

This instrument prepared by, and  
after recording, please return to:

**Loan No. 100012769**

Julie A. Schoepf, Esq.  
Dinsmore & Shohl LLP  
255 E. 5<sup>th</sup> Street, Suite 1900  
Cincinnati, Ohio 45202

## **ASSIGNMENT OF RENTS, LEASES AND OTHER BENEFITS**

**THIS ASSIGNMENT OF RENTS, LEASES AND OTHER BENEFITS** ("Assignment") made as of April 29, 2016, by **NEW MARKET-SOUTHGATE LLC**, a Delaware limited liability company with a mailing address of 3284 Northside Parkway, Suite 150, Atlanta, Georgia 30327 (hereinafter called "Borrower") in favor of **UNUM LIFE INSURANCE COMPANY OF AMERICA**, a Maine corporation, with a mailing address of 2211 Congress Street – C474, Portland, Maine 04122-0590 (hereinafter called "Lender"),

## **RECITALS**

**WHEREAS**, Lender has been requested to make a loan to Borrower, as described in a Loan Agreement dated as of April 29, 2016, entered into by Lender and Borrower (the "Loan Agreement"), which Loan is evidenced by a Note (the "Note") dated as of April 29, 2016, executed by Borrower, as maker, and payable to the order of Lender in the principal sum of Eight Million and 00/100 Dollars (US \$8,000,000.00), together with interest thereon at the rate described in the Note, and which is secured by a Mortgage and Security Agreement (the "Security Instrument") and other documentation of even date herewith (hereinafter collectively called the "Loan Documents"); and

**WHEREAS**, in order to induce Lender to make the Loan to Borrower, Borrower has agreed to make this Assignment in favor of Lender;

**NOW, THEREFORE**, in consideration of Lender making the Loan to Borrower and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower hereby agrees as follows:

Borrower, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby absolutely and irrevocably bargain, sell, transfer, assign, convey, set over and deliver unto Lender all right, title and interest of Borrower in, to and under leases and lease guaranties with respect to all or any portion of the "Property" (hereinafter defined) together with any and all future leases and lease guaranties hereinafter entered into by Borrower relating to the buildings and/or improvements located on and/or with respect to the land, described in Exhibit A attached hereto and made a part hereof (collectively, the "Property"), all amendments, extensions and renewals of said leases and lease guaranties and any of them, all of which are hereinafter called the "Leases," and the immediate and continuing right to collect and receive all rents, income and profits (including, but not limited to all fees, charges, accounts or other



payments received for the use or occupancy of rooms and other public facilities in hotels, motels, and other public lodging facilities) that may now or hereafter be or become due or owing under any of the Leases, and all income, profits, revenues, royalties, bonuses, accounts, equitable and contract rights, general intangibles, claims, cure amounts or administrative amounts in any bankruptcy proceeding relating to any of the Leases or the Property and benefits in any way pertaining to or on account of the use of the Property (hereinafter the "Rents and Other Benefits"). Rents and Other Benefits include, without limitation, minimum rents, additional rents, percentage rents, security deposits, parking maintenance charges or fees, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents and liquidated damages following default or late payment of rent, premiums payable by any lessee upon the exercise of a cancellation privilege provided for in any Lease, any compensation or other consideration, direct or indirect paid, payable or due and owing to Borrower in connection with any modification or termination of a Lease and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Property, together with any and all rights and claims of any kind which Borrower may have against any lessee under any Lease or any subtenants or occupants of the Property. This Assignment is given to secure the obligations of Borrower to the Lender under the Loan Documents and any costs incurred or advances made by the Lender hereunder.

Borrower warrants, covenants and agrees with Lender as follows:

1.1 Borrower is the sole owner of the entire lessor's interest in the Leases, and has not executed any other assignment of any of the Leases or the Rents and Other Benefits, and has not done and shall not do anything which might prevent Lender from fully exercising its rights under this Assignment.

1.2 The Leases are valid and enforceable in accordance with their terms and have not been altered, modified, amended, terminated, or renewed, nor have any of the terms and conditions thereof been waived in any manner whatsoever except as approved in writing by Lender.

