

## **DECLARATION OF RESTRICTIVE COVENANT**

AFTER RECORDING RETURN TO:

Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.

Attn: Francis C. Bagbey, Esq.

Post Office Box 2611

Raleigh, North Carolina 27602-2611

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STATE OF ALABAMA  
COUNTY OF SHELBY

THIS DECLARATION OF RESTRICTIVE COVENANT (this "Declaration") is given as of this 26<sup>th</sup> day of March, 2007 by JERRY'S KWIKSHOP OF COLUMBIANA, INC., an Alabama corporation ("Seller"), and JERRY W. HUFF, an individual with an address of 4058 Greystone Drive, Birmingham, Alabama 35242 ("Huff"), as declarants.

WHEREAS, on or around January 18, 2007, The Pantry, Inc. ("Pantry") purchased from Seller the real property located at 21195 Highway 25, Columbiana, Alabama (the "Real Property") and certain other assets of Seller used in the operation of the convenience store located at the Real Property (the "Transaction") pursuant to that certain Purchase Agreement dated as of November 13, 2006 (the "Purchase Agreement");

WHEREAS, simultaneously with the closing of the Transaction, Pantry closed a sale/leaseback transaction with National Retail Properties, LP ("NNN"), in connection with which NNN purchased the Real Property from Pantry and leased the Real Property to Pantry;

WHEREAS, Huff owns one hundred percent (100%) of the stock of Seller, and, as such received a benefit from the Transaction; and

WHEREAS, pursuant to the terms of the Purchase Agreement and the Closing Agreement by and between Seller and Pantry dated as of January 18, 2007 (the "Closing Agreement"), Seller and Huff are required to restrict the use of two pieces of real property leased



or owned by Seller and/or Huff (collectively, the "Restricted Properties") described respectively in Exhibit A and Exhibit B attached hereto and incorporated herein by reference.

NOW, THEREFORE, in consideration of Pantry having closed the Transaction and Pantry's reliance on the obligations of Seller and Huff under the Closing Agreement, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Seller and Huff hereby covenant as follows:

1. Use Restrictions. The Restricted Properties are and shall be subject in perpetuity to the following restrictive covenant: Neither of the Restricted Properties may be used as or for (a) a convenience store, a store for the sale of alcoholic beverages, or a business engaged in the retail sale of gasoline, (b) the retail sale of cigarettes, (c) the retail sale of beer for off-premises consumption, and/or (d) the operation of a car wash, or in any other manner connected with a business that engages in the restricted activities referred to in subclauses (a), (b), (c), and (d) above.

2. Duration and Modification. The foregoing use restrictions shall burden and encumber the Restricted Properties in perpetuity, shall benefit the Real Property, and shall be binding upon all successive owners and occupants of the Restricted Properties. These restrictions can only be released by a written document signed by the owner of the Real Property and recorded in the county(ies) in which the Restricted Properties are located.

3. Binding Effect. The servitudes, easements, privileges, agreements, maintenance obligations, and terms hereof shall be deemed to be covenants running with the land, and until this Declaration is terminated, shall be binding upon and inure to the benefit of the parties hereto, their respective successors, assigns, agents, representatives, tenants, subtenants, contractors, and consultants.

4. Governing Law. This Declaration and all the provisions hereof shall be governed by, construed, and enforced in accordance with the laws of the State of Alabama.

5. Execution. This Declaration may be executed in counterparts, each of which shall be deemed an original, and all of which shall constitute one agreement.

*[Signature pages to follow.]*




*Signature page to Declaration of Restrictive Covenant*

IN WITNESS WHEREOF, each party hereto has caused this Declaration to be signed in its respective name by its duly authorize officer (as applicable) as of the date first set forth above.

