


STATE OF ALABAMA  
COUNTY OF SHELBY

  
20060104000006330 1/6 \$26.00  
Shelby Cnty Judge of Probate, AL  
01/04/2006 02:07:12PM FILED/CERT

## NEGATIVE PLEDGE AGREEMENT

THIS NEGATIVE PLEDGE AGREEMENT (hereinafter "Agreement") is made this 30 day of December, 2005, between **Jeffrey M. Stern**, a unmarried man, whose address is 331 First Avenue North, Birmingham, Alabama, 35204 (hereinafter referred to as "Owner") and **AMSOUTH BANK** whose address is P.O. Box 11007, Birmingham, Alabama, 35288 (hereinafter "Lender").

**WHEREAS**, Owner is the owner of the land described on Exhibit "A" attached hereto, along with all buildings, structure, fixtures, equipment, personal property, improvements, easements, right-of-ways, interests, privileges, liberties, tenements, hereditaments, appurtenances, reversions and remainders pertaining thereto or pertaining thereto in the future (hereafter collectively the "Real Estate")

**WHEREAS**, Lender is making a loan to RITE-WAY SERVICE, INC. (the "Borrower"), one of the conditions of which requires Owner to agree not to encumber the Real Estate while this loan, any part thereof, or any other obligation of Borrower and/or Owner is still owed by Borrower to Lender.

**NOW THEREFORE** for and in consideration of the premises, Ten Dollars and other good and valuable consideration in hand paid, and to induce Lender to make the loan to Borrower, the Owner represents and warrants to the Lender, and covenants and agrees with the Lender, that it **WILL NOT** grant bargain, sell, alien, convey, mortgage, encumber, grant a security interest or lien in, or otherwise restrict or assign in any way, to or in favor of any person or entity, any interest in or to the Real Estate.

**PROVIDED HOWEVER**, if the loan made by Lender to Borrower and all other obligations of Owner and/or Borrower to Lender is paid, then this agreement shall be null and void; otherwise it shall remain in full force and effect.

**AND** the Owner covenants and agrees with the Lender a follows;

1. **Warranties of Title.** Owner covenants with Lender that it is lawfully seized in fee simple of the Real Estate and has full power and right to enter into this agreement, that the Real Estate is free of all encumbrances except as set out in Exhibit "A", that the Owner quietly enjoys and possesses the same; and Owner will warrant and forever defend the title to said Real Estate against lawful claims of all persons.

2. **No Homestead.** The Property described on Exhibit "A" is not the homestead of Owner nor of Owner's spouse.

3. **Covenant Against Sale, Lease or Transfer.** In the event of any change in the present ownership of all or any part of the Real Estate or any interest therein, either by



affirmative action, by operation of law or otherwise, or in the event any encumbrance of the Real Estate is created without Lender's prior written approval, Lender may, at its option, declare all of Borrower's indebtedness to Lender due and payable in full.

4. **Taxes, Utilities, and Liens.** The Owner shall pay promptly, when and as due, and, if requested, will exhibit promptly to the Lender receipts for the payment of all taxes, assessments, water rates, utility charges, dues, charges, fines, penalties, costs and other expenses incurred, and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Real Estate or any part thereof, or upon the revenues, rents, issues and profits of the Real Estate or arising in respect to the occupancy, use or possession thereof, or upon the interest of the Owner in the Real Estate, or any charge which, if unpaid, would become a lien or charge upon the Real Estate. Such taxes, assessments and other charges shall not be permitted to become delinquent.

5. **Hazard Insurance.** Owner will constantly keep in force fire and extended coverage insurance policies with respect to any and all buildings or equipment on said Real Estate. Such insurance will be provided in such a manner by such companies and for such amounts as may be required by Lender. Owner covenants to pay the premium on such policy or policies when due, to deliver to the Lender upon its request the official receipts for such premium payments.

