

20090102000000910 1/12 \$46.00
Shelby Cnty Judge of Probate, AL
01/02/2009 12:12:31PM FILED/CERT

This Instrument Prepared by:
William C. Byrd, II
Bradley Arant Rose & White LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, Alabama 35203-2104
Telephone: (205) 521-8000

Cross Reference:
Instr. 20060406000160340
Instr. 20070201000048070
Instr. 20080328000125260

4,050,000
P.A.D

STATE OF ALABAMA)
 :
COUNTY OF SHELBY)

ASSUMPTION AND AMENDMENT TO LOAN DOCUMENTS AGREEMENT

THIS AGREEMENT, made effective the 30th day of December 2008, is by and among **FRONTIER BANK**, a Georgia banking corporation (the "Lender"), **MCKENZIE MANOR , LLC**, an Alabama limited liability company ("McKenzie"), and **WATERSTONE DEVELOPMENT LLC**, an Alabama limited liability company (the "Borrower").

RECITALS:

A. Lender is the Mortgagee that pursuant to that certain Mortgage and Security Agreement: Open-End Credit with Future Advances dated March 31, 2006, from McKenzie to Lender recorded at Instrument 20060406000160340 with the Judge of Probate of Shelby County, Alabama, that certain Amendment to Mortgage and Security Agreement dated January 23, 2007, by and between McKenzie and Lender recorded at Instrument 20070201000048070, and that certain Mortgage and Security Agreement dated March 21, 2008, recorded at Instrument 20080328000125260 with the Judge of Probate of Shelby County, Alabama (as amended or modified, collectively, the "Mortgage"). The Mortgage secures that certain Multipurpose Note and Security Agreement dated March 31, 2006, by and between McKenzie and Lender, that certain Multipurpose Note and Security Agreement dated October 19, 2007, by and between McKenzie and Lender, Multipurpose Note and Security Agreement dated March 21, 2008, by and between McKenzie and Lender, and Modification, Extension, Change in Terms Agreement dated July 31, 2008, by and between McKenzie and Lender (as amended, extended, or modified, collectively, the "Note").

Borrower desires to purchase the real property and improvements described in Exhibit A and described in and encumbered by the Mortgage (collectively, the "Premises"), subject to the lien thereof, and has requested that Lender consent to such acquisition and permit the assumption by Borrower of the Note and the obligations of MCKENZIE under the Note and the Mortgage. Lender has agreed to permit such acquisition and assumption pursuant to the terms of this Agreement. All obligations of MCKENZIE under the Note and the Mortgage are collectively referred to herein as the "Loan Obligations."

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and the representations, warranties, covenants and agreements herein set forth, the parties hereby agree as follows:

1. **Affirmation of Recitals; Definitions.** The parties hereby acknowledge the foregoing Recitals to be true and correct. Borrower confirms that it has received copies of the Credit Documents, and has had full and fair opportunity to review the same with independent legal counsel of Borrower's choosing. Lender hereby warrants to Borrower that the Loan Obligations are embodied in the Credit Documents, all as herein described.

2. **Outstanding Principal Balance of Loan.** The parties hereby acknowledge that the Lender has advanced \$4,050,000 to McKenzie and continues to be outstanding with the Notes (the "Loans") and the Notes and Loans are secured by the Mortgage.

3. **Assumption of Loan Obligations.** Borrower hereby assumes and agrees to be fully bound by the Loan Obligations as stated in the Credit Documents, including all covenants, agreements and waivers therein set forth, and shall be unaffected by any offset, defense or defect in enforceability of any of the Credit Documents against MCKENZIE, all of which are hereby expressly waived by Borrower. Any and all references to the "Mortgagor", "Grantor", "Borrower", "Maker" "User" and "Assignor" contained in any Loan Document shall hereafter be deemed to refer to Waterstone Development LLC, an Alabama limited liability company, mutatis mutandis, with full and equal force and effect.

4. **Release.** MCKENZIE is hereby released and discharged from any and all liability pursuant to the Mortgage and Loan Obligations.

