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Shelby Cnty Judge of Probate, AL  
09/15/2009 03:46:25 PM FILED/CERT

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

Cross Reference:

Instrument: 2006120600591370

STATE OF ALABAMA                    )  
  :  
COUNTY OF SHELBY                 )

**ASSUMPTION AND AMENDMENT TO LOAN DOCUMENTS AGREEMENT**

**THIS AGREEMENT**, made effective the 3rd day of July, 2009, is by and among **FRONTIER BANK**, an Alabama banking corporation (the "Lender"), **S&M DEVELOPMENT, LLC**, an Alabama limited liability company ("S&M"), and **VALLEY GRANDE FARMS, LLC**, an Alabama limited liability company (the "Borrower").

**RECITALS:**

\$ 689,930

A. Lender is the owner and holder of that certain promissory note dated January 18, 2007, in the original principal sum of Seven Hundred Fifty Dollars (\$750,000), as amended by that certain Note Modification Agreement dated May 29, 2009, by and between S&M and Lender (as amended, modified, or restated, the "Note"), which instruments were executed and delivered to Lender by S&M in order to evidence a loan from Lender to S&M, in said principal amount (the "Loan"). The Loan is secured by that certain Multipurpose Note and Security Agreement dated November 28, 2007 by and between S&M and Lender (as amended or modified, the "Security Agreement") by that certain Mortgage and Security Agreement: Open End with Future Advance Assignment of Rents and Leases dated January 18, 2007 from S&M to Lender (the "Mortgage") recorded at 2006120600591370. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Note.

B. 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 Loan and the obligations of

S&M under the Note, the Security Agreement, the Mortgage and any and all other loan documents executed by S&M in connection with any indebtedness from Lender (collectively, the "Loan Documents"). Lender has agreed to permit such acquisition and assumption pursuant to the terms of this Agreement. All obligations of S&M under the Loan Documents 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 Loan 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 Loan Documents, all as herein described.

2. **Outstanding Principal Balance of Loan; No Default.** The parties hereby acknowledge and agree that all accrued interest on the outstanding principal balance of the Loan has been paid current as of and including the date hereof. The parties hereby further acknowledge and agree that, to the best of their knowledge and belief, there presently exists no Event of Default under the Loan Documents, nor any event which, upon the giving of any required notice or the expiration of any stipulated grace or cure period, would constitute an Event of Default under the Loan Documents.

3. **Assumption of Loan Obligations.** Borrower hereby assumes and agrees to be fully bound by the Loan Obligations as stated in the Loan 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 Loan Documents against S&M, all of which are hereby expressly waived by Borrower. Any and all references to the "Grantor", "Borrower", "Maker" and "Assignor" contained in any Loan Document shall hereafter be deemed to refer to Valley Grande Farms, LLC, mutatis mutandis, with full and equal force and effect...

4. **Representations and Warranties.** Borrower confirms that it has reviewed the covenants, representations and warranties contained in the Loan Documents, and that upon substituting itself for S&M 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 nor performance of this Agreement or of any of the Loan 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.

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

6. **Amendment to Loan Documents.**

(a.) The maturity date of the Loan is hereby extended from July 3, 2009, to July 3, 2010 (the "Maturity Date").

(b.) On August 3, 2009, and on the third (3<sup>rd</sup>) day of each month thereafter, the Borrower shall pay to Lender all accrued and unpaid interest. On the Maturity Date, all accrued but unpaid interest and all of the outstanding principal balance of the Loan shall be due and owing.

7. **Cross Collateralized and Cross Default.** This Loan and the collateral securing this Loan are hereby crossed collateralized and cross defaulted against the Loan to Borrower in the stated principal amount of \$175,000 and any all indebted owed by Borrower to Lender ("Borrower's Other Obligations"). An event of default under the Borrower's Other Obligations



shall be an event of default under the Loan and the Loan Documents and an event of default under the Loan and the Loan Documents shall be an event of default under any loan documents evidencing the Borrower's Other Obligations. The collateral securing this Loan shall also secure the Borrower's Other Obligations.

8. **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 Loan Documents as a first and prior lien upon and security interest in all of the Premises.

9. **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 Loan 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.**



IN WITNESS WHEREOF, the parties have caused this instrument to be properly executed as of the 29<sup>th</sup> day of August, 2009, but to be effective as of the day and year first above written.

**LENDER:**

**FRONTIER BANK,**  
an Alabama banking corporation

By: *John C. Sisley*  
Print Name: John C. Sisley  
Its: Senior Vice President

STATE OF ALABAMA )  
 )  
 )  
Shelby COUNTY )

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

Given under my hand and official seal this 29<sup>th</sup> day of August, 2009.