1.3 No Leases have been or will be entered into except for actual occupancy of the Property by the lessees thereunder.

1.4 There are no defaults now existing under any of the Leases and there exists no state of facts which, with the giving of notice or lapse of time or both, would constitute a default under any of the Leases; and Borrower will fulfill or perform each and every condition and covenant of each of the Leases by lessor to be fulfilled or performed, give prompt notice to Lender of any notice of default either given or received by Borrower under any of the Leases together with a complete copy of any such notice; and Borrower shall, at the sole cost and expense of Borrower, enforce, short of termination of any Lease, the performance or observance of each and every covenant and condition of all such Leases by the lessee(s) to be performed or observed.



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1.5 Borrower has not collected or accepted and shall not collect or accept payment of rent under any of the Leases more than one month in advance.


1.6 Borrower shall not, without the prior written consent of Lender: (i) execute any other assignment of the Rents and Other Benefits; (ii) execute any future leases of any portion of the Property except for Permitted Leases (as defined in the Loan Agreement); (iii) terminate or consent to the cancellation or surrender of any Leases or tenancy of the Property or of any part thereof, now existing or hereafter to be made, having an unexpired term of six (6) months or more (except for Permitted Leases); (iv) modify, alter or amend any Lease or tenancy other than a Permitted Lease, so long as such modification, alteration or amendment does not shorten the unexpired term thereof or decrease the amount of the rents payable thereunder, alter the structure of the Property, or change the use thereof; (v) accept prepayments more than thirty (30) days prior to the due date of any installments of rents to become due and payable under any Leases or tenancies; (vi) accept any security deposit equal to more than two (2) months' rent; (vii) consent to an assignment or subletting of the Property, in whole or in part; (viii) consent to any settlement or compromise concerning acceptance of less than full payment of the amounts due in connection with any Lease whether under bankruptcy or applicable nonbankruptcy law; or (ix) cause or permit any Leases or tenancies to be subordinated to any lien on the Property, except the lien of the Security Instrument referenced below.

In the event any Lease is terminated prior to the expiration of its stated term, all payments made by the tenant in conjunction with said lease termination (including, but not limited to, voluntary buyout/termination payments, or payments made by or on behalf of the tenant, incident to the tenant rejecting the Lease in accordance with the federal Bankruptcy Code (or similar state creditors' rights laws)), shall be made directly to Lender, and Borrower shall have no right to said payments, whatsoever. Lender shall, in its reasonable determination, apply said payments against the indebtedness due under the Loan Documents or toward the Property.

1.7 Borrower shall and does hereby assign and transfer to Lender any and all subsequent leases and lease guaranties upon all or any part of the Property and shall request and require as a condition of entering into any subsequent lease that the applicable tenant thereunder execute and deliver at the request of Lender a tenant estoppel certificate and/or subordination and attornment agreement in form and substance acceptable to Lender for each subsequent lease, and Borrower shall execute all such further assurances and assignments as Lender shall from time to time require or deem necessary.

1.8 Each of the Leases shall remain in full force and effect irrespective of any merger of the interests of the lessor and lessee under any of the Leases.

1.9 Borrower shall furnish to Lender, within thirty (30) days after a request by Lender to do so, a written statement containing the names of all lessees or occupants of the Property, the terms of their respective Leases or tenancies, the spaces occupied and the rentals paid. If any of such Leases provide for the giving by the lessee of certificates with respect to the status of such Leases, Borrower shall exercise its right to request such certificates within five (5) days of any demand therefor by Lender.

  
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1.10 Borrower shall, at its sole cost and expense, appear in and defend any action or proceeding arising under or in any manner related to any of the Leases.

