Chilton County, Alabama, being more particularly described as follows: Beginning at the SW corner of said SW ¼ of the NW ¼ and run East along the South boundary of said ¼-¼ a distance of 1309.6 feet to the SE corner of said ¼-¼ Section; thence turn an angle of 89 degrees 41 minutes to the left and run North along the East boundary of said ¼-¼ section a distance of 1251.6 feet to a point on the South boundary of said Freeman Road; said point being located as the P. T. Of a curve whose delta angel is 15 degrees 10 minutes to the right and whose radius is 286.5 feet; thence turn to the left and run Westerly along the South boundary of said Freeman Road 41.6 feet to P.T. of said curve; thence run Westerly along the South boundary of said road 241.1 feet to the P.C. of a curve shoes delta angel is 6 degrees 28 minutes to the left and whose radius is 381.97 feet; thence run 40.3 feet along curve to P.T. of said curve in a Northerly direction to a point 50 feet South of the North boundary of said SW ¼ of the NW ¼ of Section 21; thence run West and parallel with the North boundary of said ¼-¼ section and along the South boundary of sald road a distance of 424.5 feet; thence turn an angle of 42 degrees 14 minutes to the left and run Southwesterly 456.5 feet; thence turn an angle of 32 degrees 00 minutes to the right and run 239.0 feet Westerly to a point on the West boundary of said SW ¼ of the NW ¼; thence turn an angle of 80 degrees to the left and run South along the West boundary of said ¼-¼ section 930.6 feet to the point of beginning.

Less and Except: A 50 foot easement from Freeman Road to the county line, for Ingress, egress and utilities, more particularly described as follows: From the SW corner of the SW ¼ of NW ¼, Section 21, Township 24 North, Range 12 East, Chilton County, Alabama, run North along the Section line 930.6 feet to the NW corner of the lot presently owned by Barnett and the beginning point of said easement; said easement being a strip of land 50 feet of even width and parallel to the following described line; from said point of beginning previously stated, deflect to the right 100 degrees 00 minutes for 239 feet; thence deflect left 58 degrees 00 minutes for 456.6 feet to the South right of way line of the existing county gravel road community known as "Freeman Road", and the end of said easement.

**Parcel II**

A 50 foot easement form Freeman Road to the County line, for ingress, egress and utilities, more particularly described as follows:

From the SW corner of the SW ¼ of the NW ¼, Section 21, Township 24 North, Range 12 East, Chilton County, Alabama, run North along the Section line 930.6 feet to the NW corner of the lot presently owned by Barnett and the beginning point of sald easement; said easement being a strip of land 50 feet of even width and parallel to the following described line; from said point of beginning previously stated, deflect to the right 100 degrees 00 minutes for 239 feet; thence deflect left 58 degrees 00 minutes for 456.6 feet to the South right of way line of the existing county gravel road commonly known as "Freeman Road", and the end of sald easement.



**Bibb County Parcel**

**Parcel I**

A tract of land situated in the Southwest  $\frac{1}{4}$  of Section 20, Township 24 North, Range 12 East, Bibb County, Alabama, described as follows:

Begin at the Northeast corner of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 20, Township 24 North, Range 12 East, Bibb County, Alabama and run South 1 degree 29 minutes 29 seconds East, for a distance of 1852.29 feet to an iron corner; thence South 78 degrees 13 minutes 03 seconds West for a distance of 418.82 feet; thence North 90 degrees 00 minutes West for a distance of 80.0 feet to a point of intersection with the centerline of Mahan Creek; thence Westerly along the meanderings of said Mahan Creek to a point which is North 86 degrees 15 minutes 10 seconds West and 2248.15 feet from last described point; thence North 44 degrees 52 minutes 50 seconds East along an old fence line and hedge row for a distance of 1337.52 feet; thence North 39 degrees 03 minutes 25 seconds East for a distance of 230.76 feet to a spike located in the center of a paved public road; thence North 34 degrees 01 minutes 02 seconds East along the center of an unpaved public road for a distance of 320.8 feet; thence North 16 degrees 33 minutes 02 seconds East for a distance of 245.6 feet; thence North 36 degrees 43 minutes 02 seconds East for a distance 175.25 feet to a point of intersection with the West line of the Northeast  $\frac{1}{4}$  of the Southwest  $\frac{1}{4}$  of Section 20, Township 24 North, Range 12 East; thence North 0 degrees 37 minutes 08 seconds East for a distance of 106.72 feet to the Northwest corner of said  $\frac{1}{4}$ - $\frac{1}{4}$  section; thence North 89 degrees 11 minutes 46 seconds East for a distance of 1329.39 feet to the point of beginning. Being the same property conveyed to Marcella M. Nicholson, Register of the Circuit Court of Bibb County, Alabama in Equity to Charles Hogge by Register's Deed dated September 27, 1966 and filed September 27, 1966 and recorded in Deed Book 86, Page 51 in the Probate Office of Bibb County, Alabama.