*Morgan M. Guthas*  
Notary Public

[NOTARIAL SEAL]

My commission expires: Morgan Guthas  
Notary Public-State at Large  
Alabama  
Commission Expires June 4, 2011



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S&M:

S&M DEVELOPMENT, LLC,  
an Alabama limited liability company

By: 

Print Name: JASON E SPINKS

Its: MEMBER

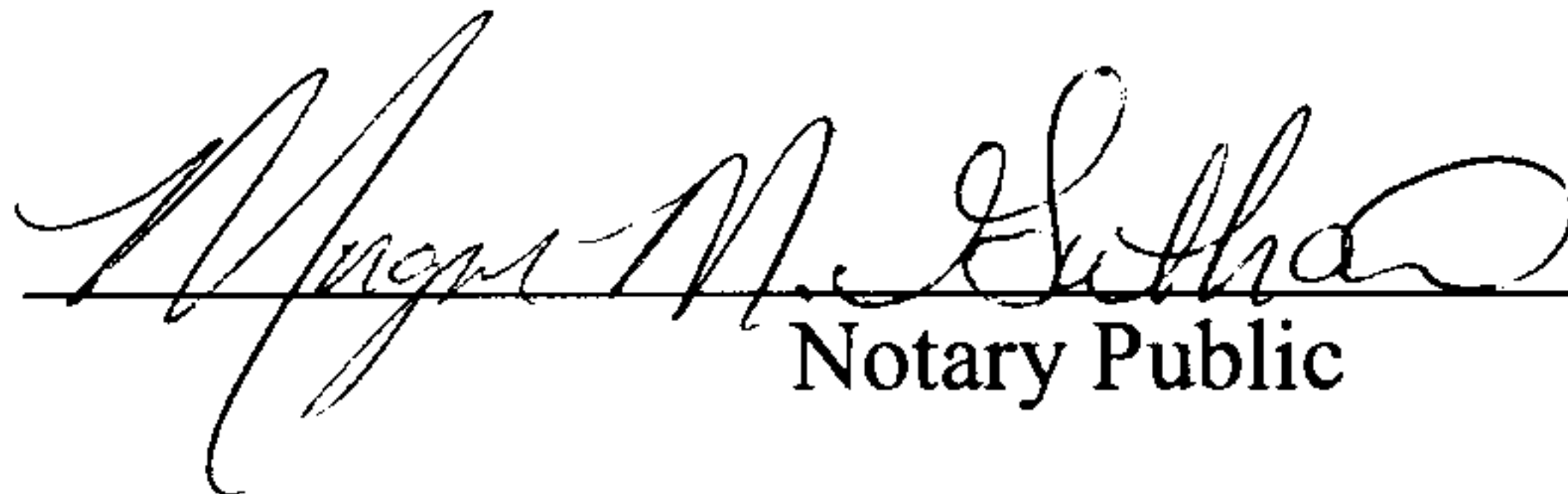
STATE OF ALABAMA

Shelby COUNTY

)  
:  
)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jason E. Spinks, whose name as Manager/Member of S&M 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 Manager/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 31<sup>st</sup> day of August,  
2009.

  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_

**Morgan Guthas**  
Notary Public-State at Large  
Alabama  
Commission Expires June 4, 2011



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**BORROWER:**

**VALLEY GRANDE FARMS, LLC,**  
an Alabama limited liability company

By: [Signature]  
Print Name: JASON E SPINKS  
Its: Member

STATE OF ALABAMA )  
 )  
Shelby COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jason E. Spinks, whose name as Manager/Member of Valley Grande Farms, 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 Manager/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 31<sup>st</sup> day of August, 2009.


[Signature]  
Notary Public

[NOTARIAL SEAL]

My commission expires: Morgan Guthas  
Notary Public-State at Large  
Alabama  
Commission Expires June 4, 2011



The undersigned guarantor of that certain Continuing Guaranty dated November 28, 2006 (the "Guaranty") consents to this Agreement and agrees that its Guaranty shall continue all obligations of S&M as assumed by Valley Grande Farms, LLC.

