


This instrument was prepared by:
Robert H. Sprain, Jr.
Sprain & Shires, P.C.
1707 29th Court South
Birmingham, Ala. 35209


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Shelby Cnty Judge of Probate, AL
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STATE OF ALABAMA)
COUNTY OF SHELBY)

COLLATERAL ASSIGNMENT OF LEASES AND RENTS

THIS COLLATERAL ASSIGNMENT OF LEASES AND RENTS ("this Assignment") is made this 10th day of May, 2007, by and between 2151, LLC, an Alabama limited liability company, having an address at 418 Heatherwood Forest Circle, Birmingham, AL 35244 (the "Borrower"), as assignor, and Red Mountain Bank, its successor and assigns, having an address at 1919 Cahaba Road, Birmingham, AL 35223 (the "Lender"), as assignee.

Introduction

Lender has made a loan to Borrower (the "Loan"), as evidenced by the Promissory Note dated this date by Borrower in the principal amount of Five Hundred Ninety Thousand and No/100 Dollars (\$590,000.00) (together with any modifications, amendments, replacements, substitutions, extensions, or renewals thereof, the "Note").

The Note shall be secured in part by a Mortgage dated this date by Borrower to Lender, granting a first-priority lien on the land described in Exhibit A to this Assignment and all improvements situated thereon (such land and improvements are collectively called the "Property"), which Mortgage shall be recorded immediately prior to this Assignment among the land records of Shelby County, Alabama (together with any modifications, amendments, or supplements thereto, the "Mortgage"). The Mortgage is reflected at Book * and Page

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As a condition precedent to making the Loan, Lender has required that Borrower further secure the payment and performance of all the obligations of Borrower in connection with the Loan by entering into this Assignment.

Agreement

In consideration of the foregoing and to induce Lender to make the Loan to Borrower, Borrower hereby covenants, warrants, represents, and agrees with Lender as follows:

1. Defined Terms.

The capitalized terms used but not defined in this Assignment are used as defined in the Mortgage.

2. **Assignment.**

Borrower hereby grants, transfers, and assigns to Lender, its successors, and assigns, all of the right, title, interest, and estate of Borrower in and to (a)(i) all leases, licenses, concessions, use agreements, occupancy agreements, or tenancies, whether or not specifically listed in this Assignment and whether or not executed or in effect on the date hereof or subsequent hereto, and relating to or affecting the Property; (ii) any modifications, amendments, renewals, supplements, and extensions thereto; (iii) all credits, deposits (security, escrow, or otherwise), and advance payments made or given thereunder; and (iv) any guarantees of the tenants', licensees', concessionaires', users', or occupants' obligations thereunder (items (i) through (iv) are collectively referred to as the "Leases"); and (b) all rents, issues, profits, fees, income, and revenues from the Leases (collectively, the "Rents").

3. **Security.**

This Assignment is for the purpose of securing (a) payment of the indebtedness evidenced by the Note; (b) payment of all other sums with interest thereon becoming due and payable to Lender under the provisions of this Assignment or under the provisions of any other document evidencing or securing the Loan (this Assignment, the Note, the Mortgage, and such other documents evidencing or securing the Loan, together with any amendments, modifications, and supplements thereto, are collectively called the "Loan Documents"); and (c) performance and fulfillment of each and every term, covenant, and condition set forth in the Loan Documents.

4. **Performance of Leases.**

With respect to each of the Leases, Borrower (a) shall faithfully abide by, perform, and fulfill each and every term, covenant, and condition of the Leases to be performed or fulfilled by Borrower; (b) at the sole cost and expense of Borrower, shall enforce or secure the performance of each and every material term, covenant, and condition of the Leases to be performed or fulfilled by Borrower; (c) shall not modify, extend, or in any way alter any material term, covenant, or condition of any of the Leases, without the prior written consent of Lender; and (d) shall not accept payment of the Rents more than one (1) month in advance as payable under any of the Leases, or waive, excuse, condone, or in any manner release or discharge any tenants, licensees, concessionaires, users, and occupants of any part of the Property (including, but not limited to, all parties claiming an interest under any of the Leases) (collectively, the "Tenants") of or from the terms, covenants, or conditions to be performed or fulfilled by such party, including the obligation to pay any Rents in the manner and at the place and time specified therein.

5. **Defense of Actions.**

Borrower, at Borrower's sole cost and expense, shall appear in and defend any action or proceeding arising out of or in any manner connected with any of the Leases or the obligations, duties, or liabilities of Borrower or of any of the Tenants, and shall pay all costs and expenses of Lender, including actual attorneys' fees and expenses, in any such action or proceeding to which Lender may be a party.

