


RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Greystone Servicing Corporation, Inc.  
(Att: Leslie Dominy)  
419 Belle Air Lane  
Warrenton, VA 20186

  
20090312000089790 1/10 \$38.00  
Shelby Cnty Judge of Probate, AL  
03/12/2009 09:20:56AM FILED/CERT

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(Space above this line for Recorder's Use)

**SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

**NOTICE: THE SUBORDINATION PROVIDED FOR IN THIS AGREEMENT RESULTS IN YOUR LEASEHOLD ESTATE BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE INTEREST CREATED BY SOME OTHER OR LATER INSTRUMENT.**

THIS AGREEMENT, made as of this 12th day of March, 2009, by and among PELHAM SENIOR LIVING TRIPLE NET, LLC, a limited liability company organized and existing under the laws of the State of Delaware and having its principal place of business at 41 Independence Way, Jersey City, New Jersey 07305 ("Mortgagor" or "Lessor"), as lessor under the lease hereinafter described, and MATURE OPTIONS ELDERCARE, INC. (as successor in interest to Mature Options Eldercare, LLC), a corporation organized and existing under the laws of the State of Alabama and having its principal place of business at 4072 Milners Crescent, Birmingham, Alabama 35242 ("Operator" or "Lessee"), lessee under the aforementioned lease, in favor of GREYSTONE SERVICING CORPORATION, INC., a Georgia corporation having an office and place of business at 419 Belle Air Lane, Warrenton, Virginia 20186 ("FHA Mortgagee"), the owner and holder of the Mortgage hereinafter described.

**WITNESSETH:**

WHEREAS, Lessor has or will execute that certain Mortgage, dated as of March, 2009 (the "Mortgage"), in favor of FHA Mortgagee and covering certain real property (the "Property") located at 2124 Old Montgomery Highway, Pelham, Shelby County, Alabama 35124, with a legal description as set forth in Exhibit "A" attached hereto and incorporated herein by this reference, and covering the improvements situated thereon (the "Improvements"), and which Mortgage is being recorded concurrently herewith; and

WHEREAS, the Property is subject to a certain Lease Agreement dated August 31, 2006, a memorandum of which is recorded in the land records of the Probate Office of Shelby County, Alabama, as Instrument Number 20060907000441460, which Lease Agreement was heretofore amended, assigned and assumed, and which Lease Agreement

was heretofore subordinated as described in a certain Subordination, Non-Disturbance and Attornment Agreement dated May 21, 2007, and recorded in the land records of the Probate Office of Shelby County, Alabama, as Instrument Number 20070524000242270, and which Lease Agreement was assumed by the Lessee and further amended by the Lessor and the Lessee by way of a certain Assumption, Amendment and Subordination of Lease dated the date hereof (collectively, the "Lease"), covering the Improvements for the term and upon the conditions set forth therein; and

WHEREAS, the parties hereto now desire to enter into this Agreement to establish certain rights and obligations with respect to their interests, and to provide for various contingencies as hereinafter set forth.

NOW, THEREFORE, in consideration for the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and of the mutual benefits to accrue to the parties hereto, it is hereby declared, understood and agreed that the Lease, all terms and conditions set forth in the Lease, the leasehold interests and estates created thereby, and the priorities, rights, privileges and powers of Lessee and Lessor thereunder shall be and the same are hereby, and with full knowledge and understanding of the effect thereof, unconditionally made subject and subordinate to the lien and charge of the Mortgage, all terms and conditions contained therein, any renewals, extensions, modifications or replacements thereof, and the rights, privileges and powers of the FHA Mortgagee thereunder, and shall hereafter be junior and inferior to the lien and charge of the Mortgage. The parties further agree as follows:

1. It is expressly understood and agreed that this Agreement shall supersede, to the extent inconsistent herewith, the provisions of the Lease relating to the subordination of the Lease and the leasehold interests and estates created thereby to the lien or charge of the Mortgage.