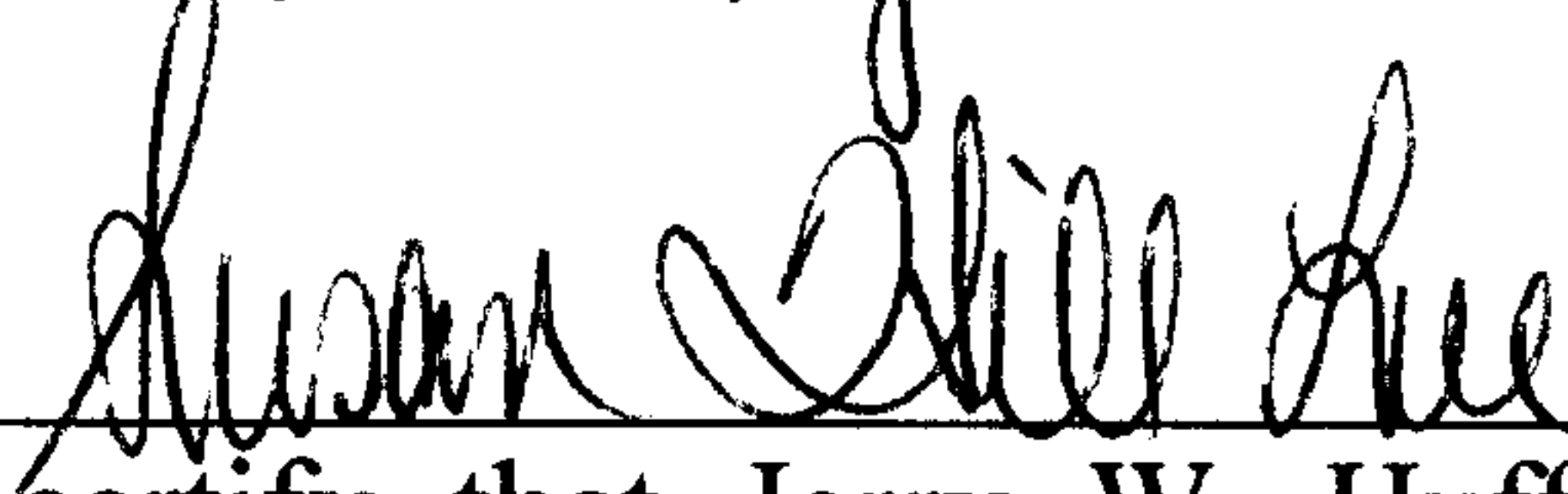
SELLER:

JERRY'S KWIKSHOP OF COLUMBIANA, INC., an  
Alabama corporation

By:   
Name: Jerry W. Huff  
Title: President

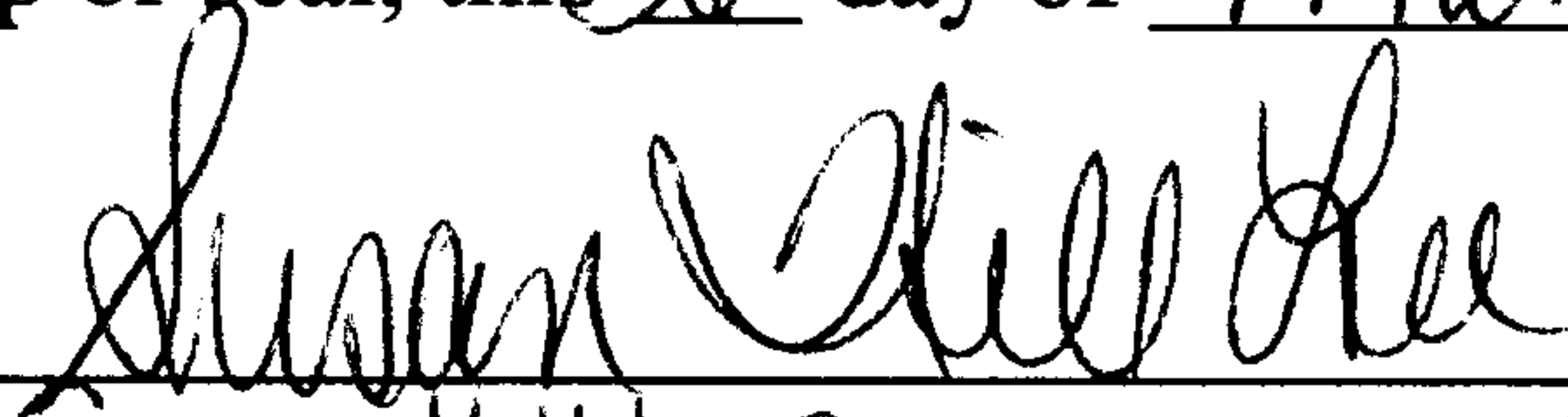
STATE OF ALABAMA

COUNTY OF Shelby

I, , a Notary Public of the County and State aforesaid, certify that Jerry W. Huff, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally appeared before me this day and acknowledged that he is President of Jerry's KwikShop of Columbiana, Inc., an Alabama corporation, and that he, as President being authorized to do so, voluntarily executed the foregoing on behalf of the corporation for the purposes stated therein.

