

This instrument prepared by:
Dan A. Olivier
as Agent for **MOTIVA ENTERPRISES LLC**
12700 Northborough, Suite 100
Houston, TX 77067

20060207000061570 1/6 \$26.00
Shelby Cnty Judge of Probate, AL
02/07/2006 09:52:03AM FILED/CERT

When recorded, return to:
Beverly J. Klug
as Agent for **MOTIVA ENTERPRISES LLC**
12700 Northborough, Suite 100
Houston, TX 77067

ACCESS AGREEMENT

This **Access Agreement** ("**Agreement**"), dated as of the 14 day of December, 2005, is by and between Motiva Enterprises LLC, a Delaware limited liability company ("**Seller**"), with a place of business at 12700 Northborough, Suite 100, Houston, Texas 77067 and The McPherson Companies, Inc., a Delaware corporation with a place of business at 2340 Woodcrest Place, Suite 175, Birmingham, Alabama 35209 ("**Buyer**").

RECITALS

WHEREAS, Seller and Buyer are parties to that certain Asset Purchase and Sale Agreement dated as of the 7th day of December, 2005 (the "**Purchase Agreement**"), pursuant to which Seller has agreed to transfer to Buyer and Buyer has agreed to accept from Seller, all of Seller's right, title and interest in and to the Assets, including without limitation the Contract Operator Premises described on **Exhibit A** hereto (the "**Premises**"); and

WHEREAS, in accordance with the Purchase Agreement, Seller may require access to the Premises in connection with certain post-closing activities contemplated or required by the terms of the Purchase Agreement;

NOW, THEREFORE, in exchange for the mutual promises and considerations stated herein and the Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE 1. DEFINITIONS AND PROCEDURES

1.1 Definitions and Procedures. Unless defined in this Agreement or the context shall otherwise require, terms used and not defined herein shall have the meanings set forth in **Schedule A** to the Purchase Agreement, and unless otherwise provided in this Agreement, all rules as to usage and procedural conventions set forth in **Schedule B** to the Purchase Agreement shall govern this Agreement.

ARTICLE 2. GRANT OF LICENSE; REMEDIATION

2.1 Grant of License. Buyer, as owner or tenant of the Premises, hereby grants a nonexclusive irrevocable license from the date of this Agreement to Seller, its employees,

authorized agents and contractors, to enter the Premises to perform any and all post Closing activities contemplated by Section 4.6 (*UST Matters*), Section 9.6 (*Future Conveyances/Leases*), Article 12 (*Environmental Indemnification*) and Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*) of the Purchase Agreement, which activities include, but are not limited to, monitoring well installations, performing engineering or environmental studies, performing tank closure assessments, conducting tests, surveys or appraisals and conducting inspections to review the environmental compliance status of any UST System. This Agreement is not intended to be a grant of an easement or any other interest in the Premises.

2.2 Care of Environmental Equipment. Buyer shall comply with Section 13.4 of the Purchase Agreement (*Seller's Environmental Equipment*), with respect to monitoring wells or other equipment of Seller located at the Premises.

2.3 Buyer Modification to Premises. In accordance with Section 13.5 of the Purchase Agreement (*Buyer's Modifications to Premises*), Buyer acknowledges that any construction, excavation or other modification at the Premises ("**Modification Activity**") may affect Seller's activities at the Premises. Buyer agrees to comply with Section 13.5 of the Purchase Agreement (*Buyer's Modifications to Premises*), with respect to any Modification Activity and take such action as may be required by the Purchase Agreement before commencing such Modification Activity.

ARTICLE 3. COVENANTS

3.1 Regulations. In accordance with the Purchase Agreement, Buyer shall comply with all Laws, including, without limitation, Environmental Laws, pertaining to its operation of the Premises and for the assessment and remediation of any Hazardous Substances or other contamination resulting from its operations at the Premises.

3.2 Mutual Cooperation. In accordance with Section 13.3 of the Purchase Agreement (*Notice; Access; Cooperation*), Buyer and Seller shall cooperate with the other's activities at the Premises.

3.3 Assignment and Reimbursement From Trust Funds. Buyer hereby assigns to Seller any and all rights it may have against any applicable state fund established by the state or federal government to fund or reimburse cleanup, assessment, remediation or satisfaction of claims at UST System sites. Buyer agrees to cooperate with Seller, including executing any additional documents, if necessary, to obtain any allowable reimbursement from any state fund established by the state or federal government to fund or reimburse cleanup, assessment, remediation, or satisfaction of claims relating to the Premises to the extent related to Seller's Remediation at the Premises, with any amounts obtained from said fund belonging exclusively to Seller.

