

*This instrument prepared by
and when recorded return to:*
Claude McCain Moncus, Esq.
CORLEY MONCUS, P.C.
728 Shades Creek Parkway
Suite 100
Birmingham, Alabama 35209
205.879.5959


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Shelby Cnty Judge of Probate, AL
05/30/2014 03:26:07 PM FILED/CERT

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (this "Assignment"), dated as of the 30th day of May, 2014, by **FOUR FOUR LITTLE MOUNTAIN, LLC**, an Alabama limited liability company (hereinafter called the "Borrower"), Mortgagor, whose address is 3179 Green Valley Road, #313, Birmingham, Alabama 35243, Attn: D. Alan Dillenberg, IV, in favor of **FIRST PARTNERS BANK**, an Alabama banking corporation (hereinafter called "Lender"), Mortgagee, whose address is 2121 Highland Avenue, Birmingham, Alabama 35205, Attn: J. David Sizemore.

I. RECITALS

This Assignment is made as additional security for a loan by Lender to Borrower in the principal amount of Three Million Six Hundred Sixty Thousand Seven Hundred Fifty and No/100 Dollars (\$3,660,750.00) (the "Loan"). The Loan is evidenced by a Promissory Note of even date herewith executed and delivered by Borrower to Lender in said amount (as the same may hereafter be extended, renewed, modified or amended, the "Note"). The Loan is secured by the real property more particularly described on Exhibit "A" attached hereto and the improvements located thereat (collectively, the "Property").

II. GRANTING CLAUSE

In consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration and to secure the payment of the Note and any and all renewals, extensions, modifications, and replacements thereof, and to assure performance of the agreements contained herein and in the Loan Documents, Borrower hereby assigns to Lender (the fullest extent assignable), Borrower's right, title and interest (if any) in:

(a) Any and all Lease Agreements entered into between the Borrower, as lessor, and various parties, as lessee, (the "Leases"), copies of which will be provided to Lender upon Lender's request, together with any other oral and written leases and other agreements for the use or occupancy made or agreed to by, any person or entity (including, without limitation of the foregoing, Borrower and Lender under the powers granted herein) and any and all amendments, extensions, renewals, modifications and replacements thereof pertaining to allow any part of the Property, whether such leases or other agreements have been heretofore or are hereafter made or agreed to (such leases and other use and occupancy agreements being collectively referred to herein as the "Leases");

(b) The rents, issues and profits and any other payments by any and all lessees under the Leases in addition to rent (collectively the "Rents") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property;

(c) Any and all moneys, awards or other payments made or payable by any and all lessees under the Leases in lieu of rent, including, but not limited to, any damages (all such moneys, awards or payments, including, but not limited to, damages, are collectively referred to herein as the "Damages") which may hereafter become due pursuant to any of the Leases pertaining to all or any part of the Property;

(d) All rights, powers, privileges, options and other benefits (collectively the "Rights") of Borrower under the Leases, upon default by Borrower hereunder, including without limitation of the foregoing:

(i) the immediate and continuing right to receive and collect all insurance proceeds, condemnation awards, moneys and security deposits or the like pursuant to any of the provisions thereof, whether as rents or otherwise (except sums payable directly to any person other than the lessor thereunder);

(ii) the right to make all waivers and agreements, including waivers of obligations of lessees;

(iii) the right to give all notices, permissions, consents and releases, including consent to the subordination of the interest of a lessee;

(iv) the right to take such action upon the happening of a default under the Leases (including the commencement, conduct and consummation of proceedings at law or in equity) as shall be permitted under any provisions of the Leases or by law;

(v) the right to do any and all other things whatsoever which Borrower is or may become entitled to under the Leases;

(vi) the right to exercise any option required or permitted;

(vii) to manage the Property and let and relet the Property, or any part thereof according to Lender's own discretion;

(viii) to prosecute or defend any suits in connection with the Property in the name of any or all of Lender or Borrower as it may consider desirable;

(ix) to enforce or take any other action in connection with the Leases in the name of any or all of Lender or Borrower;

(x) to make such repairs to the Property as Lender may deem reasonably advisable;
and

(xi) to do anything in or about the Property that Lender may deem reasonably advisable or that the Borrower has the right or power to do.

TO HAVE AND TO HOLD unto Lender, its successors and assigns, forever, subject to and upon the terms set forth herein.