6. **Protection of Security.**

Upon the occurrence of a default under any of the Loan Documents and upon Borrower's failure to cure such default within any applicable cure period or grace period (an "Event of Default"), at Lender's option, and without releasing Borrower from any obligation under this Assignment or the other Loan Documents, Lender may make or do such acts in such manner and to such extent as Lender may deem necessary to protect the security of this Assignment, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights, privileges, or powers of Lender, and also the right to perform and discharge each and every term, covenant, and condition of Borrower set forth in any of the Leases; and in exercising any such powers to pay the costs and expenses thereof, employ counsel, and incur and pay attorneys' fees and expenses.

7. **Payment of Expenses.**

Borrower shall immediately reimburse Lender upon demand all sums expended by Lender under the authority of this Assignment, together with interest thereon at the default rate set forth in the Note.

8. **Rights of Borrower Before Event of Default.**

For so long as there shall exist no Event of Default, Borrower shall have a revocable license to collect, but not prior to the times payable under the Leases, all Rents and to retain, use, and enjoy such Rents and to exercise any other rights of Borrower under the Leases.

9. **Rights of Lender Upon Event of Default.**

(a) Upon or at any time after the occurrence of an Event of Default, Lender may do any or all of the following: (i) revoke Borrower's license to collect, retain, use, and enjoy the Rents and to exercise any other rights of Borrower under the Leases, as provided by Section 8; (ii) declare all sums secured by this Assignment immediately due and payable and, at its option, without notice and without regard to the adequacy of security for the indebtedness hereby secured, either in person or by agent, with or without bringing any action or proceeding, or by a receiver to be appointed by a court, enter upon, take possession of, manage, and operate the Property or any part thereof; (iii) make, cancel, enforce, or modify any of the Leases; (iv) obtain and evict Tenants, and fix or modify any of the Rents; and (v) perform any acts which Lender deems proper to protect the security of this Assignment, and either with or without taking possession of the Property, in its own name sue for or otherwise collect and receive the Rents, including those past due and unpaid, and apply the Rents, less costs and expenses of operation and collection, including just and reasonable compensation for all its employees and other agents (including, but not limited to, attorneys' fees and expenses and management and rental commissions), to any indebtedness secured by this Assignment. The exercise of any or all such rights by Lender as provided by this Section 9(a) shall not cure or waive any Event of Default or waive, modify, or affect notice of default under the Loan Documents, or invalidate any act done pursuant to such notice, and Lender may continue to exercise any or all of such rights until such

Event of Default has been cured. Lender may exercise its rights and privileges under this Assignment whenever any Event of Default has occurred.

(b) If Lender receives any Rents as provided by this Assignment, Lender shall apply such amounts on account of the Loan in the order provided by the Note.

(c) Lender shall not be obligated to maintain or repair the Property but shall be entitled to do so upon the occurrence of an Event of Default, to the extent Lender determines it to be necessary or appropriate, in its discretion. Such maintenance or repair may include, without limitation, the purchase of furniture, equipment, and other personal property used in connection with the Property, and the costs thereof including all taxes imposed thereon or therefor shall be part of the costs and expenses of operation. Lender shall not be obligated to perform or fulfill, nor does it hereby undertake to perform or fulfill, any term, condition, or covenant under the Leases, or under or by reason of this Assignment.

(d) Lender may act upon any notice, request, consent, demand, statement, note, or other paper or document believed by it to be genuine and to have been signed by the party or parties purporting to sign the same. Lender shall not be liable for any error of judgment, or for any act done or step taken or omitted, or for any mistake of law or fact, or for anything which it may do or refrain from doing in good faith. Lender shall not have any accountability under this Assignment except for its own willful default or gross negligence.

(e) Any default by Borrower in the performance of any term, covenant, or condition of this Assignment and not cured within any applicable cure period provided in this Assignment shall constitute and be deemed to be an Event of Default under the Loan Documents, entitling Lender to every and all rights, privileges, and remedies set forth therein.

(f) Borrower, on its own behalf and that of any successors or assigns, hereby authorizes and directs all Tenants to pay Rents directly to Lender, and to treat Lender as the other party under the applicable Lease, with all of the rights, powers, and privileges granted by Borrower to Lender under this Assignment or by such Tenant to Borrower under the applicable Lease, after receiving written instructions to do so from Lender, notwithstanding any instructions to the contrary from Borrower. Borrower, on its own behalf and that of any successors or assigns, hereby further authorizes all Tenants to recognize the claims and demands of Lender under this Assignment without investigating (i) the reason for any action taken by Lender or the validity or the amount of indebtedness owing to Lender; (ii) the existence of any Event of Default; or (iii) the application to be made by Lender of any sums to be paid to Lender. The sole signature of Lender shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of Lender for any sums received shall be a full discharge and release therefor to any Tenant. Checks for all or any part of the Rents payable to Lender under this Assignment shall be drawn to the exclusive order of Lender.