3.4 Assignment of Other Rights. To the extent Seller has expended such funds in Seller's Remediation at the Premises, Buyer hereby assigns to Seller any and all claims, causes of action and suits (a) that accrued during Seller's ownership of the Premises, and (b) with respect to which Seller has heretofore performed Remediation or otherwise has responsibility pursuant to the Purchase Agreement, that may exist against any Third-Party who may have

financial responsibility for any environmental response costs or other expenses or damages at the Premises, including, but not limited to, any rights to recover under any insurance policy that may name Buyer as a beneficiary or against which Buyer may have a right of recovery. Buyer covenants and agrees to cooperate with Seller in determining whether such claims exist, and in taking any other actions necessary to effectuate the assignment(s) contemplated by this Section 3.4.

ARTICLE 4. TERMINATION

4.1 Termination. This Agreement shall automatically terminate, without any further action of either Seller or Buyer, upon the later to occur of (a) termination of Seller's rights and obligations under Section 4.6 of the Purchase Agreement (*UST Matters*) or (b) Seller's obligation, if any, to indemnify Buyer or perform Remediation pursuant to Article 12 (*Environmental Indemnification*) and/or Article 13 (*Cooperation and Performance of Environmental Remediation and Indemnification*) of the Purchase Agreement.

ARTICLE 5. INDEMNITIES

5.1 Indemnification. This Agreement is delivered pursuant to the Purchase Agreement and is subject to the provisions, including, without limitation, provisions relating to indemnification by Seller and by Buyer, and the limitations in respect of such indemnification set forth therein.

ARTICLE 6. MISCELLANEOUS

6.1 Dispute Resolution. All disputes between Seller and Buyer arising out of, relating to, or in connection with this Agreement, including, without limitation, any Claim or question relating to this Agreement's negotiation, performance, non-performance, interpretation or termination or the relationship between Seller and Buyer contemplated or established by this Agreement, shall be referred to and finally resolved pursuant to the dispute resolution provisions of **Schedule B**. This Section 6.1 shall survive indefinitely.

6.2 Assignment, Successor and Assigns. In the event Buyer's interest in the Premises is conveyed, transferred or in any way assigned in whole or in part to any other person or entity, whether by contract, operation of law or otherwise, Buyer shall (a) provide prior written notice to Seller of such conveyance or transfer and (b) comply with the provisions of Section 9.6 (*Future Conveyances/Leases*) of the Purchase Agreement.

6.3 Notice. Any notice, consent, request, report, demand, or other document required to be given to one Party by the other shall be in writing and be delivered to or mailed to the receiving Party at its address and in the manner set forth in the Purchase Agreement.

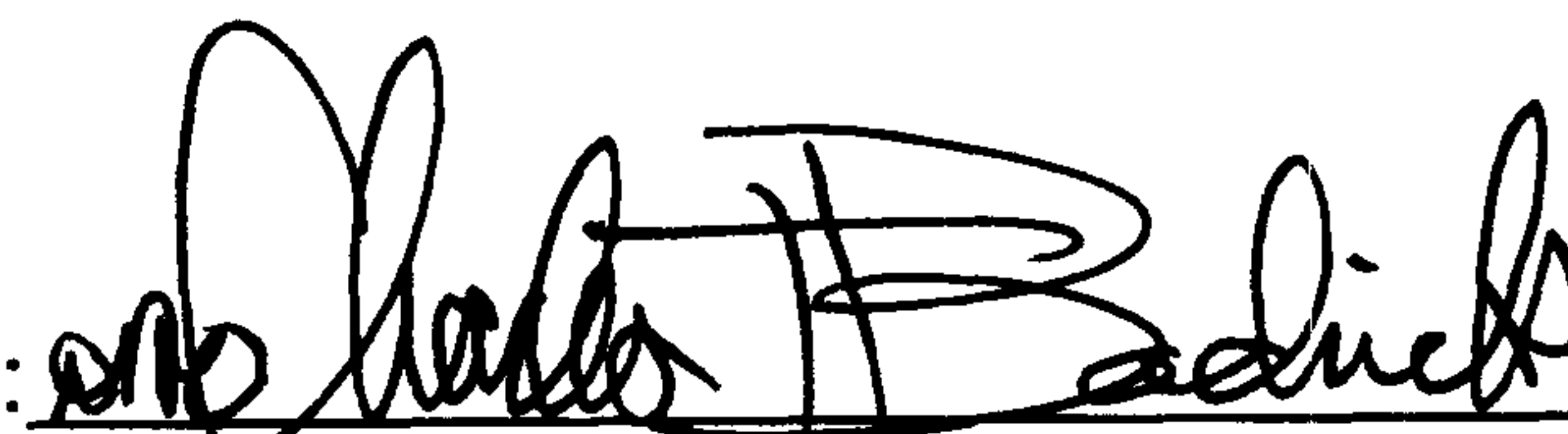
6.4 Environmental Investigation and Remediation. **Buyer agrees that Seller is under no obligation to Buyer to remedy or respond to any Environmental Condition at the Premises for which Seller is not responsible under the Purchase Agreement. Seller**