Although this instrument constitutes a present assignment of the foregoing Leases, Rights, Rents, Guaranties, Damages, interests and privileges, Borrower shall have the right and license to collect and use all rentals due under the Leases, and subject to the covenants and restrictions on Borrower contained in Section III and the other paragraphs of this instrument, to exercise the rights and privileges herein, provided, herein, that such license shall be revoked during the pendency of an Event of Default (as herein defined).

III. COVENANTS

3.1 **No Other Assignment.** Borrower warrants, represents, and covenants that it is the sole owner of the entire lessor's interest in the Leases and has full right to assign the Leases and the rents due or to become due thereunder, that there has been no previous and, without Lender's prior written consent as to form and substance, Borrower will permit no future assignment (as collateral or otherwise) of the Borrower's right, title, and interest in any of the Leases, that the Leases are in full force and effect in accordance with their terms, that, to the best of Borrower's knowledge (except as reflected on a rent roll, which will be made available to the Lender upon Lender's request), the lessees are not in default under the Leases and the best of Borrower's knowledge as of the date hereof, have no defenses, setoffs, or counterclaim against the lessor under the Leases, that no rent reserved in the Leases has been assigned or anticipated, and that no rent for any period subsequent to the date hereof has been collected for more than one (1) month in advance of the time when the said rent becomes or would become due under the terms of the Leases except for security deposits and except as otherwise disclosed in writing to Lender by Borrower.

3.2 **Management.** At all times until this Assignment is released, or until the assignment granted hereby is exercised by Lender, and at all times thereafter during which Lender is not in actual or constructive possession of the Property, Borrower shall use all reasonable effort to cause the Property to be managed in accordance with sound business practices and cause to be performed all obligations imposed upon the lessor under the Leases and not do or permit to be done anything to impair the security thereof. Borrower shall not, within the exercise of all reasonable effort, permit any of the Rents to be collected in advance, except that monthly rent due and payable under the Leases may be collected for each current month in advance. Borrower shall not make any other assignment of any interest in the Leases or the Rents accruing from such Leases or from the Property, or subordinate any of the Leases or any security deed, mortgage, or other encumbrance, or permit (within the exercise of all reasonable effort), consent, or agree to such subordination without the prior written consent of the Lender, which consent will not be unreasonably withheld. Borrower shall execute and deliver, at the reasonable written request of Lender, all such further assurances and assignments as Lender from time to time shall require.

3.3 **Notice of Lessor's Default.** Borrower shall cause notice to be given to Lender of any notice of default by the lessor under any of the Leases, which default is of a nature which would permit such lessee to terminate such lessee's lease, promptly upon the receipt of notice of such default, but in all events in sufficient time to afford to Lender an opportunity to cure any such default prior to the lessee under the subject lease having any right to terminate the lease by reason of such default.

3.4 **Lender to be Creditor of Lessee.** To the extent permitted by law, Lender shall be deemed to be the creditor of each lessee in the Leases with respect of any and all claims for Damages, assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such lessee (without obligation on the part of Lender, however, to file or make timely filings of claims in such proceedings or otherwise to pursue creditor's rights therein).

Borrower hereby assigns to Lender any and all Damages and any and all money received in connection with such assignment for the benefit of creditors or in any such bankruptcy, reorganization, insolvency, dissolution or receivership proceedings, with Lender to receive such Damages and monies and hold them in escrow for the purposes of applying Damages or any money received by Lender as such creditor in payment of the principal and interest installments secured by or to be paid under the Loan next falling due. To the extent permitted by law, Borrower hereby appoints Lender as its irrevocable attorney-in-fact to appear in any action and/or collect any such money, award or payment.

IV. DEFAULTS AND REMEDIES

4.1 **Defaults.** The occurrence of an Event of Default under the Loan Agreement (if applicable) or any of the other Loan Documents shall constitute an Event of Default hereunder.

4.2 **Exercise of This Assignment of Leases and Rents.**

(a) Lender may exercise the assignment hereby granted upon the occurrence and during the continuation of any Event of Default and pursue its rights to collect the Rents or manage the Property, or both, and otherwise exercise its rights as provided in this Assignment without regard to the adequacy of the security and without waiving any other remedy available to Lender and without waiving such Event of Default.

(b) In the event Lender elects to invoke any of its rights hereunder, and thereafter for any reason relinquishes to the Borrower such rights, this Assignment shall in no respect be terminated but instead remain in full force and effect until the indebtedness represented by the Note is paid in full, it being the intent of the parties that Lender, from time to time upon the occurrence of any Event of Default under this Assignment, which such Event of Default is continuing shall have all the rights granted hereby.