WITNESS my hand and official stamp or seal, this 26<sup>th</sup> day of March, 2007.

Date: 3/26/07

  
Susan Hill Lee, Notary Public  
(print name)

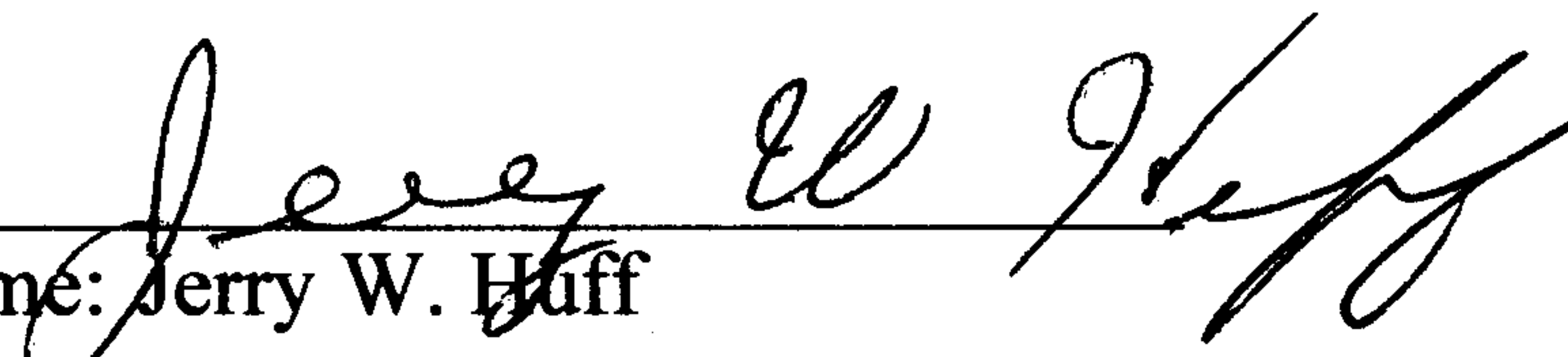
(official seal)

My commission expires: 1/3/09

[AFFIX NOTARIAL STAMP OR SEAL]

*Signature page to Declaration of Restrictive Covenant*

HUFF:

  
Name: Jerry W. Huff


STATE OF ALABAMA

COUNTY OF Shelby

I, Susan Hill Lee, a Notary Public of the County and State aforesaid, certify that Jerry W. Huff, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), personally appeared before me this day and acknowledged that he voluntarily executed the foregoing for the purposes stated therein.

WITNESS my hand and official stamp or seal, this 26<sup>th</sup> day of March, 2007.

Date: 3/26/07

  
Susan Hill Lee, Notary Public  
(print name)

(official seal)

My commission expires: 1/3/09

[AFFIX NOTARIAL STAMP OR SEAL]



**EXHIBIT A**

**LEGAL DESCRIPTION**

**PARCEL 2**

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 21 SOUTH, RANGE 1 WEST, BEING THE SAME LAND DESCRIBED IN A DEED TO JERRY HUFF, RECORDED IN INSTRUMENT NUMBER 1999-19807, OF THE REAL PROPERTY RECORDS OF SHELBY COUNTY, ALABAMA. SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT A 2" IRON PIPE, FOUND AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 26;

THENCE S 89°18'00" W, ALONG THE NORTH LINE OF SAID SIXTEENTH SECTION, A DISTANCE OF 154.95 FEET TO THE POINT OF BEGINNING;

THENCE S 03°59'34" E, A DISTANCE OF 93.84 FEET TO A POINT;

THENCE N 64°15'03" W, A DISTANCE OF 142.75 FEET TO POINT ON THE WEST RIGHT-OF-WAY OF STATE HIGHWAY NO. 25;

THENCE N 25°41'20" E, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 106.12 FEET TO A POINT;

THENCE S 76°46'02" E, A DISTANCE OF 74.28 FEET TO A POINT;

THENCE S 03°59'34" E, A DISTANCE OF 47.95 FEET TO THE POINT OF BEGINNING. THE HEREIN DESCRIBED PARCEL CONTAINS 0.291 ACRES OF LAND.