and Buyer agree that no provision of this Agreement shall expand Seller's obligations to respond to Environmental Conditions not specifically identified in the Purchase Agreement and shall not be construed to be an admission of liability, wrongdoing or violation of any Law by Seller or Buyer or their predecessors, successors or permitted assigns.


6.5 Governing Law. This Agreement shall be construed in accordance with the internal laws of the State of Alabama.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

MOTIVA ENTERPRISES LLC

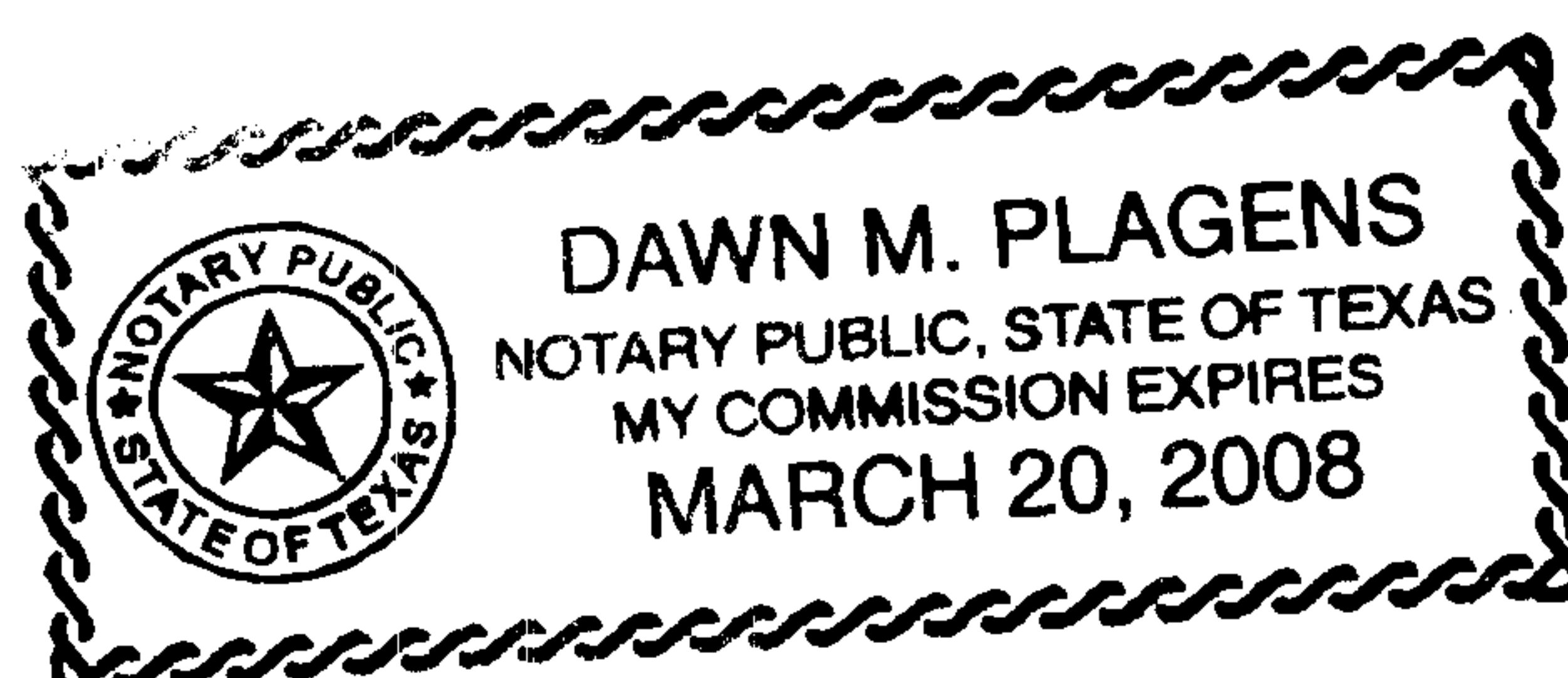
By: 
Name: Charles T. Badrick
Title: Manager, Real Estate Contracts
Date: December , 2005
Tax I.D.#: XXXXXXXXXX