2. FHA Mortgagee consents to the Lease.

3. In the event FHA Mortgagee or any other purchaser at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by FHA Mortgagee of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:


- (a) Lessee shall be bound to FHA Mortgagee or such other purchaser under all of the terms, covenants and conditions of the Lease for the remaining balance of the term thereof, with the same force and effect as if FHA Mortgagee or such other purchaser were the lessor under such Lease, and Lessee does hereby agree to attorn to FHA Mortgagee or such other purchaser as its lessor, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the parties to this Agreement, immediately upon FHA Mortgagee or such other purchaser succeeding to the interest of Lessor under the Lease.



(b) Subject to the observance and performance by Lessee of all the terms, covenants and conditions of the Lease on the part of the Lessee to be observed and performed, FHA Mortgagee or such other purchaser shall recognize the leasehold estate of Lessee under all of the terms, covenants and conditions of the Lease for the remaining balance of the term (as the same may be extended in accordance with the provisions of the Lease) with the same force and effect as if FHA Mortgagee or such other purchaser were the lessor under the Lease and the Lease shall remain in full force and effect and shall not be terminated, except in accordance with the terms of the Lease or this Agreement; provided, however, that FHA Mortgagee or such other purchaser shall not be (i) liable for any act or omission of Lessor or any other prior lessor, (ii) obligated to cure any defaults of Lessor or any other prior lessor under the Lease which occurred prior to the time that FHA Mortgagee or such other purchaser succeeded to the interest of Lessor or any other prior lessor under the Lease, (iii) subject to any offsets or defenses which Lessee may be entitled to assert against Lessor or any other prior lessor, (iv) bound by any payment of rent or additional rent by Lessee to Lessor or any other prior lessor for more than one (1) month in advance, (v) bound by any amendment or modification of the Lease made without the written consent of FHA Mortgagee or such other purchaser, or (vi) liable or responsible for or with respect to the retention, application and/or return to Lessee of any security deposit paid to Lessor or any other prior landlord, whether or not still held by Lessor, unless and until FHA Mortgagee or such other purchaser has actually received for its own account as lessor the full amount of such security deposit. The non-disturbance provisions of this Section 3(b) are conditioned upon Lessor at all times having no identity of ownership interest with any of the Lessee, any management agent at the Property, any service provider to the Property, or any sub-contractor or supplier to the Property.

4. Lessee hereby agrees that it will not exercise any right granted it under the Lease, or which it might otherwise have under applicable law, to terminate the Lease on account of a default of Lessor thereunder or the occurrence of any other event without first giving to FHA Mortgagee prior written notice of its intent to terminate, which notice shall include a statement of the default or event on which such intent to terminate is based. Thereafter, Lessee shall not take any action to terminate the Lease if FHA Mortgagee (a) within thirty (30) days after service of such written notice on FHA Mortgagee by Lessee of its intention to terminate the Lease, shall cure such default or event if the same can be cured by the payment or expenditure of money, or (b) shall diligently take action to obtain possession of the leased premises (including possession by receiver) and to cure such default or event in the case of a default or event which cannot be cured unless and until FHA Mortgagee has obtained possession, but in no event to exceed ninety (90) days after service of such written notice on FHA Mortgagee by Lessee of its intention to terminate.

5. For the purposes of facilitating FHA Mortgagee's rights hereunder, FHA Mortgagee shall have, and for such purposes is hereby granted by Lessee and Lessor, the right to enter upon the Property and the Improvements thereon for the purpose of effecting any such cure.

  
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6. Lessee hereby agrees to give to FHA Mortgagee concurrently with the giving of any notice of default under the Lease, a copy of such notice by mailing the same to FHA Mortgagee in the manner set forth hereinbelow, and no such notice given to Lessor which is not at or about the same time also given to FHA Mortgagee shall be valid or effective against FHA Mortgagee for any purpose.

7. Subordination of Lease to Mortgage and Regulatory Agreements and Regulation by HUD.

(a) The Lease and all estates, rights, options, liens and charges therein contained or created under the Lease are and shall be subject and subordinate to the lien or interest of (i) the Mortgage on the Lessor's interest in the Property in favor of FHA Mortgagee, its successors and assigns insofar as it affects the real and personal property comprising the Property (and not otherwise owned, leased or licensed by Lessee) or located thereon or therein, and to all renewals, modifications, consolidations, replacements and extensions thereof, and to all advances made or to be made thereunder, to the full extent of amounts secured thereby and interest thereon, (ii) that certain Regulatory Agreement for Multifamily Housing Projects between Lessor and the U.S. Department of Housing and Urban Development ("HUD") to be recorded against the Property, and (iii) that certain Regulatory Agreement Nursing Homes between Tenant and HUD to be recorded against the Premises (the "Lessee's Regulatory Agreement").