6. **Covenant Against Waste; Care of the Property.** The Real Estate and the improvements thereon shall be kept in good condition and no waste committed or permitted thereon, reasonable natural wear and tear excepted. No building or other improvement on the Real Estate shall be structurally altered, removed or demolished, without the Lender's prior written consent, nor shall any fixture or chattel adapted to the proper use and enjoyment of the Real Estate be removed at any time without like consent. In the event of any breach of this covenant the Lender may, in addition to any other rights or remedies, at any time thereafter, declare the whole of the indebtedness owed by Borrower to Lender immediately due and payable. Lender is hereby authorized to enter upon and inspect the Real Estate and to inspect the Owner's or Owner's agent's records with respect to the ownership, use, management and operation of the Real Estate, at any time during normal business hours.

7. **Mechanics' and Materialmen's Liens Prohibited.** Any lien which may be filed under the provisions of the statutes of Alabama, relating to the liens of mechanics and materialmen, shall be promptly paid and discharged by Owner and shall not be permitted to attach to the Real Estate.

8. **Governmental Compliance.** Owner shall comply with all laws, governmental standards, and regulations applicable to Owner or the Real Estate with regards to occupational safety, hazardous waste and materials, and environmental matters. Owner shall promptly notify Lender of its receipt of any nature of a violation by Owner or the Real Estate of any such law, standard, or regulation. Owner represent and warrant to Lender that there is not now, or will there be in the future, any asbestos or other harmful or regulated substances in the Real Estate or on the Real Estate or pending claims relating thereto. Owner shall indemnify and hold Lender harmless for any and all loss incurred by Lender as a result of Owner's breach of this warranty



and representation. This indemnification shall survive the payment of Borrower's obligations to Lender, and all similar or related events or occurrences.

9. **Events of Default.** Owner shall be deemed in default hereunder upon the occurrence of any of the following events ("Events of Default"): (a) if Owner defaults in the payment of any mechanic's lien, materialmen's lien, insurance premiums, taxes, or assessments now, or which may hereafter be levied against, or which may become a lien on the Real Estate, (b) if the Owner defaults in any of the covenants, conditions, and agreements herein contained; (c) if a receiver of Owner or of the Real Estate be appointed; (d) if Owner intentionally damages or attempts to remove any improvement from said Real Estate; (e) if all or any part of the Real Estate is condemned; or (f) if Owner sells, aliens, conveys, mortgages, encumbers, grants a security interest in, or disposes of the Real Estate

10. **Acceleration of Debt.** Upon the occurrence of an Event of Default or at any time thereafter, the Lender shall have the option or right, without notice or demand, to declare all of the indebtedness owed by Borrower to Lender immediately due and payable.

11. **Waiver and Election.** No failure or delay of Lender to exercise any option herein given, shall be taken or construed as a waiver of its right to exercise such option. The procurement of insurance or the payment of taxes or other liens, debts, or charges by Lender shall not be taken or construed as a waiver of its right to declare the maturity of the indebtedness referred to herein, by reason of the failure of Owner to procure such insurance or to pay such taxes, debts, liens, or charges.

12. **Modifications or Extensions Not Affecting Agreement.** The parties expressly agree that: (a) any indebtedness at any time referred to herein may be extended, rearranged or renewed, and that any part of the terms hereof or in the documents or agreements executed by Borrower may be waived or released without in any way altering, varying, or diminishing the force and effect of this instrument; (b) this instrument shall continue as a agreement pertaining to the Real Estate and will not be expressly released until all sums with interest and charges owed by the Borrower to Lender are fully paid; (c) no other security now existing or hereafter taken to secure the payment of said indebtedness or any part thereof shall in any manner be impaired or affected by the execution of this instrument; (d) no security subsequently taken by Lender or other holder or holders of said indebtedness shall in any manner impair or affect the rights given by this instrument; and (e) all security for the payment of said indebtedness or any part thereof shall be taken, considered and held as cumulative.