5. **Representations and Warranties.** Borrower confirms that it has reviewed the covenants, representations and warranties contained in the Credit Documents, and that upon substituting itself for MCKENZIE all such covenants, representations and warranties, to the extent applicable, shall remain true and correct as of the date hereof unless specifically modified in writing by agreement of the parties. As a material inducement to Lender's agreement to permit the assumption of the Loan Obligations by Borrower, Borrower hereby further represents and warrants to Lender as follows:

(a) Borrower is a duly organized and validly existing Alabama limited liability company, having full power and authority to consummate the transactions contemplated by this Agreement and to perform the Loan Obligations.

(b) There are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened, which might materially and adversely affect the financial condition of Borrower or which might materially impair the value of any collateral taken or to be taken by Lender in connection with the transactions contemplated hereby. Borrower is not in violation of any agreement, the violation of which might reasonably be expected to have a materially adverse effect on Borrower's business or assets, and Borrower is not in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which Borrower is subject. Neither the execution and performance of this Agreement or of any of the

Credit Documents will result in any breach of any mortgage, security deed, lease, credit or loan agreement or any other instrument which may bind or affect Borrower.

(c) All financial statements of Borrower heretofore given and hereafter to be given to Lender are and will be true and complete in all material respects as of their respective dates and prepared in accordance with generally accepted accounting principles consistently applied, and fairly represent the financial conditions of the Borrower as of the date thereof, and no materially adverse change shall have occurred in the financial conditions reflected therein during the period between the date thereof and the date of delivery of such financial statements to Lender.

(d) To the best of Borrower's knowledge, there are no proceedings pending or threatened to acquire, by power of condemnation or eminent domain, any portion of the Premises, or any interest therein, or to enjoin or similarly prevent the use of any of the Premises for the purposes contemplated by Borrower.

(e) All documents furnished to Lender by or on behalf of Borrower as part of or in support of the Borrower's application to assume the Loan are true, correct, complete and accurately represent the matters to which they pertain in all material respects.

(f) The Premises will, at all times, be maintained in substantial compliance with all applicable laws, ordinances, rules and regulations, and all laws, ordinances, rules and regulations relating to zoning, building codes, set back requirements and environmental matters.

6. **Consent to Assumption.** In consideration of the representations, warranties and agreements of Borrower and MCKENZIE herein set forth, Lender does hereby (a) consent to the transfer of the Premises from MCKENZIE, and (b) consent to the assumption of the Loan Obligations by Borrower.

7. **Further Assurances.** Upon request by the Lender, the Borrower will make, execute and deliver or cause to be made, executed and delivered, to the Lender and, where appropriate, to cause to be recorded and/or filed and from time to time thereafter to be re-recorded and/or refiled at such time and in such offices and places as shall be deemed reasonably necessary by the Lender, any and all such instruments of further assurance, certificates and other documents as may, in the reasonable opinion of the Lender, be necessary or desirable in order to effectuate, complete, perfect, or to continue and preserve the Loan Obligations of the Borrower assumed hereby, and the lien and security title of the Credit Documents as a first and prior lien upon and security interest in all of the Premises.

8. **Miscellaneous.**

(a) Any provision in this Agreement which may be unenforceable or invalid under any law shall be ineffective to the extent of such unenforceability or invalidity without affecting the enforceability or validity of any other provision hereof; provided, however, that if the assumption of the Loan Obligations by Borrower set forth herein shall be unenforceable or invalid, then this Agreement shall be deemed null and void ab initio.

(b) Section headings are inserted for convenience of reference only and shall be disregarded in the interpretation of this Agreement. The provisions of this Agreement shall be construed without regard to the party responsible for the drafting and preparation hereof.

(c) Time is of the essence regarding this Agreement and the performance of each of the covenants and agreements contained herein and in the Credit Documents.

(d) This Agreement and the obligations of the parties hereunder shall be binding upon and enforceable against, and shall inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

(e) No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose whatsoever unless in writing and duly executed by the party against whom the same is sought to be asserted.