The parties further agree as follows:

2.1 This Assignment shall not create a security interest which requires possession of the Property for perfection thereof. However, this Assignment is nonetheless absolute and effective immediately. Notwithstanding the foregoing, Borrower shall have a revocable license from Lender to receive, collect and enjoy the Rents and Other Benefits until the occurrence of an "Event of Default," as such term is defined in the Loan Agreement; and upon any such Event of Default such license shall cease automatically, without need of notice, possession, foreclosure, or any other act or procedure, and all Rents and Other Benefits assigned hereby shall thereafter be payable directly to Lender and Borrower shall immediately deliver to Lender all rents, security deposits and other payments received from tenants on account of such Leases and shall notify each tenant that all rents and all other payments due under such Leases shall be paid directly to Lender or its designee; except that such license shall be reinstated automatically by acceptance by Lender of any cure of any such Event of Default by Borrower, unless Lender shall notify Borrower that acceptance of such cure shall not reinstate such license.

2.2 Subject to the license described and limited above, Borrower hereby irrevocably and exclusively constitutes and appoints Lender its true and lawful attorney coupled with an interest with full power of substitution and with power for Lender in its own name, and capacity, or in the name of Borrower, to demand, collect, receive and give complete acquittances for any and all Rents and Other Benefits, and at Lender's discretion file any claim or take any other action or proceeding and make any settlement of any claims, either in its own name or in the name of Borrower or otherwise, which Lender may deem necessary or desirable in order to collect and enforce the payment of the Rents and Other Benefits. Lessees of the Property are hereby expressly authorized and directed to pay any and all amounts due Borrower pursuant to the Leases to Lender or such nominee as Lender may designate in writing delivered to and received by such lessees who are expressly relieved of any and all duty, liability or obligation to Borrower in respect of all payments so made.

2.3 Lender is hereby vested with full power to use all measures, legal and equitable, deemed by it necessary or proper, after revocation of the above-described license, to enforce this Assignment and to collect the Rents and Other Benefits assigned hereunder, including the right of Lender or its designee to enter upon the Property, or any part thereof, with or without force and with or without process of law, and take possession of all or any part of the Property together with all personal property, fixtures, documents, books, records, papers and accounts of Borrower relating thereto, and may exclude Borrower, its agents or servants, wholly therefrom. Borrower hereby grants full power and authority to Lender to exercise all rights, privileges and powers herein granted at any and all times after revocation of the above-described license, without notice to Borrower with full power to use and apply all of the Rents and Other Benefits herein assigned to the payment of the costs of managing and operating the Property and of any indebtedness or liability of Borrower to Lender, including but not limited to the payment of receiver's fees, receiver's attorney's fees, receiver's certificate, taxes, special assessments, insurance premiums, damage claims, the costs of maintaining, repairing, rebuilding and restoring the improvements on



the Property or of making same rentable, attorneys' and paralegals' fees incurred in connection with the enforcement of this Assignment, and of principal and interest payments due from Borrower to Lender on the Note and the Security Instrument, all in such order as Lender may determine. Lender shall be under no obligation to exercise or prosecute any of the rights or claims assigned to it hereunder or to perform or carry out any of the obligations of the lessor under any of the Leases and does not assume any of the liabilities in connection with or arising or growing out of the covenants and agreements of Borrower in the Leases. Borrower hereby agrees to indemnify Lender and to hold it harmless from any liability, loss or damage including without limitation reasonable attorneys' and paralegals' fees which may or might be incurred by it under the Leases or by reason of this Assignment, and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any of the Leases. This Assignment shall not operate to place responsibility for the control, care, management or repair of the Property, or parts thereof, upon Lender nor shall it operate to make Lender liable for the performance of any of the terms and conditions of any of the Leases or for any waste of the Property by the lessee under any of the Leases or any other party, or for any dangerous or defective condition of the Property or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any lessee, licensee, employee or stranger, nor shall it constitute Lender as a mortgagee in possession, nor make Lender responsible for any security deposits or other deposits delivered by a lessee to Borrower and not delivered to Lender.

2.4 Lender may, at its option, although it shall not be obligated so to do, perform any lease covenant for and on behalf of Borrower and any monies expended in so doing shall be chargeable with interest to Borrower the same as for advances under the Security Instrument and added to the indebtedness secured by the Security Instrument and pursuant to which this Assignment was made.

2.5 Waiver of or acquiescence by Lender in any default by Borrower, or failure of Lender to insist upon strict performance by Borrower of any warranties or agreements in this Assignment, shall not constitute a waiver of any subsequent or other default or failure, whether similar or dissimilar.