(b) The parties to the Lease agree to execute and deliver to FHA Mortgagee and/or HUD such other instrument or instruments as the FHA Mortgagee and/or HUD, or their respective successors or assigns, shall reasonably request to effect and/or confirm the subordination of the Lease to the lien of the Mortgage and the above-described Regulatory Agreements. To the extent that any provision of the Lease shall be in conflict with the provisions of the Mortgage, the Regulatory Agreements or any applicable section of Section 232 of the National Housing Act and/or the March 15, 2002 Multifamily Accelerated Processing (MAP) Guide provisions applicable to Section 232, the provisions of the Mortgage, the Regulatory Agreements, such sections of Section 232 of the National Housing Act and/or the March 15, 2002 Multifamily Accelerated Processing (MAP) Guide provisions applicable to Section 232, as the case may be, shall be controlling.

(c) In the event HUD, at a foreclosure sale or sale under private power contained in the Mortgage, or by acceptance of a deed in lieu of foreclosure, succeeds to the interest of Lessor under the Lease by reason of any foreclosure of the Mortgage or the acceptance by HUD of a deed in lieu of foreclosure, or by any other manner, it is agreed as follows:

(i) HUD can terminate the Lease (A) for any violation of the Lease that is not cured within any applicable notice and cure period given in the Lease, (B) for any violation of Lessee's Regulatory Agreement or other HUD Program Obligations or Health Care Requirements (both as defined below) that is not cured within thirty (30) days after receipt by Lessee of written notice of such violation; provided,



however, that if such cure reasonably requires more than thirty (30) days to cure, HUD may not terminate the Lease if Lessee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion, or (C) if HUD, as a result of the occurrence of either of the events described in the foregoing items (A) or (B), is required to advance funds for the operation of the facility located on the Property.

(ii) As used in the foregoing item (i):

(A) "Program Obligations" shall mean all applicable statutes and regulations, including all amendments to such statutes and regulations, as they become effective, and all applicable requirements in HUD handbooks, notices and mortgagee letters that apply to the Property, including all updates and changes to such handbooks, notices and mortgagee letters that apply to the Property, except that changes subject to notice and comment rulemaking shall become effective upon completion of the rulemaking process.

(B) "Health Care Requirements" shall mean, relating to the Property, all federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions or agreements, in each case, pertaining to or concerned with the establishment, construction, ownership, operation, use or occupancy of the Property or any part thereof as a skilled nursing facility, and all material permits, licenses and authorizations and regulations relating thereto, including all material rules, orders, regulations and decrees of and agreements with health care authorities pertaining to the Property.


(d) To the extent there is any inconsistency between the terms of this Subordination, Non-Disturbance and Attornment Agreement, and the Lease, the terms of this Subordination, Non-Disturbance and Attornment Agreement shall be controlling.

8. For purposes of any notices to be given to FHA Mortgagee hereunder, the same shall be sent by U.S. certified mail, return receipt requested, postage prepaid, to FHA Mortgagee at the following address:

Greystone Servicing Corporation, Inc.  
419 Belle Air Lane  
Warrenton, Virginia 20186  
Attention: General Counsel

or to such other address as FHA Mortgagee may hereafter notify Lessee in writing by notice sent to Lessee as aforesaid at Lessee's address at the Property, or such other address as FHA Mortgagee may hereafter be advised of in writing by notice sent to FHA Mortgagee as aforesaid.

9. The agreements contained herein shall run with the land and shall be binding upon and inure to the benefit of the respective heirs, administrators, executors, legal representatives, successors and assigns of the parties hereto.

  
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10. This Agreement may be executed in one or more counterparts, all of which when taken together shall constitute a single instrument.