(f) This Agreement may be executed in any number of counterparts bearing the original signatures of one or more of the parties hereto, each of which shall constitute an original, but all of which, taken together, shall evidence but one and the same Agreement.

(g) **THE VALIDITY, INTERPRETATION, ENFORCEMENT, AND EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF ALABAMA.**

(h) **TO THE EXTENT PERMITTED BY LAW, THE PARTIES HERETO HEREBY MUTUALLY WAIVE ANY RIGHT TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION ARISING OUT OF OR IN ANY WAY PERTAINING OR RELATING TO THIS AGREEMENT, ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS AGREEMENT, OR IN CONNECTION WITH ANY OF THE TRANSACTIONS RELATED HERETO OR CONTEMPLATED HEREBY, OR THE EXERCISE OF ANY PARTY'S RIGHTS OR REMEDIES HEREUNDER, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. A COPY OF THIS PARAGRAPH MAY BE FILED WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY TO THE EXTENT PERMITTED BY LAW, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY. NONE OF THE PARTIES HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT IT WOULD NOT, IN THE EVENT OF SUCH DISPUTE OR CONTROVERSY, SEEK TO ENFORCE THE PROVISIONS OF THIS PARAGRAPH.**

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IN WITNESS WHEREOF, the parties have caused this instrument to be properly executed as of the 30th day of December, 2008, but to be effective as of the day and year first above written.

LENDER:

FRONTIER BANK,
a Georgia state banking corporation

By: John C. Sivley
Print Name: John C. Sivley
Its: Senior Vice President

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that John C. Sivley, whose name as Senior Vice President of Frontier Bank, a Georgia state banking corporation, 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 state banking corporation.

Given under my hand and official seal this 30th day of December, 2008.

Shirley Dunagan Lane
Notary Public

[NOTARIAL SEAL]

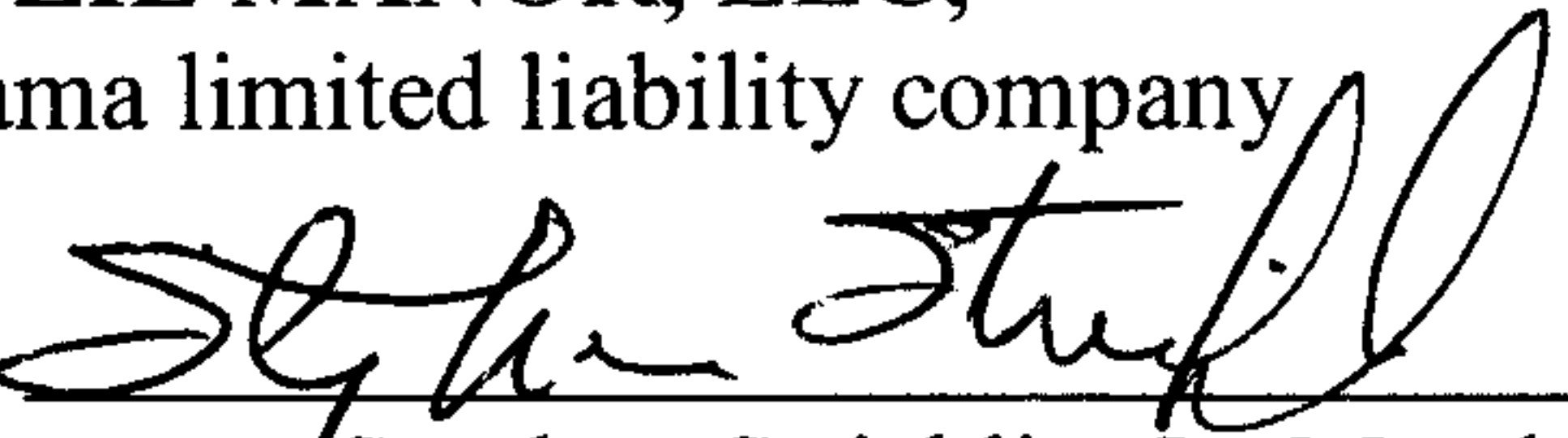
My commission expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Aug 1, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