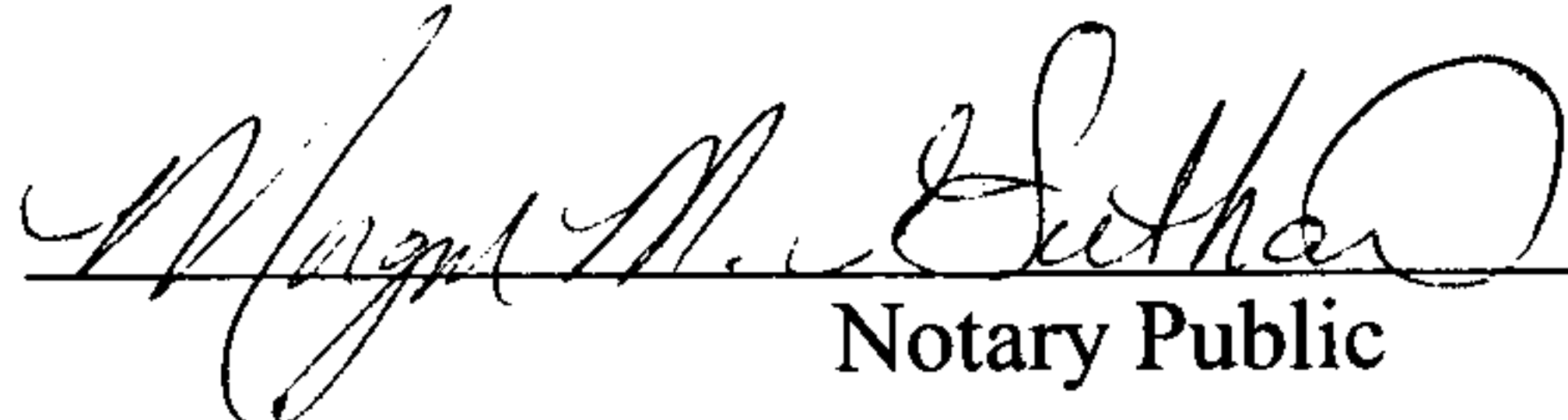
By  \_\_\_\_\_  
Jason Spinks

STATE OF ALABAMA )

Shelby COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jason Spinks, 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 said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 31<sup>st</sup> day of August, 2009.

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

[NOTARIAL SEAL]

My commission expires:

Morgan Guthas  
Notary Public-State at Large  
Alabama  
Commission Expires June 4, 2011

## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL I:

A part of the SE 1/4 of the SE 1/4 of Section 2, Township 24 North, Range 12 East, more particularly described as follows:

Beginning at the SW corner of the SE 1/4 of the SE 1/4 of Section 2, Township 24 North, Range 12 East, Shelby County, Alabama, and run North 08°28'45" West along the West line of said 1/4 - 1/4 section and along an existing barbed wire fence a distance of 244.38 feet to a set steel rebar corner at a fence corner; thence run North 88°12'57" East along an existing barbed wire fence a distance of 808.15 feet to a steel corner at a fence corner; thence run South 62°04'21" East along an existing barbed wire fence a distance of 474.38 feet to a found 3 inch open top pipe corner at a fence corner; thence run South 82°15'22" West along an up and down barbed wire fence a distance of 283.59 feet to a found 3 inch open pipe corner; thence run South 01°53'03" West along an up and down barbed wire fence a distance of 488.31 feet to a set steel corner on the South line of said 1/4 - 1/4 section; thence run North 88°55'11" West along said South line of said 1/4 - 1/4 section a distance of 317.80 feet to the point of beginning, situated in Shelby County, Alabama.

#### PARCEL II:

A part of the NE 1/4 of the NE 1/4 of Section 11, Township 24 North, Range 12 East, more particularly described as follows:

Commence at the NE corner of Section 11, Township 24 North, Range 12 East, Shelby County, Alabama, and run thence North 88°55'11" West along the North line of said section a distance of 664.17 feet to a steel rebar corner and the point of beginning of the property being described; thence continue last described course along an existing fence line a distance of 288.35 feet to a steel rebar corner; thence run South 03°11'48" East along the East line of White Oak Street a distance of 240.88 feet to a found steel corner; thence run North 78°51'00" East a distance of 197.79 feet to a found steel corner; thence run South 84°33'02" East a distance of 160.25 feet to a found steel corner; thence run North 02°35'34" West a distance of 238.04 feet to the point of beginning, situated in Shelby County, Alabama.

A 60 foot right of way easement for ingress and egress being described as follows:

Commence at the NE corner of the NE 1/4 of the NE 1/4 of Section 11, Township 24 North, Range 12 East; thence run North 88°55'11" West along the North line of said 1/4 - 1/4 for 1617.79 feet to a found 1 1/2 inch rebar; thence continue on the last described course for 30.00 feet to the point of beginning of a 60 foot right of way for ingress and egress lying 30 feet on either side of the following described centerline; thence run South 81°04'48" West for 162.72 feet; thence run South 83°42'29" East for 78.29 feet; thence run South 03°11'48" East for 242.11 feet; thence run South 02°55'21" West for 284.12 feet; thence run South 34°28'53" West for 65.04 feet to its intersection with the centerline of Shelby County Highway No. 165 and the end of said right of way, being situated in Shelby County, Alabama.