SUBJECT TO PARTS OF THE FOLLOWING EASEMENT;

AN EASEMENT IN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 21 SOUTH, RANGE 1 WEST, BEING ACROSS THE LAND DESCRIBED IN A DEED TO JERRY HUFF, RECORDED IN INSTRUMENT NUMBER 1999-19807, OF THE REAL PROPERTY RECORDS OF SHELBY COUNTY, ALABAMA.

SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT A 2" IRON PIPE, FOUND AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 26;

THENCE S 89°18'00" W, ALONG THE NORTH LINE OF SAID SIXTEENTH SECTION, A DISTANCE OF 147.25 FEET TO THE POINT OF BEGINNING;

THENCE S 03°59'34" E, A DISTANCE OF 39.23 FEET TO A POINT;

THENCE S 25°33'55" W, A DISTANCE OF 50.85 FEET TO A POINT ON THE SOUTH  
LINE OF THE ABOVE DESCRIBED PARCEL;

THENCE N 64°15'03" W, ALONG SAID SOUTH LINE, A DISTANCE OF 15.00 FEET TO  
POINT;

THENCE N 25°33'55" E, A DISTANCE OF 46.84 FEET TO A POINT;

THENCE N 03°59'34" W, A DISTANCE OF 59.76 FEET TO A POINT;

THENCE N 76°46'02" W, A DISTANCE OF 79.91 FEET, TO A POINT ON THE WEST  
RIGHT-OF-WAY OF STATE HIGHWAY NO. 25;

THENCE N 25°41'20" E, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 15.36 FEET  
TO A POINT;

THENCE S 76°46'02" E, A DISTANCE OF 87.65 FEET TO A POINT;

THENCE S 03°59'34" E, A DISTANCE OF 35.54 FEET TO THE POINT OF BEGINNING.

LOT 2A

ALL OF LOT 2A OF THE RE-SUBDIVISION OF LOT 2 OF THE STRICKLAND  
SUBDIVISION, AS RECORDED IN MAP BOOK 26, AT PAGE 36, SAID LOT  
CONTAINING 0.739 ACRES OF LAND.



**EXHIBIT B**

**LEGAL DESCRIPTION**

A PARCEL OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 21 SOUTH, RANGE 1 WEST, BEING THE SAME LAND DESCRIBED IN A DEED TO JERRY HUFF, RECORDED IN INSTRUMENT NUMBER 1999-19807, OF THE REAL PROPERTY RECORDS OF SHELBY COUNTY, ALABAMA. SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A 2" IRON PIPE, FOUND AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 26;

THENCE S 89°18'00" W, ALONG THE NORTH LINE OF SAID SIXTEENTH SECTION, A DISTANCE OF 9.20 FEET TO THE POINT OF BEGINNING;

THENCE N 01°19'03" W, A DISTANCE OF 215.25 FEET TO AN IRON, FOUND WITH A CAP STAMPED "PARAGON ENG.", ON THE SOUTH RIGHT-OF-WAY OF HIGHWAY 70;

THENCE S 89°02'33" W, ALONG THE SOUTH RIGHT-OF-WAY OF HIGHWAY 70, A DISTANCE OF 51.85 FEET TO RAIL ROAD SPIKE, FOUND ON THE RIGHT-OF-WAY FLARE OF HIGHWAY 70 AND STATE HIGHWAY NO. 25;

THENCE S 57°18'07" W, ALONG SAID RIGHT-OF-WAY FLARE, A DISTANCE OF 157.27 FEET TO A POINT;

THENCE S 25°41'20" W, ALONG THE EAST RIGHT-OF-WAY OF STATE HIGHWAY NO. 25, A DISTANCE OF 73.73 FEET TO A POINT;

THENCE S 76°46'02" E, A DISTANCE OF 74.28 FEET TO A POINT;

THENCE S 03°59'34" E, A DISTANCE OF 152.50 FEET TO A POINT;

THENCE S 00°57'30" E, A DISTANCE OF 10.96 FEET TO AN IRON, FOUND WITH A CAP STAMPED "PARAGON ENG.";

THENCE N 85°38'07" E, A DISTANCE OF 141.14 FEET TO A POINT;

THENCE N 01°19'03" W, A DISTANCE OF 106.33 FEET TO THE POINT OF BEGINNING. THE HEREIN DESCRIBED PARCEL CONTAINS 1.136 ACRES OF LAND.