(g) The rights, powers, privileges, and discretions specifically granted to Lender by this Assignment are not in limitation of but in addition to those to which Lender is entitled under any present or future general or local law relating to such assignments in the State of Alabama. The rights, powers, privileges, and discretions (hereinafter collectively called the

“rights”) to which Lender may be entitled shall inure to the benefit of its successors and assigns. All the rights of Lender are cumulative and not alternative and may be enforced successively or concurrently. Failure of Lender to exercise any of its rights shall not impair any of its rights nor be deemed a waiver of such rights. No waiver of any of Lender’s rights shall be deemed to apply to any other such rights. No waiver by Lender shall be effective unless in writing and signed by Lender.

10. **Indemnity.**

Borrower shall indemnify and hold Lender harmless against and from (a) any and all costs, expenses, liability, loss, or damage which Lender incurs under any of the Leases or under or by reason of this Assignment; and (b) any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertaking on its part to perform or discharge any of the terms, covenants, or conditions contained in any of the Leases. Should Lender incur any such liability, loss, or damage under any of the Leases or under or by reason of this Assignment, or in the defense of any such claims or demands, the amount thereof, including costs, expenses, and reasonable attorneys’ fees, shall be secured by this Assignment, and Borrower shall reimburse Lender therefor immediately upon demand, with interest at the default rate set forth in the Note. Upon the failure of Borrower so to reimburse Lender, Lender may declare all sums secured by this Assignment to be immediately due and payable.

11. **Subsequent Leases.**

Until the indebtedness secured by this Assignment shall have been paid in full, Borrower shall make, execute, and deliver to Lender, upon demand, any and all instruments that may be necessary to assign to Lender all subsequent Leases affecting all or any part of the Property, upon the same or substantially the same terms and conditions as are set forth in this Assignment, to the extent that such assignment is not already effected by this Assignment.

12. **Termination.**

Upon the payment in full of all indebtedness secured by this Assignment and the termination of the Mortgage of record, this Assignment shall terminate and become void and of no further effect. The affidavit of Lender or any officer of Lender showing any part of such indebtedness to remain unpaid shall be and constitute conclusive evidence, as to any third party, of the validity, effectiveness, and continuing force of this Assignment. Any such third party may and is hereby authorized to rely on such affidavit.

13. **Borrower’s Representations.**

Borrower hereby represents that (a) no payments have been made on account thereof by any Tenant under any of the Leases, except such Rents as may have become due and been paid prior to the date of this Assignment; (b) Borrower has not done anything which might prevent Lender from, or limit Lender in, acting under any of the provisions of this Assignment; (c) to Borrower’s knowledge, it has not breached any term, covenant, or condition of any of the Leases; (d) to Borrower’s knowledge, no Tenant has a right of deduction, counterclaim,

recoupment, or set-off under any of the Leases; and (e) all of the Leases are subject and subordinate to the Loan Documents.

14. **Notices.**

All notices, elections, deliveries, and other communications between the parties required or desired to be given in connection with this Assignment, to be effective hereunder, shall be given as provided by the Mortgage or Loan Agreement.

15. **Miscellaneous.**

(a) This Assignment shall not be amended or modified in any manner except by a document in writing executed by Lender.

(b) Borrower hereby waives trial by jury in any action or proceeding to which Borrower and Lender or any holder of the Leases may be parties, arising out of or in connection with this Agreement or any of the Leases. This waiver constitutes a waiver of trial by jury of all claims against all parties to such actions or proceedings, including claims against parties who are not parties to this Assignment.

(c) This Assignment, together with the other Loan Documents, is the entire agreement between the parties with respect to the matters set forth herein and therein, and all prior statements, discussions, negotiations, and agreements, oral or written, are superseded by this Assignment and the other Loan Documents and merged herein and therein.

(d) Time is of the essence of this Assignment.