#### PARCEL III:

A parcel of land situated in the South 1/2 of Fractional Section 1, Township 24 North, Range 12 East, described as follows:

Commence at a 2 1/2" pipe in place accepted as the Southeast corner of Fractional Section 1, Township 24 North, Range 12 East, Shelby County, Alabama, said point being the point of beginning; from this beginning point proceed North 02°13'28" West for a distance of 1264.44 feet to a 2 1/2" pipe in place; thence proceed North 85°29'33" West along a fence for a distance of 804.71 feet to a 2 1/2" pipe in place being located on the Eastern right of way of Shelby County Highway No. 10; thence proceed Southeast along the Eastern right of way of said highway and along the curvature of a concave curve right having a delta angle of 27°06'03" and a radius of 714.81 feet for a chord bearing and distance of South 28°51'09" East, 334.58 feet to the P.T. of said curve; thence proceed South 13°18'16" East along the Eastern right of way of said road for a distance of 1009.16 feet to a 1 1/2" capped rebar in place, said point being the P.C. of a concave curve right having a delta angle of 10°02'12" and a radius of 1622.51 feet; thence proceed Southeast along the Eastern right of way of said road and along the curvature of said curve for a chord bearing and distance of South 18°21'12" East, 268.38 feet to a 1 1/2" capped rebar in place; thence proceed South 75°23'32" East for a distance of 418.28 feet to the point of beginning.

#### PARCEL IV:

A parcel of land in the South 1/2 of Fractional Section 1, and part of the SE 1/4 of the SE 1/4 of Section 2, Township 24 North, Range 12 East, described as follows:

Commence at a 2 1/2" open top pipe in place accepted as the Southwest corner of Fractional Section 1, Township 24 North, Range 12 East, Shelby County, Alabama, said point being the point of beginning; from this beginning point, proceed North 88°01'46" West for a distance of 463.28 feet to a 1" open top pipe in place; thence proceed North 88°44'43" West for a distance of 554.57 feet (set 1/2" rebar); thence proceed North 01°34'51" East for a distance of 613.51 feet to a 2 1/2" open top pipe in place; thence proceed North 84°11'20" East along a fence for a distance of 283.83 feet to a 2 1/2" open top pipe in place; thence proceed North 45°08'22" East along a fence for a distance of 202.16 feet to a 2 1/2" open top pipe in place; thence proceed North 53°23'33" East for a distance of 876.51 feet; thence proceed North 01°32'49" West for a distance of 320.58 feet to a 2 1/2" open top pipe in place; thence proceed South 65°33'28" East for a distance of 476.35 feet to a 1 1/2" capped rebar in place, said point being located on the Western right of way of Shelby County Highway No. 10; thence proceed South 45°17'14" East along the Western right of way of said highway for a distance of 150.34 feet to a 1 1/2" capped rebar in place, said point being the P.C. of a concave curve right having a delta angle of 31°57'33" and a radius of 634.07 feet; thence proceed Southeast along the Western right of way of said road and along the curvature of said curve for a chord bearing and distance of South 29°17'85" East, 349.11 feet to the P.T. of said curve being a 1 1/2" capped rebar in place; thence proceed South 13°18'34" East along the Western right of way of said road for a distance of 1009.23 feet to a 1 1/2" capped rebar in place, said point being the P.C. of a concave curve right having a delta angle of 07°24'13" and a radius of 1602.51 feet; thence proceed Southeast along the Western right of way of said road and along the curvature of said curve for a chord bearing and distance of South 18°55'01" East, 268.86 feet to a 3/4" rebar in place; thence proceed North 65°03'54" West along a fence for a distance of 342.38 feet; thence proceed North 68°38'21" West along a fence for a distance of 101.64 feet; thence proceed North 89°37'41" West along a fence for a distance of 42.57 feet; thence proceed North 85°24'32" West along a fence for a distance of 34.33 feet; thence proceed North 61°22'12" West along a fence for a distance of 46.19 feet; thence proceed North 59°30'10" West along a fence for a distance of 225.11 feet to a 1 1/2" rebar in place; thence proceed North 68°38'57" West along a fence for a distance of 286.79 feet to the point of beginning.

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