13. **Notices.** Wherever and whenever in this agreement it shall be required or permitted that notice or demand be given or served by any party, such notice or demand shall be given or served, and shall not be deemed to have been given or served unless in writing and forwarded by registered or certified mail, return receipt requested, or by overnight professional courier, addressed to the addresses of the parties indicated at the beginning of this agreement, or to such other address as either party may have given to the other by notice as hereinabove provided. Such notice shall be deemed given and shall be effective upon deposit in the United States Mail postage prepaid or into the hands of an overnight professional courier, all charges prepaid, addressed to the above addresses or to such other address as either party may have

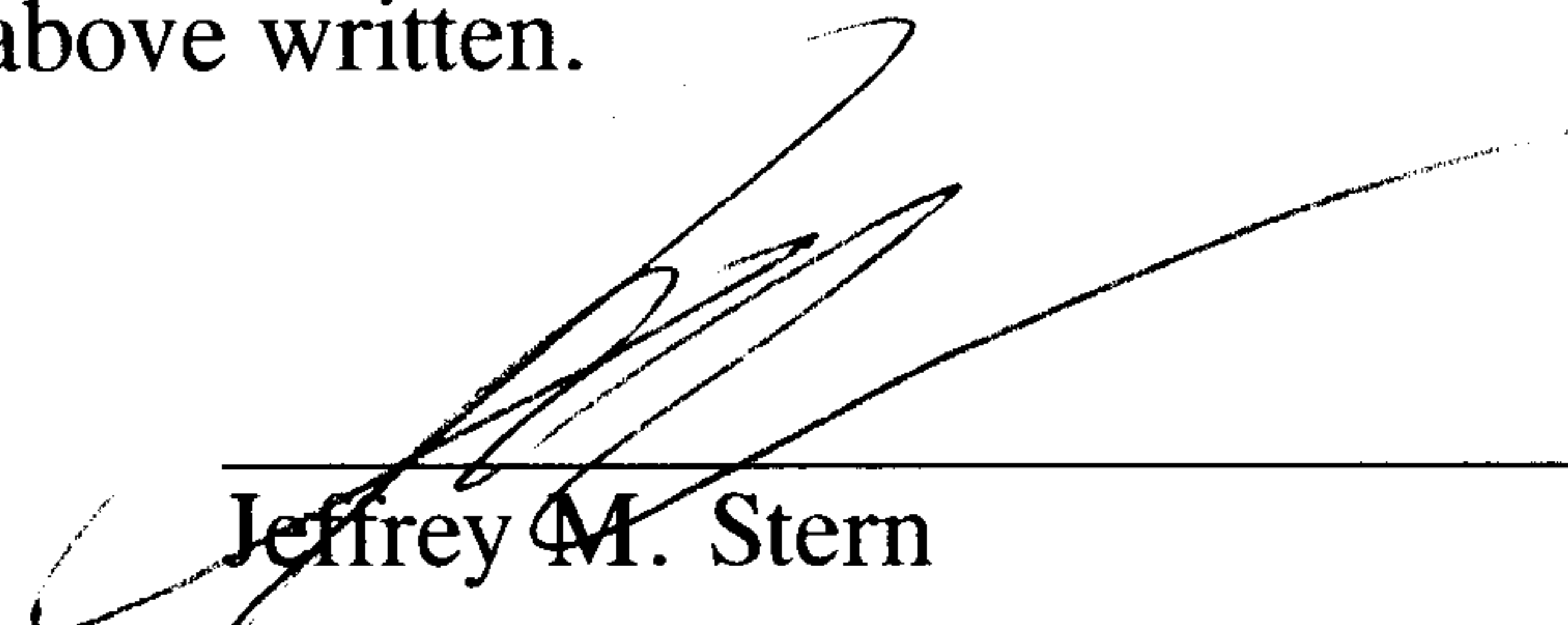


given to the other by notice as hereinabove provided. Actual notice to Owner or Lender shall always be effective no matter how given or received.

14. **Meaning of Particular Terms.** Singular or plural words used herein to designate the Owner shall be construed to refer to the maker or makers of this agreement, whether one or more persons or a corporation, and all covenants and agreements herein contained shall bind the successors and assigns of the Owner, and every option, right, and privilege herein reserved or secured to Lender shall inure to the benefit of its successors and assigns. The headings of the sections hereof are for convenience or reference only, and are not to be considered a part hereof, and shall not limit or affect any of the terms hereof.

15. **Enforceability; Remedies Cumulative.** The unenforceability or invalidity of any provision or provisions of this agreement shall not render any other provision or provisions herein contained unenforceable or invalid. All rights or remedies of Lender hereunder are cumulative and not alternative, and are in addition to those provided by law.