20090102000000910 6/12 \$46.00
Shelby Cnty Judge of Probate, AL
01/02/2009 12:12:31PM FILED/CERT

MCKENZIE:

MCKENZIE MANOR, LLC,
An Alabama limited liability company

By: 
Stephen Stricklin, Its Member

By: _____
Steven Allen, Its Member

STATE OF ALABAMA)
COUNTY OF _____)

[INSERT ACKNOWLEDGEMENT]

STATE OF ALABAMA

Shelby COUNTY

20090102000000910 7/12 \$46.00
Shelby Cnty Judge of Probate, AL
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I, the undersigned, a notary public in and for said county in said state, hereby certify that Stephen Stricklin and Steven Allen, whose name as Members of McKenzie Manor, LLC, 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 said instrument, they, as such Members and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 30 day of December, 2008.

Kelli Foster
Notary Public

[NOTARIAL SEAL]

My commission expires:

Kelli Foster
Notary Public
My Commission Expires
1/18/2009

1/1804038.1



20090102000000910 8/12 \$46.00
Shelby Cnty Judge of Probate, AL
01/02/2009 12:12:31PM FILED/CERT

MCKENZIE:

MCKENZIE MANOR, LLC,
An Alabama limited liability company

By: _____
Stephen Stricklin, Its Member

By: *Steven Allen*
Steven Allen, Its Member

STATE OF ALABAMA)
COUNTY OF Shelby)

[INSERT ACKNOWLEDGEMENT]

STATE OF ALABAMA

Shelby COUNTY

20090102000000910 9/12 \$46.00
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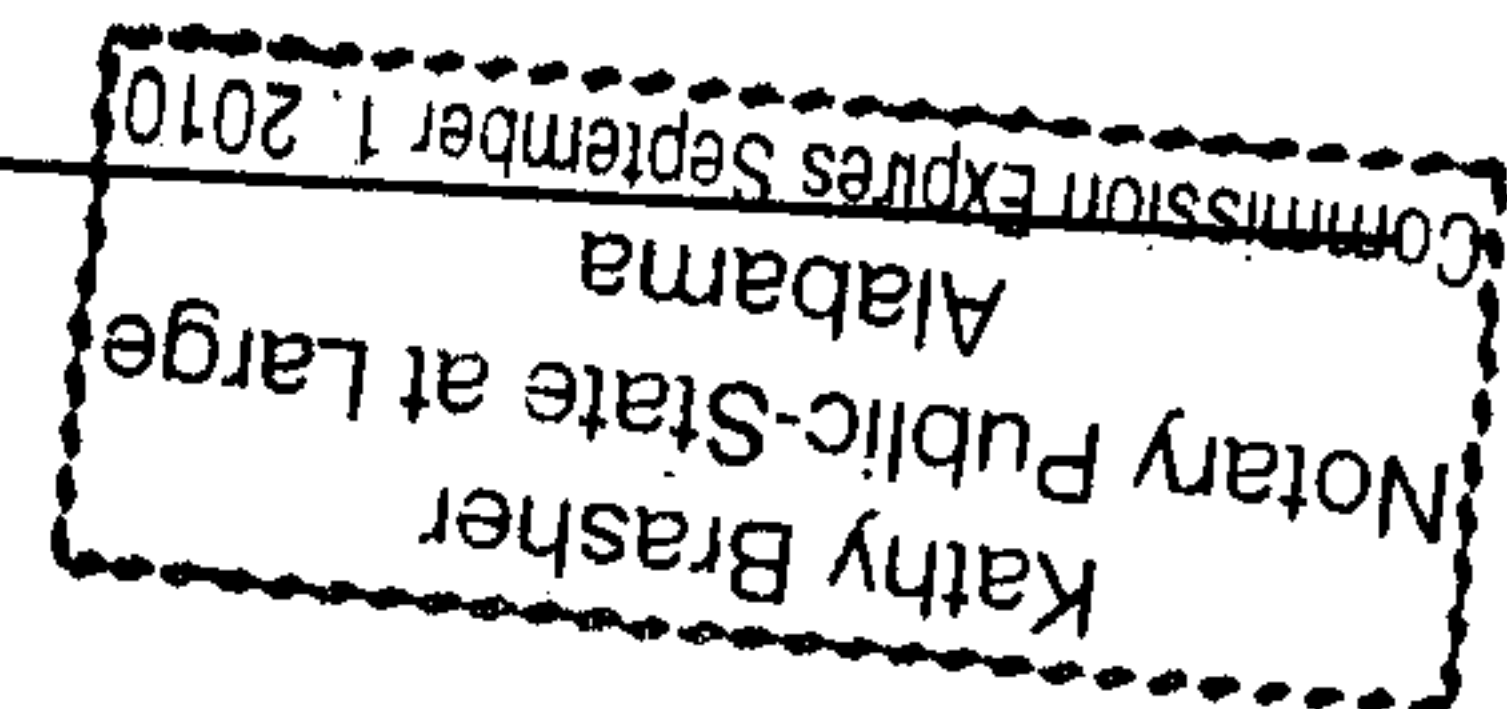
I, the undersigned, a notary public in and for said county in said state, hereby certify that Stephen Stricklin and Steven Allen, whose name as Members of McKenzie Manor, LLC, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, they, as such Members and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 30th day of Dec, 2008.