11. This Agreement shall, in all respects, be governed by and construed and interpreted in accordance with the laws of the **State of Alabama**.

**[SEE ATTACHED SIGNATURE PAGES]**



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SIGNATURE PAGE  
TO  
SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

Lessor:

PELHAM SENIOR LIVING TRIPLE NET, LLC,  
a Delaware limited liability company,

By: Michael Barber  
Michael Barber, Managing Member

STATE OF ~~ALABAMA~~ NY)  
COUNTY OF ~~JEFFERSON~~ NY)


I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Michael Barber whose name as the Managing Member of Pelham Senior Living Triple Net, LLC, 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 the instrument, he, as such managing member and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand this 6 day of March, 2009.

Laura Nelson  
Notary Public

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

LAURA NELSON  
Notary Public, State of New York  
No. 01NE5083319  
Qualified in New York County  
Commission Expires August 11, 2009

  
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**SIGNATURE PAGE  
TO  
SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMENT AGREEMENT**

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

Lessee:

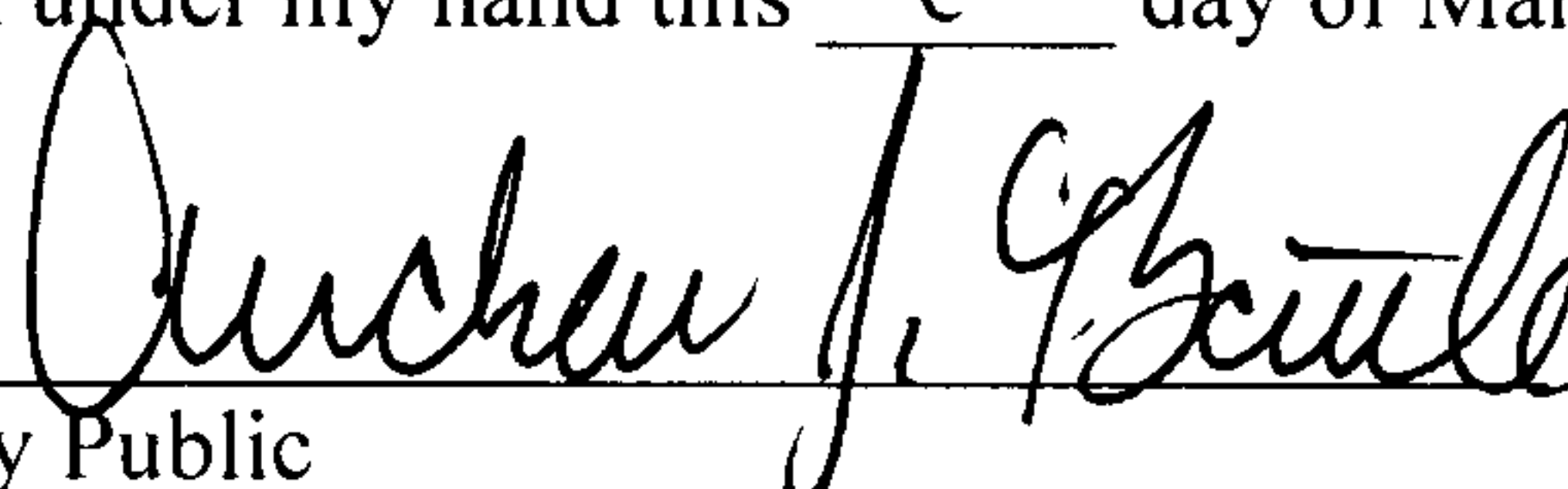
MATURE OPTIONS ELDERCARE, INC.,  
an Alabama corporation