4.3 **Nature of Remedies.** No delay or omission on the part of Lender in the exercise of any remedy for an Event of Default shall operate as a waiver thereof. The remedies available to Lender under this Assignment shall be in addition to, and exercisable in any combination with, any and all remedies available by operation of law and under the Note and the other Loan Documents. The said remedies shall be cumulative and concurrent, may be pursued separately, successively or together against Borrower or the Property, or either of them, at the sole discretion of Lender and may be exercised as often as occasion therefor shall arise.

4.4 **Application of Rents.** Lender shall have the power to apply the Rents and Damages, in such order as lender may reasonably determine, to the payment of the indebtedness (in the inverse order of maturity) represented by the Note to the payment of the Loan Documents, including without limitation the payment of all advances and reasonable expenses incurred by Lender under the Mortgage and all reasonable expenses for the care and management of the Property, including taxes, insurance, assessments, usual and customary commissions to a real estate broker for leasing real estate and collecting rents, and the reasonable expenses and fees of all attorneys, agents, and servants, which expenses Lender may reasonably deem to be necessary to exercise the powers granted to the Lender hereunder. The receipt by Lender of any Rents pursuant to this Assignment following an Event of Default and the exercise of any remedies provided for in the Note or the other Loan Documents shall not cure such Event of Default or affect or prejudice the exercise of such remedies.



4.5 **Limitation of Lender's Obligations.** Lender's obligations as to any Rents actually collected shall be discharged by application of such Rents for the purposes described in this Assignment. Lender shall not be liable for uncollected rents or for any claim for damages or set-offs arising out of Lender's management of the Property other than for damages arising from Lender's gross negligence or willful misconduct. Lender shall not be liable to any lessee under the Leases for the return of any security deposit made under any lease of any portion of the Property unless Lender shall have received such security deposit from the lessor or such lessee. Lender shall not by reason of this Assignment or the exercise of any right granted herein be obligated to perform any obligation of the lessor or any breach or failure to perform by the lessor with respect to any of the Leases. Nothing contained herein shall be deemed to have the effect of making the Lender a mortgagee in possession of the Property or any part thereof.

4.6 **Reimbursement.** Borrower shall reimburse, indemnify, and hold harmless Lender for and from any and all reasonable expenses, losses, damages, and liabilities which Lender may incur by reason of this Assignment, except for any such caused by Lender's gross negligence or willful misconduct, any of the Leases, or reasonable expenses, losses, damages, and liabilities incurred in exercising any of the rights granted in this Assignment other than for Lender's gross negligence or wilful misconduct. Any and all amount due to Lender under this Section 4.6 shall be immediately due and payable following written notice to Borrower, and shall be added to the principal amount of the Note and secured by this Assignment and the other Loan Documents.

4.7 **Authorization to Lessees.** Each present and future lessee under any of the Leases is hereby authorized and directed to pay the rent payable thereunder to Lender upon written demand from Lender stating that an Event of Default has occurred and is continuing under this Assignment without inquiry as to whether any such Event of Default has occurred or whether Lender is rightfully entitled to such rent.

V. MISCELLANEOUS

5.1 **Modification of Loan Terms.** If the time of payment of all indebtedness secured hereby or any part thereof be extended at any time or times, or if the Loan is renewed, modified, or replaced, or if any security for the Loan is released, Borrower and any other parties now or hereafter liable therefor or interested in the Property shall be held to consent to such extensions, renewals, modifications, replacements, and releases, and their liability and the lien hereof and of the other Loan Documents shall not be released and the rights created hereby and thereby shall continue in full force, the right of recourse against all such parties being reserved by Lender.

5.2 **Successors and Assigns.** This Assignment shall inure to the benefit of and be binding upon the respective successors and assigns of Borrower and Lender and all persons or entities (including owners and lessees) which may hereafter obtain any interest in the Property.

5.3 **Notices.** Whenever notice may appropriately be given under this Assignment, such notice shall be given in accordance with the provisions for notices as set forth in the Mortgage and Security Agreement of even date herewith.

5.4 **Severability.** If any term, restriction or covenant of this Assignment is deemed illegal or unenforceable, all other terms, restrictions and covenants and the application thereof to all persons and circumstances subject hereto shall remain unaffected to the extent permitted by law; and if any application of any term, restriction or covenant to any person or circumstances is deemed illegal or unenforceable, the application of such term, restriction, or covenant to any other persons or circumstances shall remain unaffected to the extent permitted by Law.