**Parcel II**

A parcel of land being all that part of the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 20, all that part of the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 20, all that part of the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 20 lying East of the center of Mahan Creek and South of an existing fence, and all that part of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 29, lying East of the center of Mahan Creek, all being in Township 24 North, Range 12 East, described as follows:

Beginning at the NW corner of the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 20 go North 89 degrees 53 minutes 48 seconds East along the North boundary of said  $\frac{1}{4}$ - $\frac{1}{4}$  Section for 1328.66 feet to the NE corner of the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of said Section 20; thence South 00 degrees 13 minutes 56 seconds West along the East boundary of said  $\frac{1}{4}$ - $\frac{1}{4}$  section for 1429.37 feet to the NE corner of the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of said Section 20; thence South 00 degrees 27 minutes 02 seconds West along the East boundary of said  $\frac{1}{4}$ - $\frac{1}{4}$  Section for 1251.60 feet to the SE corner of the SW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of said Section 20; thence North 89 degrees 23 minutes 48 seconds West along the South boundary of said  $\frac{1}{4}$ - $\frac{1}{4}$  section for 1301.91 feet to the NE corner of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 29; thence South 00 degrees 50 minutes 46 seconds West along the East Boundary of said  $\frac{1}{4}$ - $\frac{1}{4}$  Section for 1376.56 feet to the SE corner of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of said Section 29; thence North 89 degrees 41 minutes 56 seconds West along the South boundary of said  $\frac{1}{4}$ - $\frac{1}{4}$  Section for 739.54 feet to the center of Mahan Creek; thence Northerly along the center of Mahan Creek for (7) courses as follows:

Go North 02 degrees 33 minutes 55 seconds East for 296.39 feet;  
thence North 22 degrees 06 minutes 28 seconds East for 405.96 feet;  
thence North 15 degrees 21 minutes 44 seconds East for 223.78 feet;  
thence North 15 degrees 53 minutes 18 seconds East for 461.70 feet;  
thence North 04 degrees 05 minutes 10 seconds East for 479.21 feet;  
thence North 13 degrees 41 minutes 07 seconds West for 243.84 feet;  
thence North 22 degrees 02 minutes 56 seconds West for 56.67 feet;

thence North 90 degrees 00 minutes 00 seconds East for 80.00 feet; thence North 78 degrees 13 minutes 03 seconds East for 418.82 feet; thence North 01 degree 29 minutes 29 seconds West for 1352.96 feet to the point of beginning.



**Parcel III**

The NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$ , Section 20, Township 24 North, Range 12 East, Bibb County, Alabama,

Also, The NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$ , Section 20, Township 24 North, Range 12 East, Bibb County, Alabama, described as follows:

Beginning at the NW corner of the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of Section 20, go North 89 degrees 53 minutes 48 seconds, East along the North boundary of said  $\frac{1}{4}$   $\frac{1}{4}$  Section for 1328.66 feet to the NE corner of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 20; thence South 00 degrees 28 minutes 02 seconds East along the East boundary of said  $\frac{1}{4}$   $\frac{1}{4}$  section for 1325.79 feet to the SE corner of the NW  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of said Section 20; thence South 85 degrees 29 minutes 39 seconds West along the South boundary of said  $\frac{1}{4}$   $\frac{1}{4}$  section for 1349.43 feet to the SW corner of the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of said Section 20; thence North 00 degrees 13 minutes 56 seconds East along the West boundary of said  $\frac{1}{4}$   $\frac{1}{4}$  Section for 1429.37 feet to the point of beginning; being situated in Bibb County, Alabama.

Less and Except a parcel located in the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$ , Section 20, Township 24 North, Range 12 East, Bibb County, Alabama, described as follows:

Beginning at the SW corner of the NE  $\frac{1}{4}$  of the SE  $\frac{1}{4}$  of said Section, Township and Range, proceed West along the South line of said  $\frac{1}{4}$ - $\frac{1}{4}$  section line for a distance of 250 feet to a point; thence proceed North, and parallel to the East  $\frac{1}{4}$   $\frac{1}{4}$  Section line of a distance of 650 feet to a point; thence proceed East, and parallel to the South  $\frac{1}{4}$ - $\frac{1}{4}$  section line for a distance of 250 feet to the East  $\frac{1}{4}$ - $\frac{1}{4}$  section line; thence proceed South along the  $\frac{1}{4}$ - $\frac{1}{4}$  section line to the point of beginning, all being situated in Bibb County, Alabama.

**LESS AND EXCEPT**

From a 2" pipe accepted as the S.W. corner of the Southwest  $\frac{1}{4}$  - Southeast  $\frac{1}{4}$  of Section 20, Township 24 North, Range 12 East, sighting 1302.16 feet East on a 5/8" rebar accepted as the S.E. corner of said Southwest  $\frac{1}{4}$  - Southeast  $\frac{1}{4}$ , turn thence 89 degrees 46 minutes 00 seconds left and run 78.40 feet to a point in the center of a 50' radius cul-de-sac and the center of a 50' easement for ingress and egress; thence turn 46 degrees 48 minutes 15 seconds right and run 1580.44 feet along said easement centerline to a point at the P.C. of a curve concave left, having a delta angle 76 degrees 06 minutes 12 seconds and tangents of 150.00 feet; thence turn 17 degrees 28 minutes 35 seconds left and run a chord distance of 115.10 feet to a point on said curve boundary, being the point of beginning of herein described parcel of land; thence turn 38 degrees 03 minutes 06 seconds left and run a chord distance of 134.69 feet to a point at the P.T.; thence turn 20 degrees 34 minutes 31 seconds left and run 1255.64 feet to a point the center of a 50' radius cul-de-sac; thence turn 94 degrees 27 minutes 20 seconds left and run 165.28 feet along the of a private drive to a point; thence turn 10 degrees 46 minutes 39 seconds right and run 383.61 feet along the centerline of said private drive to a point; thence turn 59 degrees 59 minutes 29 seconds left and run 689.69 feet to a  $\frac{1}{2}$ " rebar; thence turn 94 degrees 18 minutes 07 seconds left and run 249.20 feet to a  $\frac{1}{2}$ " rebar; thence turn 108 degrees 55 minutes 25 seconds right and run 263.78 feet to a  $\frac{1}{2}$ " rebar; thence turn 109 degrees 13 minutes 00 seconds left and run 1059.28 feet to the point of beginning of herein described parcel of land, situated in the Northwest  $\frac{1}{4}$  - Southeast  $\frac{1}{4}$  of Section 20, Township 24 North, Range 12 East, Bibb County, Alabama.