2.6 The rights and remedies of Lender under this Assignment are cumulative and are not in lieu of, but are in addition to any other rights or remedies which Lender shall have under the Note, the Security Instrument, or any other loan document, or at law or in equity.

2.7 If any term of this Assignment, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

2.8 All notices, consents, approvals, statements, requests, reports, demands, instruments or other communications to be made, given or furnished pursuant under this Assignment (each, a "Notice") shall be in writing and delivered in any manner described in



**Section 8.4** of the Loan Agreement to the address set forth therein for the party intended to receive the same.

2.9 The terms "Borrower" and "Lender" shall be construed to include the heirs, personal representatives, successors and assigns thereof. The gender and number used in this Assignment are used as a reference term only and shall apply with the same effect whether the parties are of the masculine or feminine gender, corporate or other form, and the singular shall likewise include the plural.

2.10 This Assignment may not be amended, modified or changed nor shall any waiver of any provision hereof be effective, except only by an instrument in writing and signed by the party against whom enforcement of any waiver, amendment, change, modification or discharge is sought.

2.11 This Assignment shall terminate automatically when the Note is paid in full and the Security Instrument is fully released and discharged.

2.12 This Assignment and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by those laws of the State of Alabama that are applicable to agreements that are negotiated, executed, delivered and performed solely in the State of Alabama.

2.13 Time is of the essence in this Assignment and in each provision hereof of which time is an element.

2.14 If Lender finds it necessary to obtain the services of an attorney or to incur any other expenses to enforce any of its rights hereunder or for any purpose as described in the Security Instrument, Borrower shall pay the attorney's fees and costs to Lender in connection with such enforcement or such purpose, whether or not a suit to enforce such rights is brought or, if brought, prosecuted to judgment. In addition to the foregoing attorney's fees, Lender shall be entitled to its attorney's fees incurred in any post-judgment proceedings to enforce any judgment in connection with this Assignment. This provision is separate and several and shall survive the merger of this provision into any judgment.

2.15 Notwithstanding anything to the contrary contained herein or in any other Loan Document, by acceptance hereof, Lender acknowledges and agrees that Borrower's liability under the Note and the Loan Documents is limited as expressly set forth in the Note, the terms of which are hereby incorporated herein by this reference.


2.16 AFTER CONSULTATION WITH COUNSEL, BORROWER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT BORROWER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED UPON THIS ASSIGNMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH ANY OF THE OTHER LOAN DOCUMENTS, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN) OR ACTION OF

BORROWER OR LENDER AND ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR LENDER MAKING THE LOAN.

2.17 This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

2.18 Upon execution of this Assignment, Lender, and not Borrower, shall be the creditor of any tenant in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting any such tenant; provided, however, that Borrower shall be the party obligated to make timely filings of claims in such proceedings or to otherwise pursue creditor's rights therein. Notwithstanding the foregoing, Lender shall have the right, but not the obligation, to file such claims instead of Borrower and if Lender does file a claim, Borrower agrees that Lender (a) is entitled to all distributions on such claim to the exclusion of Borrower and (b) has the exclusive right to vote such claim and otherwise to participate in the administration of the estate in connection with such claim. Lender shall have the option to apply any monies received by it as such creditor to any of the obligations of Borrower under the Loan Documents in the order set forth in the Loan Documents. If a petition is filed under the Bankruptcy Code by or against Borrower, and Borrower, as landlord under any Lease, decides to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender at least ten (10) days' prior written notice of the date when Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender may, but shall not be obligated to, send Borrower within such ten-day period a written notice stating that (a) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code, and (b) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender sends such notice, Borrower shall not reject the Lease provided Lender complies with clause (b) of the preceding sentence.

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**IN WITNESS WHEREOF**, Borrower has caused this Assignment to be signed under seal as of the date first above written.