5.5 **Termination.** The recording of a satisfaction of the Mortgage executed by Borrower to Lender as security for the Loan by Lender shall terminate this Assignment.

5.6 **Governing Law.** THE VALIDITY, INTERPRETATION, ENFORCEMENT AND EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF ALABAMA.

[Signature page to follow]



IN WITNESS WHEREOF, Borrower has executed this instrument, or has caused the same to be properly executed, as of the day and year first above written.

BORROWER:

FOUR FOUR LITTLE MOUNTAIN, LLC,
an Alabama limited liability company

By:  [SEAL]
Name: D. Alan Dillenberg, IV
Title: Sole Member

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for said County, in said State, hereby certify that D. Alan Dillenberg, IV, whose name as Sole Member of **FOUR FOUR LITTLE MOUNTAIN, 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 Sole Member and with full authority, executed the same for and as the act of said limited liability company.

Given under my hand and official seal this 30th day of May, 2014.

[NOTARIAL SEAL]

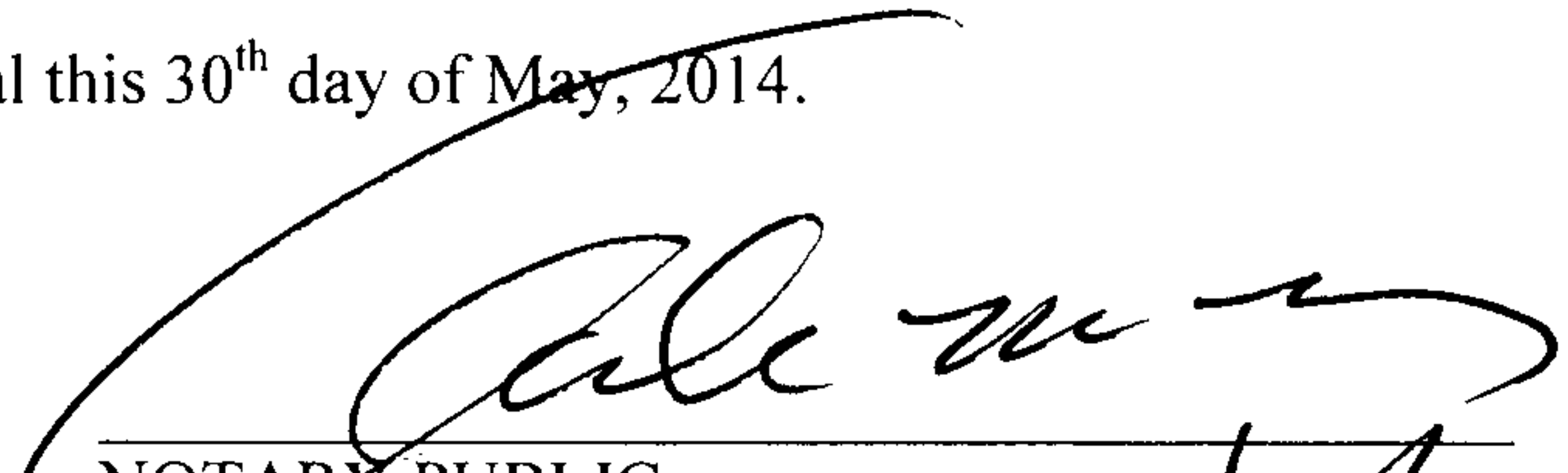

NOTARY PUBLIC
My Commission Expires: 12/21/2015



EXHIBIT "A"

Part of the Northwest quarter of the Northwest quarter of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