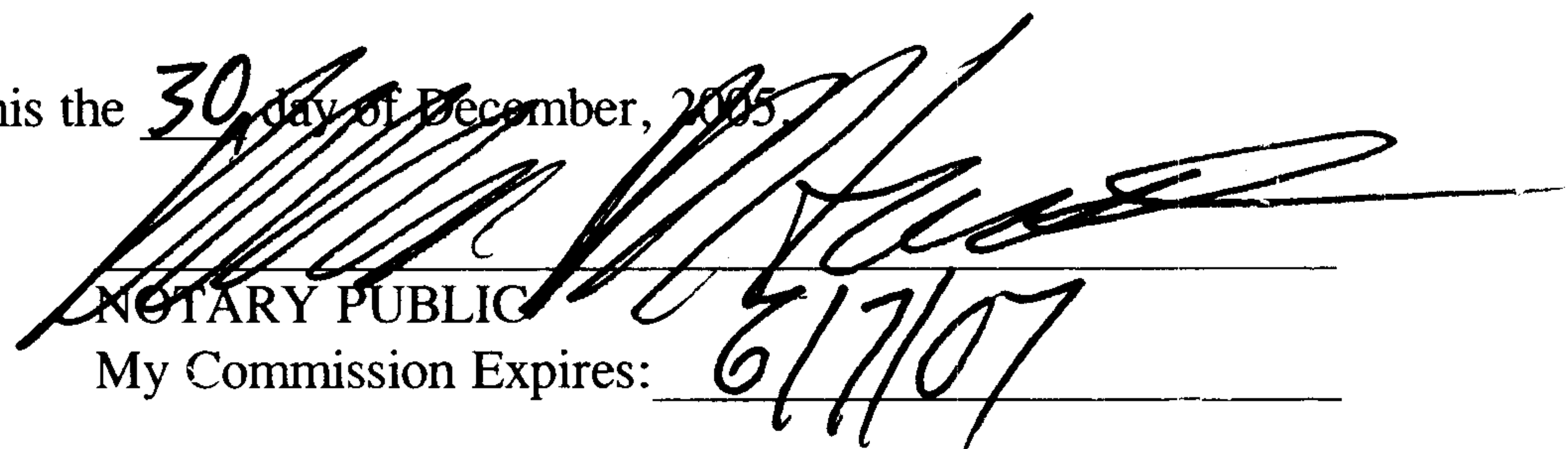
**IN WITNESS WHEREOF**, the party constituting Owner has hereto set his hand and seal hereto effective as of the date first above written.

  
\_\_\_\_\_  
Jeffrey M. Stern L.S.

STATE OF ALABAMA  
JEFFERSON COUNTY

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jeffrey M. Stern, 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 this instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal, this the 30 day of December, 2005.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 6/7/07

THIS INSTRUMENT PREPARED BY AND AFTER  
RECORDATION SHOULD BE RETURNED TO:  
William B. Hairston, III  
ENGEL, HAIRSTON & JOHANSON, P.C.  
109 North 20th Street, Fourth Floor  
P.O. Box 11405,  
Birmingham, Alabama, 35202  
(205) 328-4600