STATE OF TEXAS)
) SS.
COUNTY OF HARRIS)


I, , a Notary Public in and for said County in said State, hereby certify that Charles T. Badrick, Manager, Real Estate Contracts of Motiva Enterprises LLC, a Delaware limited liability company, who signed 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, in such capacity and with full authority, executed the same voluntarily, as the act of said limited liability company, acting in such capacity as aforesaid.

Given under my hand this 13th day of December, 2005.

My commission expires:




NOTARY PUBLIC


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THE MCPHERSON COMPANIES, INC.

By: Charles K. McPherson, Jr.
Name: Charles K. McPherson, Jr.
Title: Executive VP
Date: 12/14/05


STATE OF Alabama)
COUNTY OF Jefferson) SS.

I, Karen G. Kolaczek a Notary Public in and for said County in said State, hereby certify that Charles K. McPherson, Jr. whose name as Executive VP of The McPherson Companies, Inc., a Delaware 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/she, in such capacity and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 14 day of December, 2005.

My commission expires:
5-19-07

Karen G. Kolaczek
NOTARY PUBLIC


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EXHIBIT A

DESCRIPTION OF PREMISES

ALL that tract or parcel of land and premises, situate, lying and being in the City of Birmingham in the County of Shelby and State of Alabama, more particularly described as follows:

For the point of beginning begin at Station 183 + 77 (6"x6" conc. R.O.W. marker set by ASHD-1971 - Project - F - 214 (15)) on the South Right of Way line of U.S. Highway #280; thence proceed Southwesterly along said South Right of Way line and along the arc of a curve to the right, said curve having a radius of 2428.81 feet and a central angle of 5 degrees 10 minutes 00 seconds and a chord bearing of South 74 degrees 26 minutes 05 seconds East, for a distance of 219.02 feet to point; thence turn an angle to the right of 90 degrees 52 minutes 05 seconds to the chord of last said curve and proceed South 16 degrees 26 minutes 00 seconds West for a distance of 175.0 feet to a point, thence turn an angle of 86 degrees 02 minutes 41 seconds to the right and proceed North 77 degrees 31 minutes 19 seconds West for a distance of 313.74 feet to a point on the East Right of Way line of Alabama State Highway #119; thence turn an angle of 97 degrees 00 minutes 19 seconds to the right and proceed North 19 degrees 29 minutes 00 seconds East along the said East Right of Way line of the said, Alabama State Highway #119 for a distance of 85.0 feet to a point on the flare of U.S. Highway 280 (Project F-214(15)); thence turn an angle of (deed: 36 degrees 30 minutes 30 seconds) calc. 36 degrees 29 minutes 59 seconds to the right and proceed North 55 degrees 58 minutes 59 seconds East diagonally along the said U. S. Highway 280 flare for a distance of (deed: 140.55 feet) calc. 140.64 feet to the point of beginning. Being a part of the SW ¼ of the SW ¼ of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama.

ALSO:

A parcel of land situated in the Southwest 1/4 of the Southwest 1/4 of Section 32, Township 18 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner Section 32, Township 18 South, Range 1 West, Shelby County, Alabama, and run in an Easterly direction along the South line of said Section a distance of 209.91 feet; thence deflect 67° 03' 57" and run to the left in a Northeasterly direction 1049.98 feet to the Southwest corner of a tract owned by Texaco, Inc.; thence deflect 81° 46' 32" and run to the right in a Southeasterly direction along the South line of said Texaco tract 314.30 feet to the Point of Beginning of the herein described parcel; thence deflect 85° 07' 21" and run to the left in a Northeasterly direction along the East line of said Texaco tract 174.9 feet more or less to the Southerly right of way of U.S. Highway 280; thence turn an interior angle of 88° 24' 12" to the tangent of a curve to the right having a central angle of 00° 19' 00" and a radius of 2716.19 feet and run along the arc of said curve in a Southeasterly direction and along said right of way 15.01 feet; thence turn an interior angle of 91° 54' 48" from the tangent of last described curve and run to the right in a Southwesterly direction 173.18 feet; thence turn an interior angle of 94° 52' 39" and run to the right in a Northwesterly direction 15.05 feet to the point of beginning, containing 2,611 square feet, more or less.



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