Kathy Brasher
Notary Public

[NOTARIAL SEAL]

My commission expires:



1/1804038.1



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BORROWER:

WATERSTONE DEVELOPMENT LLC,
An Alabama limited liability company

By: Tobi Gilkey
Tobi Gilkey, Its Member/Manager

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Tobi Gilkey, whose name as Member/Manager of Waterstone Development LLC, 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 said instrument, he, as such Member/Manager and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 30th day of December, 2008.

Sharilyn D. Duggan
Notary Public

[NOTARIAL SEAL]

My commission expires: Aug 1, 2010
NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Aug 1, 2010
BONDED THRU NOTARY PUBLIC UNDERWRITERS

EXHIBIT A
LEGAL DESCRIPTION

2009010200000910 11/12 \$46.00
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PARCEL I:

The following described property situated in Shelby County, Alabama, to-wit:

Commence at the NW corner of the SW 1/4 of the NE 1/4 of Section 6, Township 22 South, Range 2 West; thence turn Eastwardly along the North line for a distance of 853.88 feet for the point of beginning; thence continue along last described course for a distance of 271.30 feet; thence turn an angle to the right of 84°42'14" for a distance of 1347.12 feet to the South line of said 1/4 1/4; thence turn an angle to the right of 95°27'20" along said South line for a distance of 277.50 feet; thence turn an angle to the right of 84°48'15" for a distance of 1345.81 feet to the point of beginning.

Less and except any part of subject property lying within a road right of way.

PARCEL II:

A parcel of land situated in the SW 1/4 of the NE 1/4 of Section 6, Township 22 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the NE corner of the SE 1/4 of the NE 1/4 of said Section 6; thence North 87°20'08" West a distance of 1319.15 feet to the Point of Beginning; thence South 01°39'30" East a distance of 742.37 feet; thence North 87°12'15" West a distance of 275.23 feet; thence North 01°17'04" West a distance of 741.39 feet; thence South 87°20'08" East a distance of 270.33 feet to the Point of Beginning.

Less and except any part of subject property lying within a road right of way.