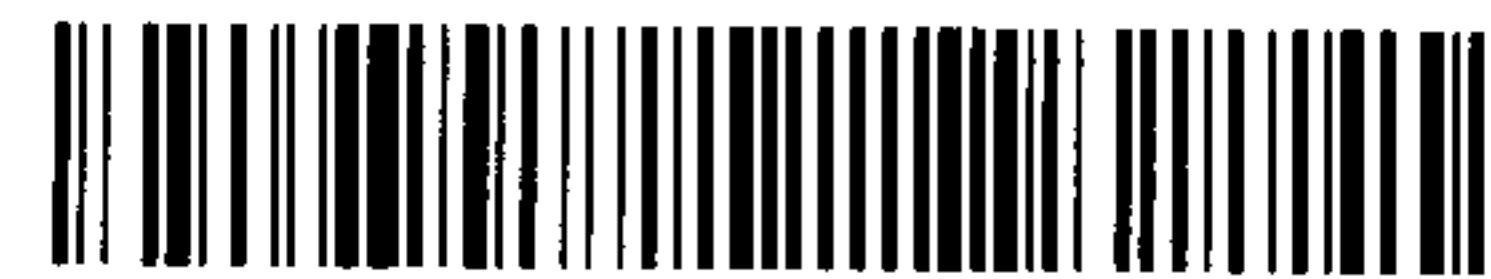
(e) This Assignment shall be governed by the laws of the State of Alabama.

IN WITNESS WHEREOF, Borrower has duly executed and delivered this Collateral Assignment of Leases and Rents under seal on the date first written above.

Assignor: **2151, LLC**, an Alabama limited liability company

By: John W. Boone
Its: Member

By: Jerome A. Fiore, Jr.
Its: Member



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State of Alabama)
County of Jefferson)

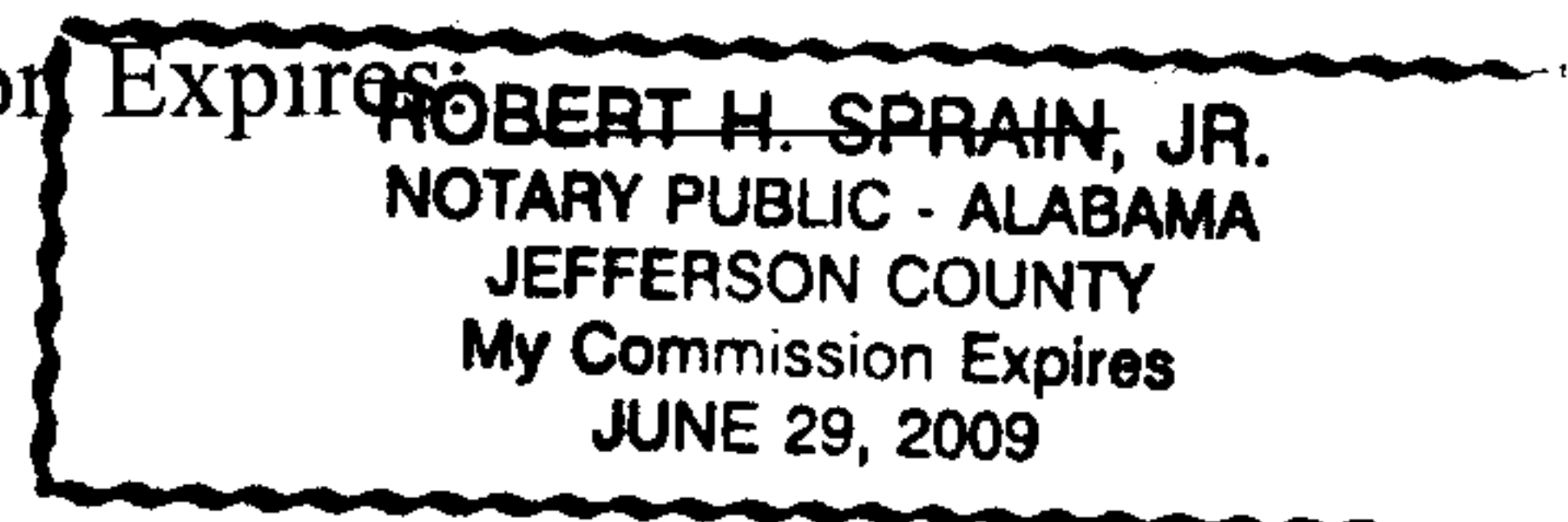
I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John W. Boone, whose name as Member of 2151, LLC, is signed to the foregoing conveyance, and who is known to me acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such Member and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this the 10th day of May, 2007.



