

AFFIDAVIT

STATE OF ALABAMA  
COUNTY OF Jefferson

Before me, the undersigned notary public in and for said state and county, personally appeared Harry R. Andress, who being first duly sworn on oath deposes and states as follows:

1. My name is Harry R. Andress and I am President of Andress Company, Inc., which is the same as or a successor to Andress Engineering Company, Inc., and as such President make this Affidavit.

2. I am familiar with the transactions between Andress Engineering Company, as Lessor, and Shelly Cain, Jr., as Lessee, in connection with the lease (the "Lease") of the property as described on the attached Exhibit A (the "Property").

3. Shelly Cain, Jr. filed bankruptcy and defaulted under the terms of Lease. I do not recall the date of the bankruptcy. Pursuant to an Order of the Bankruptcy Court, Higginbotham Oil Company, Inc. assumed the Lease, as Lessor. I do not have a copy of said Order.

4. On March 12, 1986, Andress Company, Inc., and Higginbotham Oil Co., Inc. entered into a new Ground Lease (the "Ground Lease"), which lease is still in full force and effect and the subject of the Memorandum of Lease recorded in Real 325, page 421 in the Probate Office of Shelby County, Alabama.

5. Higginbotham Oil Co., Inc. is not in default under any of the terms of the Ground Lease.

Dated this 11<sup>th</sup> day of December, 1996.

Harry R. Andress  
Harry R. Andress

Sworn to and subscribed before me this 11<sup>th</sup> day of December, 1996.

Claiborne P. Seier  
Notary Public

CLAIBORNE P. SEIER  
Notary Public at Large  
State of Alabama  
My Commission Expires Nov. 24, 1999

12/09/96 05:08 PM FROM LAF SPSCC P/L

12/30/1996-42539  
10:56 AM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
002 NEL 11.00

Inst # 1996-42539

EXHIBIT "A"

to

AFFIDAVIT (of HARRY R. ANDRESS)

Commence at the Northwest corner of the NW 1/4 of the SE 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and run in an Easterly direction along the Northerly line of said 1/4 - 1/4 section a distance of 474.70 feet to the point of beginning; thence continue along the last stated course a distance of 82.20 feet to a point; thence 117° 04' to the right in a Southwesterly direction a distance of 170.91 feet to a point on the Northeasterly right of way line of U.S. Highway No. 280; thence 89° 59' to the right in a Northwesterly direction along the Northeasterly right of way line of U.S. Highway No. 280 a distance of 73.20 feet to a point; thence 90° 01' to the right in a Northeasterly direction a distance of 133.51 feet to the point of beginning.

LESS AND EXCEPT: That portion of the above described parcel subject to a Joint Use Agreement between Higginbotham Oil Company, Inc. and Shoney's, Inc. dba Captain D's Restaurant and more particularly described as follows:

A part of the NW 1/4 of the SE 1/4 of Section 36, Township 18 South, Range 2 West, being more particularly described as follows: Commence at the Northwest corner of said 1/4 - 1/4 section and run Easterly along the North line of said 1/4 - 1/4 section a distance of 523.21 feet to the point of beginning; thence continue along last stated course a distance of 33.69 feet to a point; thence 117° 04' to the right in a Southwesterly direction a distance of 170.91 feet to a point on the Northeasterly right of way line of U.S. Highway No. 280; thence 89° 59' to the right in a Northwesterly direction along said right of way line a distance of 30.0 feet to a point; thence 90° 01' to the right in a Northeasterly direction a distance of 155.59 feet to the point of beginning.

Inst # 1996-42539

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