By:   
Rea A. Oliver, President

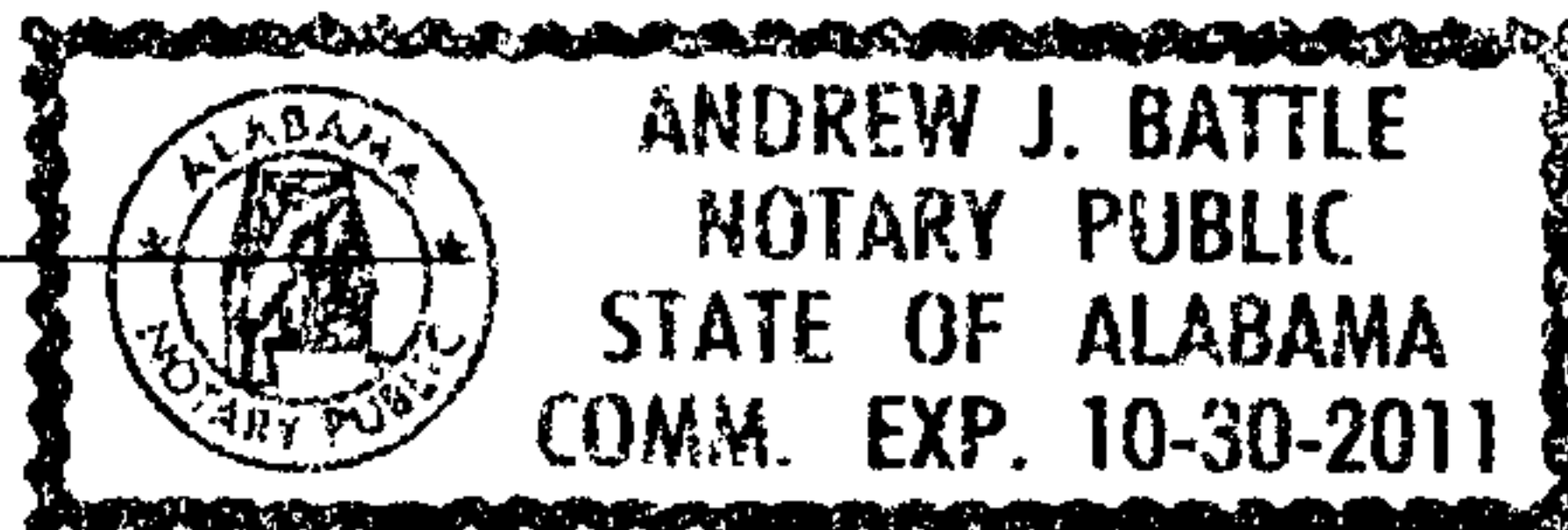
STATE OF ALABAMA     )  
COUNTY OF JEFFERSON )


I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Rea A. Oliver whose name as the President of Mature Options Eldercare, Inc., 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 the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 9th day of March, 2009.

  
Notary Public

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



  
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**SIGNATURE PAGE  
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IN WITNESS WHEREOF, the undersigned have executed this instrument as of the day and year first above written.

FHA Mortgagee:

GREYSTONE SERVICING CORPORATION, INC.,  
a Georgia corporation

By: 

Lisa Anderson, Vice President

STATE OF NEW YORK     )  
COUNTY OF ONONDAGA )


I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that Lisa Anderson whose name as a Vice President of Greystone Servicing Corporation, Inc., 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 the instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 9<sup>th</sup> day of March, 2009.

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

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

JOHN R. BRENNAN  
NOTARY PUBLIC, State of New York  
No. 0284883409  
Qualified in Onondaga County  
Commission Expires December 29, 2010

  
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03/12/2009 09:20:56AM FILED/CERT


## EXHIBIT "A"

### LEGAL DESCRIPTION

A part of Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 36, Township 19 South, Range 3 West, being more particularly described as follows:

Commence at the Southeast corner of the Northeast  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 36, Township 19 South, Range 3 West; thence run West along the South line of said  $\frac{1}{4}$  -  $\frac{1}{4}$  Section 138.44 feet to an existing iron pin and the point of beginning; thence continue West along the last described course 324.18 feet; thence turn right 116 degrees 32 minutes 26 seconds and run Northeasterly 247.63 feet to a point on the Southwesterly Right of Way of Old Montgomery Highway; thence turn right 92 degrees 00 minutes 07 seconds and run Southeasterly along said Right of Way line 294.56 feet; thence turn right 90 degrees 42 minutes 00 seconds and run Southwesterly 92.59 feet to the point of beginning; being situated in Shelby County, Alabama.

LESS AND EXCEPT any part of subject property lying within a road Right-Of-Way.

  
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