Notary Public

My Commission Expires:



State of Alabama)
County of Jefferson)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Jerome A. Fiore, Jr., whose name as Member of 2151, LLC, is signed to the foregoing conveyance, and who is known to me acknowledged before me on this day that, being informed of the contents of the conveyance, he, as such Member and with full authority, executed the same voluntarily for and as the act of said company.



Notary Public

My Commission Expires: _____

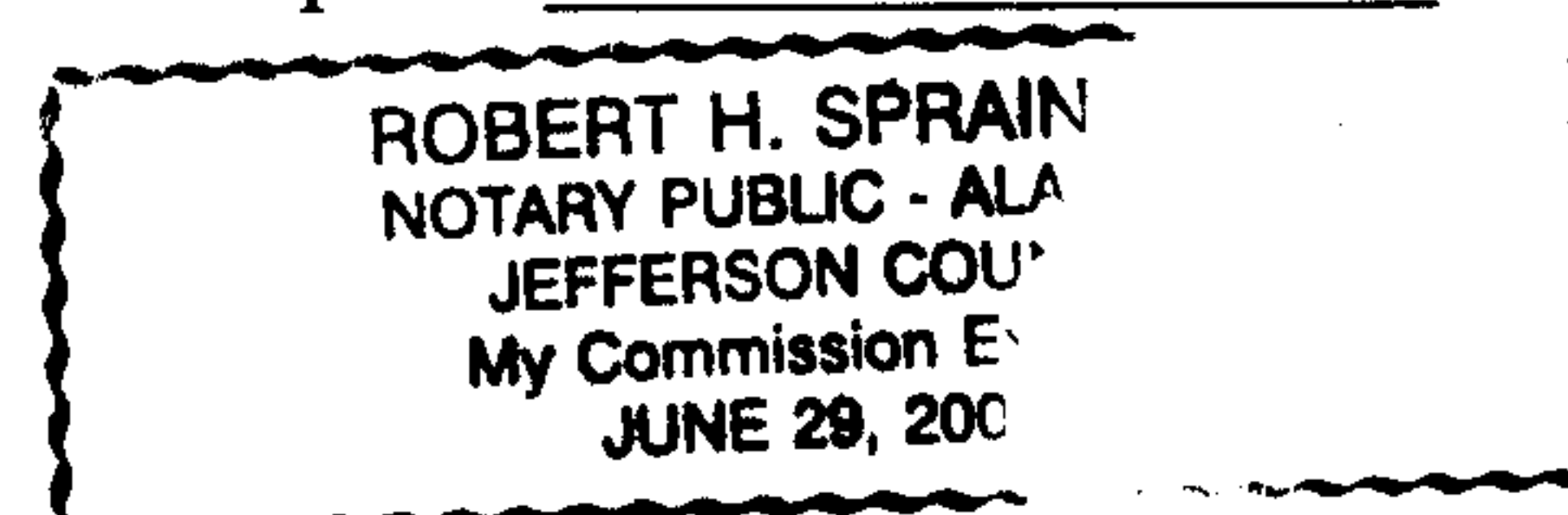


EXHIBIT A

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From the NE corner of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 31, Township 19 South, Range 2 West, run Westerly along the North boundary line of said $\frac{1}{4}$ - $\frac{1}{4}$ section 313.96 feet; thence turn an angle of $99^{\circ} 00' 40''$ to the left and run SE 175 feet; thence turn an angle of $66^{\circ} 06'$ to the right and run SW 224.93 feet to the point of beginning of the land herein described and conveyed; thence continue SW along the last said course for 250 feet, more or less, to a point on the East right of way line of US 31 Highway; thence turn an angle of 95° to the left and run SE along the East right of way line of said highway for 104.71 feet; thence turn an angle of 85° to the left and run NE 250 feet; thence turn an angle of 95° to the left and run NW 104.71 feet to the point of beginning. This land being part of the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 31, Township 19 South, Range 2 West.

AND:

A parcel of land situated in the SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, more particularly described as follows: Commence at the NE corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section; thence in a Westerly direction along the North line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 313.96 feet; thence $99^{\circ} 00' 40''$ left in a SE direction a distance of 175 feet; thence $66^{\circ} 06'$ right in a SW direction a distance of 342.93 feet, more or less, to the NE side of a building and the point of beginning; thence 90° right in a NW direction, along the NE side of said building a distance of 0.5 feet to the Northerly corner of said building; thence 90° left in a SW direction along the NW side of said building a distance of 132 feet, more or less, to the East right of way line of US Highway 31; thence 95° left in a SE direction along the East right of way of said highway a distance of 0.5 feet; thence 85° left in a NE direction a distance of 132 feet, more or less, to the point of beginning.