**NEW MARKET-SOUTHGATE LLC,**  
a Delaware limited liability company

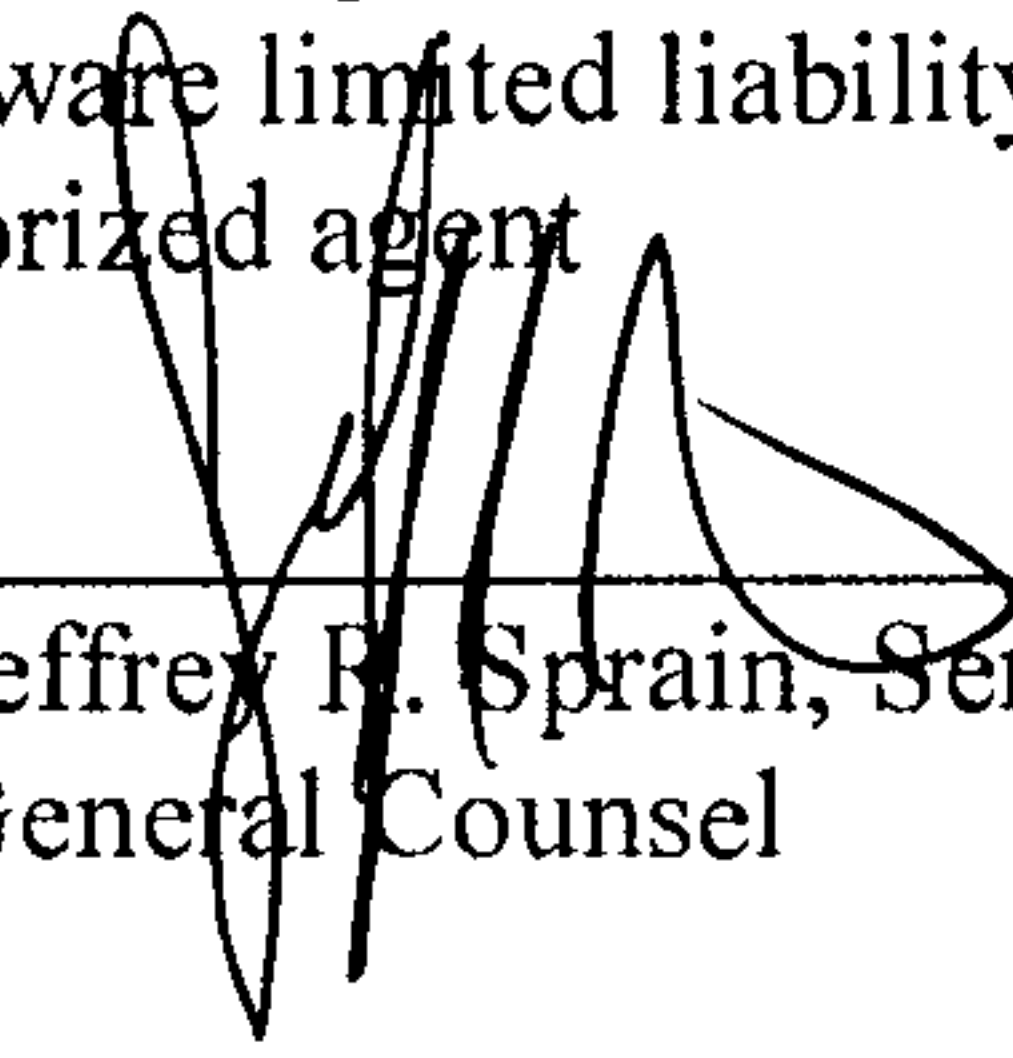
By: SE Grocery LLC, a Delaware  
limited liability company, its Manager


By: Sunbelt Retail, LLC, a Delaware limited  
liability company, its sole Member

By: New Market Properties, LLC, a Maryland  
limited liability company, its sole Member

By: Preferred Apartment Communities  
Operating Partnership, L.P., a Delaware  
limited partnership, its sole Member

By: Preferred Apartment Advisors, LLC, a  
Delaware limited liability company, its  
authorized agent

By:   
Jeffrey R. Sprain, Senior Vice President,  
General Counsel

  
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STATE OF Georgia )  
 )  
Cobb COUNTY )