From an existing open top iron pin, being the Southeast corner of the Northwest quarter of the Northwest quarter of Section 31, Township 19 South, Range 2 West, run in a Northerly direction along the East line of said quarter-quarter section for a distance of 207.59 feet to an existing iron rebar being the point of beginning; thence turn an angle to the left of 86 degrees 42 minutes 13 seconds and run in a Northwesterly direction for a distance of 209.28 feet; thence turn an angle to the right of 92 degrees 20 minutes 15 seconds and run in a Northerly direction for a distance of 21.0 feet to an existing iron rebar; thence turn an angle to the left of 97 degrees 02 minutes 36 seconds and run in a Westerly direction for a distance of 231.61 feet; thence turn an angle to the left of 76 degrees 15 minutes 40 seconds and run in a Southwesterly direction for a distance of 72.22 feet; thence turn an angle to the right of 10 degrees 48 minutes 49 seconds and run in a Southwesterly direction for a distance of 37.95 feet; thence turn an angle to the right of 19 degrees 34 minutes 50 seconds and run in a Southwesterly direction for a distance of 34.92 feet; thence turn an angle to the right of 27 degrees 45 minutes 15 seconds and run in a Southwesterly direction for a distance of 48.83 feet; thence turn an angle to the right of 24 degrees 01 minutes 57 seconds and run in a Westerly direction for a distance of 224.32 feet to an existing iron rebar being on the East right of way line of Little Mountain Circle; thence turn an angle to the right of 105 degrees 42 minutes 34 seconds and run in a Northeasterly direction along the East right of way of said Little Mountain Circle for a distance of 75.32 feet to the point of beginning of a curve, said curve being concave in a Southeasterly direction and having a deflection angle of 3 degrees 45 minutes 30 seconds and a radius of 1497.29 feet; thence turn an angle to the right and run in a Northeasterly direction along the arc of said curve and along the Southeast right of way line of Little Mountain Circle for a distance of 196.43 feet to the point of ending of said curve; thence continue in a Northeasterly direction along the line tangent to the end of said curve and along the Southeast right of way line of Little Mountain Circle for a distance of 231.06 feet to the point of beginning of a new curve, said new curve being concave in a Southeasterly direction and having a deflection angle of 29 degrees 36 minutes 30 seconds and a radius of 106.91 feet; thence turn an angle to the right and run in a Northeasterly direction along the arc of said curve and along the Southeast right of way line of Little Mountain Circle for a distance of 110.49 feet; thence run in a Northeasterly direction along line tangent to the end of said curve and along the South right of way line of Little Mountain Circle for a distance of 67.50 feet to the point of beginning of another curve, said latest curve being concave in a Southerly direction and a deflection angle of 2 degrees 47 minutes 30 seconds and a radius of 1000.32 feet; thence turn an angle to the right and run in an Easterly direction along the arc of said curve and along the Southerly right of way line of Little Mountain Circle for a distance of 97.48 feet to the point of ending of said curve; thence run in an Easterly direction along line tangent to the end of said curve and along the Southerly right of way line of Little Mountain Circle for a distance of 94.94 feet to the point of beginning of another curve, said newest curve being concave in a Southwesterly direction and having a deflection angle of 17 degrees 58 minutes 14.5 seconds and a radius of 128.59 feet; thence turn an angle to the right and run in an Easterly and Southeasterly direction along the Southerly right of way line of Little Mountain Circle and along the arc of said curve for a distance of 80.67 feet to the point of ending of said curve; thence run in a Southeasterly direction along the Southwest right of way line of Little Mountain Circle and along line tangent to the end of said curve for a distance of 137.70 feet to the point of beginning of another curve, said curve being concave in a Northeasterly direction and having a central angle of 60 degrees and a radius of 50.0 feet; thence turn an angle to the right, (60 degrees 26 minutes 19 Seconds to the tangent of said curve) and run in a Southerly and Southeasterly direction along the arc of said curve for a distance of 52.36 feet to the point of ending of said curve; thence turn an angle to the right (51 degrees 05 minutes from the tangent of last mentioned curve) and run in a Southerly direction along the East line of said quarter-quarter section for a distance of 248.68 feet, more or less, to the point of beginning.

EXHIBIT "B"
PERMITTED EXCEPTIONS

1. Taxes or assessments for **2014** and subsequent years and not yet due and payable.
2. Right of Way granted to Alabama Power Company by instrument(s) recorded in Deed Book 278, Page 494; Deed Book 101, Page 504; Deed Book 145, Page 377; Deed Book 158, Page 558; Deed Book 180, Page 288, and Deed Book 101, Page 502.
3. Right of Way to Shelby County as recorded in Deed Book 101, Page 250 and Deed Book 153, Page 295.
4. Right of Way in favor of Southern Bell Telephone & Telegraph Company by instrument(s) recorded in Deed Book 252, Page 871.
5. Rights of tenants, as tenants only, under unrecorded residential apartment leases of one year or less.
6. Easement granted to Marcus Cable as recorded in Instrument # 20120813000298930.
7. Easement to BellSouth Telecommunications recorded in Instrument # 9407/7568.