SUBJECT TO THE FOLLOWING EASEMENT:



AN EASEMENT IN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 21 SOUTH, RANGE 1 WEST, BEING ACROSS THE LAND DESCRIBED IN A DEED TO JERRY HUFF, RECORDED IN INSTRUMENT NUMBER 1999-19807, OF THE REAL PROPERTY RECORDS OF SHELBY COUNTY, ALABAMA. SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT A 2" IRON PIPE, FOUND AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 26;

THENCE S 89°18'00" W, ALONG THE NORTH LINE OF SAID SIXTEENTH SECTION, A DISTANCE OF 9.20 FEET TO THE POINT OF BEGINNING;

THENCE N 01°19'03" W, A DISTANCE OF 215.25 FEET TO AN IRON, FOUND WITH A CAP STAMPED "PARAGON ENG.", ON THE SOUTH RIGHT-OF-WAY OF HIGHWAY 70;

THENCE S 89°02'33" W, ALONG THE SOUTH RIGHT-OF-WAY OF HIGHWAY 70, A DISTANCE OF 51.85 FEET TO RAIL ROAD SPIKE, FOUND ON THE RIGHT-OF-WAY FLARE OF HIGHWAY 70 AND STATE HIGHWAY NO. 25;

THENCE S 57°18'07" W, ALONG SAID RIGHT-OF-WAY FLARE, A DISTANCE OF 28.51 FEET TO A POINT;

THENCE N 89°02'33" E, A DISTANCE OF 61.19 FEET TO A POINT;

THENCE S 01°19'03" E, A DISTANCE OF 307.47 FEET TO A POINT ON THE SOUTH LINE OF THE ABOVE DESCRIBED PARCEL;

THENCE N 03°59'34" E, A DISTANCE OF 152.50 FEET TO A POINT;

THENCE N 85°38'07" E, A DISTANCE OF 15.02 FEET TO A POINT;

THENCE N 01°19'03" W, A DISTANCE OF 106.33 FEET TO THE POINT OF BEGINNING.

SUBJECT TO THE PARTS OF THE FOLLOWING EASEMENT;

AN EASEMENT IN THE WEST HALF OF THE NORTHEAST QUARTER OF SECTION 26, TOWNSHIP 21 SOUTH, RANGE 1 WEST, BEING ACROSS THE LAND DESCRIBED IN A DEED TO JERRY HUFF, RECORDED IN INSTRUMENT NUMBER 1999-19807, OF THE REAL PROPERTY RECORDS OF SHELBY COUNTY, ALABAMA. SAID EASEMENT BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT A 2" IRON PIPE, FOUND AT THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 26;



THENCE S 89°18'00" W, ALONG THE NORTH LINE OF SAID SIXTEENTH SECTION, A DISTANCE OF 147.25 FEET TO THE POINT OF BEGINNING;

THENCE S 03°59'34" E, A DISTANCE OF 39.23 FEET TO A POINT;

THENCE S 25°33'55" W, A DISTANCE OF 50.85 FEET TO A POINT;

THENCE N 64°15'03" W, ALONG SAID SOUTH LINE, A DISTANCE OF 15.00 FEET TO POINT;

THENCE N 25°33'55" E, A DISTANCE OF 46.84 FEET TO A POINT;

THENCE N 03°59'34" W, A DISTANCE OF 59.76 FEET TO A POINT;

THENCE N 76°46'02" W, A DISTANCE OF 79.91 FEET, TO A POINT ON THE WEST RIGHT-OF-WAY OF STATE HIGHWAY NO. 25;

THENCE N 25°, 41'20" E, ALONG SAID RIGHT-OF-WAY, A DISTANCE OF 15.36 FEET TO A POINT;

THENCE S 76°46'02" E, A DISTANCE OF 87.65 FEET TO A POINT;

THENCE S 03°59'34" E, A DISTANCE OF 35.54 FEET TO THE POINT OF BEGINNING.