I, the undersigned, a notary public in and for said county in said state, hereby certify that Jeffrey R. Sprain, whose name as Senior Vice President and General Counsel of Preferred Apartment Advisors, LLC, a Delaware limited liability company, authorized agent of Preferred Apartment Communities Operating Partnership, L.P., a Delaware limited partnership, sole Member of New Market Properties, LLC, a Maryland limited liability company, sole Member of Sunbelt Retail, LLC, a Delaware limited liability company, sole Member of SE Grocery LLC, a Delaware limited liability company, Manager of New Market – Southgate LLC, a Delaware 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 Senior Vice President and General Counsel and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 27 day of April, 2016.

CB Williams

Notary Public

[NOTARIAL SEAL]

My commission expires: 4-26-19




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**EXHIBIT A**  
**TO**  
**ASSIGNMENT OF RENTS, LEASES AND OTHER BENEFITS**

The Property is described as follows:

  
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## EXHIBIT "A"

A tract of land situated in the Southeast 1/4 of the Southeast 1/4 of Section 25, Township 19 South, Range 3 West, Shelby County, Alabama, and more particularly described as follows:

Commence at the Northeast corner of said 1/4 - 1/4 section and run North 87 degrees 18 minutes 38 seconds West, along the North line thereof a distance of 422.06 feet; thence run South 01 degrees 17 minutes 56 seconds West, for a distance of 412.83 feet to the Point of Beginning; thence run South 87 degrees 17 minutes 54 seconds East, for a distance of 417.36 feet to a point on the East line of said 1/4 - 1/4 section; thence run South 01 degrees 57 minutes 45 seconds West, along said East line a distance of 189.93 feet; thence run South 88 degrees 02 minutes 15 seconds East, for a distance of 3.83 feet to a point on the West right of way line of U.S. Highway No. 31; thence run along said right of way South 10 degrees 40 minutes 00 seconds West, a distance of 434.26 feet; thence run South 32 degrees 01 minutes 05 seconds West, a distance of 188.80 feet to a point on the Northwest right of way line of Alabama Highway No. 261; thence run South 61 degrees 31 minutes 05 seconds West, along said right of way a distance of 122.50 feet; thence run North 32 degrees 30 minutes 55 seconds West, along the Northeast boundary of Riverchase Animal Clinic property a distance of 141.48 feet; thence run South 57 degrees 29 minutes 05 seconds West, along the Northwest line of said property a distance of 100.00 feet to the Northeast right of way line of Valley Dale Terrace; thence run North 32 degrees 30 minutes 55 seconds West, along right of way line a distance of 25.60 feet to the beginning of a curve to the right, said curve having a radius of 419.64 feet and subtending a central angle of 13 degrees 13 minutes 21 seconds; thence run Northwest along the arc of said curve a distance of 96.84 feet; thence on a line tangent to curve, continue North 19 degrees 17 minutes 34 seconds West, along right of way line a distance of 166.06 feet; thence run North 58 degrees 04 minutes 35 seconds East, along right of way a distance of 13.01 feet; thence an angle to the left to tangent of a curve to the left of 77 degrees 07 minutes 41 seconds, said curve having a radius of 174.25 feet and subtending a central angle of 30 degrees 07 minutes 58 seconds; thence run along the arc of said curve a distance of 91.61 feet; thence on a line tangent to curve, continue along right of way line North 49 degrees 11 minutes 04 seconds West, a distance of 67.40 feet; thence run North 40 degrees 48 minutes 56 seconds East, a distance of 147.17 feet; thence run North 50 degrees 36 minutes 35 seconds East, a distance of 175.89 feet; thence run North 01 degrees 17 minutes 56 seconds East, for a distance of 175.35 feet to the Point of Beginning.

Containing 8.376 acres as shown on ALTA/ACSM Land Title Survey prepared by Howell Surveying, Inc., dated December 31, 2015, last revised March 24, 2016, Job No. 15-12-01938:005.

Together with easement rights arising under that certain Easement dated November 18, 1987, and recorded in Book 161, Page 3, in the Probate Office of Shelby County, Alabama.



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