PARCEL III:

A parcel of land situated in the SE 1/4 of the NE 1/4 of Section 6, Township 22 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows:

Begin at the NE corner of the SE 1/4 of the NE 1/4 of said Section 6; thence North 87°20'08" West a distance of 1319.15 feet; thence South 01°39'30" East a distance of 742.37 feet; thence South 01°58'59" East a distance of 586.36 feet; thence South 87°38'13" East a distance of 1216.85 feet; thence North 01°49'04" West a distance of 150.00 feet; thence South 87°38'13" East a distance of 100.00 feet; thence North 01°43'22" West a distance of 201.27 feet; thence North 01°48'38" West a distance of 166.11 feet; thence North 01°42'08" West a distance of 804.26 feet to the Point of Beginning.

Less and except any part of subject property lying within a road right of way.

PARCEL IV:

Part of Section 6, Township 22 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

From an existing 3 inch open top iron pipe found to be the most Southerly corner of Lot 4, the round table, as recorded in the Office of the Judge of Probate, Shelby County, Alabama, in Map Book 7, page 38, and looking in a Northerly direction along the West line of said Lot 4 at the NW corner of said Lot 4, turn an angle to the left of $85^{\circ}54'13''$ and run in a Westerly direction for a distance of 1316.72 feet to a point on the North right of way line of Shelby County Highway No. 22 (being 40 feet from the center of said road) and being marked by an existing iron rebar set by Weygand and being the point of beginning; thence run in a Westerly direction along the North right of way line of said Shelby County Highway No. 22 for a distance of 279.01 feet to an existing iron rebar set by Wheeler; thence turn an angle to the right of $85^{\circ}30'27''$ and run in a Northerly direction for a distance of 585.62 feet to an existing iron rebar set by Weygand; thence turn an angle to the right of $94^{\circ}26'12''$ and run in an Easterly direction for a distance of 275.19 feet to an existing iron rebar set by Weygand and being 1.6 feet West of an existing fence; thence turn an angle to the right of $85^{\circ}11'36''$ and run in a Southerly direction for a distance of 586.20 feet, more or less, to the Point of Beginning.

LESS AND EXCEPT:

A parcel of land located in the South $1/2$ of the NE $1/4$ of Section 6, Township 22 South, Range 2 West, being more particularly described as follows:

Commence at the NW corner of the SW $1/4$ of the NE $1/4$ of Section 6, Township 22 South, Range 2 West; thence in an Easterly direction along the North line of said $1/4 - 1/4$ section a distance of 853.88 feet to the Northeast corner of Lot 2 of Heavenly Family Subdivision as recorded in Map Book 29, page 90, in the Office of the Judge of Probate in Shelby County, Alabama; thence a deflection angle right from the last described course of $86^{\circ}07'59''$ in a Southerly direction along the Easterly lines of Lots 1 and 2 of said Heavenly Family Subdivision a distance of 1325.98 feet to a point on the North right of way line of Shelby County Highway Number 22; thence an angle to the right from the last described course of $94^{\circ}03'23''$ in an Easterly direction and along said right of way line a distance of 278.19 feet; thence an angle to the right from the last described course of $85^{\circ}30'21''$ in a Northerly direction a distance of 372.26 feet; thence an interior angle to the left from the last described course of $89^{\circ}33'44''$ in an Easterly direction a distance of 5.35 feet to the Point of Beginning; thence an exterior angle to the right from the last described course of $90^{\circ}00'00''$ in a Northerly direction a distance of 90.45 feet; thence an interior angle to the left from the last described course of $105^{\circ}06'44''$ in a Northeasterly direction a distance of 190.34 feet; thence an interior angle to the left from the last described course of $90^{\circ}00'00''$ in a Southeasterly direction a distance of 47.65 feet to the beginning of a curve to the left having a radius of 50.00 feet and a central angle of $35^{\circ}55'38''$; thence in a Southeasterly direction along said curve and tangent to last described course an arc distance of 31.35 feet; thence an interior angle to the left from the chord of last described curve of $107^{\circ}57'49''$ in a Southwesterly direction a distance of 142.98 feet; thence an interior angle to the left from the last described course of $109^{\circ}43'26''$ in a Northwesterly direction a distance of 130.39 feet to the Point of Beginning.

Less and except any portion of subject property lying within a road right of way.