## EXHIBIT "A"

### PARCEL I:

Commencing at the NW corner of the SW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 8, Township 20 South, Range 2 West; thence South 87 degrees 13 minutes 31 seconds East and run a distance of 394.59 feet to the Point of Beginning; thence continue along the last described course a distance of 106.45 feet; thence South 00 degrees 54 minutes 59 seconds East and run a distance of 1310.46 feet to a point on the north line of Section 17; thence continue along the last described course and run a distance of 825.0 feet; thence South 51 degrees 09 minutes 34 seconds West and run a distance of 407.57 feet to a point on the northerly right of way line of an Alabama Power Transmission Line Easement (200 foot R.O.W.); thence leaving said right of way on a bearing of North 10 degrees 38 minutes 48 seconds East and run a distance of 1105.02 feet to a point on the north line of Section 17; thence North 86 degrees 51 minutes 19 seconds West and along the North line of said Section 17 and run a distance of 159.60 feet; thence North 12 degrees 17 minutes 36 seconds East and leaving said north line of said Section 17 and run a distance of 258.91 feet to the point of a curve to the left, said curve having a radius of 300.00 feet and a central angle of 19 degrees 44 minutes 41 seconds; thence continue along the arc of said curve a distance of 103.38 feet to the end of said curve; thence North 06 degrees 17 minutes 59 seconds West and run a distance of 442.19 feet to the point of a curve to the right, said curve having a radius of 200.00 feet and a central angle of 19 degrees 08 minutes 43 seconds; thence continue along the arc of said curve a distance of 66.83 feet to the end of said curve; thence North 12 degrees 50 minutes 43 seconds East and run a distance of 139.55 feet to the point of a curve to the left, said curve having a radius of 200.00 feet and a central angle of 41 degrees 41 minutes 50 seconds; thence run along the arc of said curve a distance of 145.55 feet to the end of said curve; thence North 32 degrees 15 minutes 08 seconds East and run a distance of 145.55 feet to the end of said curve; thence North 32 degrees 15 minutes 08 seconds East and run a distance of 187.03 feet to the Point of Beginning.

### PARCEL II:

A parcel of land situated in Sections 8 and 17, Township 20 South, Range 2 West, and being more particularly described as follows:

Begin at the SW corner of the NW  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of Section 8, Township 20 South, Range 2 West and run South 87 degrees 13 minutes 31 seconds East along the South line thereof 501.04 feet to the point of beginning, thence continue along said South line 2143.21 feet to the SE corner of the NE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section, thence South 0 degrees 46 minutes 37 seconds East and run along the East line of the SE  $\frac{1}{4}$  of the SW  $\frac{1}{4}$  of said Section 1301.84 feet to the SE corner of said  $\frac{1}{4}$   $\frac{1}{4}$  thence North 87 degrees 49 minutes 13 seconds West and run along the South line thereof 1318.96 feet to the SW corner of said  $\frac{1}{4}$   $\frac{1}{4}$ , thence South 0 degrees 34 minutes 53 seconds



East and run along the East line of the NW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 17, Township 20 South, Range 2 West 1324.03 feet to the SE corner thereof; thence North 75 degrees 45 minutes 51 seconds West and run parallel to the Alabama Power Company R.O.W. 1173.10 feet; thence North 51 degrees 09 minutes 34 seconds East and run 407.57 feet; thence North 0 degrees 54 minutes 59 seconds West and run 2135.45 feet to the point of beginning.

LESS AND EXCEPT from I and II above a part of the NW  $\frac{1}{4}$  of Section 17, Township 20, Range 2 West, being more particularly described as follows:

Begin at the Northeast corner of Lot 79, according to the Survey of High Hampton, Sector 1, as recorded in Map Book 19, page 89, in the Office of the Judge of Probate of Shelby County, Alabama; thence run South 10 degrees 38 minutes 48 seconds West along the projected east line of said Lot 79 for a distance of 401.03 feet; thence run South 75 degrees 45 minutes 51 seconds East for a distance of 333.08 feet; thence run North 00 degrees 54 minutes 59 seconds West for a distance of 461.09 feet; thence run North 86 degrees 26 minutes 38 seconds West for a distance of 241.85 feet to the point of beginning.

FURTHER LESS AND EXCEPT from I and II above a part of the NW  $\frac{1}{4}$  of Section 17, Township 20, Range 2 West, being more particularly described as follows:

Lot 9, according to the Map of Survey of High Hampton Estates, Phase Two, as the same appears of record in Map Book 34, Page 133, in the Office of the Judge of Probate of Shelby County, Alabama

**SUBJECT TO:** i) taxes for the year 2006, a lien but not yet payable; ii) agreement and grant of easement recorded in Instrument 1994/6147; iii) restrictions or covenants recorded in Instrument 1996/41127; iv) agreement and grant of easement and rights of others recorded in Instrument 1994/13983; v) timber rights and rights of way thereto recorded in Instrument 1994/13782; vi) easements and reservations reserved in Instrument 1994/10603; and vii) restrictions or covenants recorded in Instrument 1999/5581 and 1999/13571.