

6582

THIS LEASE, Made this 17TH day of JULY, 1964, by and between MAX GRAY and ESTHER A. GRAY, his wife, of the City of Birmingham, State of Alabama (hereinafter called "Landlord"), and HUFFSTUTLER-WALTERS OIL COMPANY, INC., an existing Alabama corporation (hereinafter called "Tenant").

W I T N E S S E T H :

THAT in consideration of the respective covenants, conditions and agreements herein contained, it is expressly covenanted and agreed by and between Landlord and Tenant as follows:

I. Landlord does hereby demise and lease unto Tenant subject to the provisions hereinafter set forth all that property situate in the County of Shelby, State of Alabama, and located in the SE $\frac{1}{4}$ of Section 31, Township 18 South, Range 1 West, more particularly described as follows:

COMMENCE at the NE corner of SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 31; thence in a westerly direction along the north line of said $\frac{1}{4}$ - $\frac{1}{4}$ section, a distance of 116.00 feet to the Point of Beginning; thence 90 degrees right, in a northerly direction, a distance of 79.55 feet; thence 90 degrees left, in a westerly direction, a distance of 150.00 feet; thence 90 degrees left, in a southerly direction, a distance of 150.00 feet to a point in the northerly Right of Way line of Highway 280; thence in a southeasterly direction along said Right of Way line, a distance of 154.35 feet; thence in a northerly direction, parallel to west line of herein described lands, a distance of 107.0 feet to the Point of Beginning, ALSO a triangular easement lying adjacent to the southeast corner of above described parcel of land, more particularly described as follows: COMMENCE at the NE corner of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of said Section 31; thence in a westerly direction along the north line of said $\frac{1}{4}$ - $\frac{1}{4}$ section, a distance of 116.0 feet; thence 90 degrees left, in a southerly direction, a distance of 72.0 feet to the Point of Beginning; thence continue along last described course, a distance of 35.0 feet to a point in the northerly Right of Way line of Highway 280; thence in a southeasterly direction along said Right of Way line, a distance of 50.0 feet; thence

in a northwesterly direction to the Point of Beginning.

TOGETHER WITH all appurtenant rights, easements and approaches and all buildings, improvements and equipment thereon or connected therewith including, but not limited to, the property listed on Schedule "A" attached hereto, said property and rights hereinafter collectively called the "Premises".

II. TO HAVE AND TO HOLD the aforesaid premises unto Tenant, its successors and assigns, subject to the provisions of this Lease for a term of Twelve (12) years beginning on the first (1st) day of the month next succeeding that in which the construction referred to in Paragraph IV hereof shall be completed.

III. Tenant, its successors and assigns, covenants and agrees to pay to Landlord as rental for the demised premises the sum of Two Hundred Forty-Eight Dollars (\$248.00) per month or a proportionate amount for any fraction of a month, payable monthly in advance on the first (1st) day of each and every month during the term of this Lease (except that rent for a fraction of a month in the beginning of the term, if any, shall be paid on the first (1st) day of the succeeding month).

IV. Landlord agrees to construct or cause to be constructed or installed on said premises at their own cost and expense a drive-in gasoline filling and service station, complete with improvements, paving and utilities as shown on the plans and specifications dated June 2, 1964 attached hereto and incorporated herein by reference. The exterior and interior of the service station building and such equipment furnished by Landlord as Tenant may designate shall be painted to Tenant's specifications. It is expressly understood that the improvements to be made by Landlord shall include the furnishing of water, sewage and such further utilities as are necessary to properly service the station. Said service station and related improvements shall be deemed completed and rent shall commence when Tenant's Manager of Construction shall have inspected and approved the same and shall have issued his acceptance thereof to Landlord in writing, which acceptance shall not be unreasonably withheld and must specify any item of disapproval and the method of correcting the same, and Tenant shall have been placed in actual possession and a certificate of occupancy issued by the appropriate governmental agency. It is understood and agreed that in the event Tenant is not placed in actual possession pursuant hereto on or before the first (1st) day of November, 1964, this Lease shall, at the option of Tenant, be and become null and void without liability of Tenant to pay rent or perform any acts hereunder.

V. Landlord agrees to furnish and install in operating condition at Landlord's sole cost and expense the items of equipment listed on Schedule "A" which is attached hereto and made a part hereof. It is understood and agreed that Tenant will maintain such equipment subject to Landlord's replacing any items when, as and if they become beyond repair.

VI. Landlord hereby grants unto Tenant, its successors and assigns, the following options to renew this Lease:

(a) An option to renew this Lease for a further term of five (5) years next succeeding the original term of this Lease, at and for the rental during such renewal term of Two Hundred Forty-Eight Dollars (\$248.00) per month, payable in the same manner as provided in the original term of this Lease;

(b) A further option to renew this Lease for an additional term of five (5) years next succeeding the first renewal term above mentioned at and for the rental during such renewal term of Two Hundred Forty-Eight Dollars (\$248.00) per month, payable in the same manner as provided in the original term of this Lease.

If Tenant shall exercise either option herein granted to renew this Lease, it shall do so by written notice to Landlord, as hereinafter provided, not less than sixty (60) days prior to the expiration of the original or renewal term of this Lease.

It is understood and agreed that in the event of the exercise by Tenant of the above renewal options or either of them, all of the other covenants, terms, provisions and conditions of this Lease shall remain in full force and effect during such renewal term.

VII. Landlord hereby grants Tenant:

(a) The right and option to purchase the premises at any time during the term of this Lease, at and for the price of Thirty-Five Thousand Dollars (\$35,000.00); and, further,

(b) The right and option to purchase the premises at any time during the term of this Lease, or any continuing tenancy thereafter, at and for the price offered by the Landlord and accepted by any responsible third party, or which is offered therefor by any responsible third party and acceptable to Landlord. Upon the making of any offer or the receipt of any acceptable offer, Landlord shall promptly notify Tenant in writing, stating the name and address of the intended purchaser, if any, the price, all terms and conditions of the offer and

furnish copies of any correspondence in Landlord's possession pertaining to such proposed sale and, without prejudice to any other rights under this Lease, Tenant shall then have thirty (30) days from receipt of such notice and correspondence to exercise this option to purchase the demised premises, said option to be exercised by written notice to Landlord as hereinafter provided.

Tenant's failure at any time to exercise any option extended under this paragraph shall not affect this Lease or the continuance of Tenant's option under this or any of the other paragraphs of this Lease, it being agreed that any such option shall be binding upon all succeeding purchasers or successors in title during the term of this Lease.

In the event Tenant shall exercise any option to purchase the premises, Landlord covenants and agrees within thirty (30) days thereafter, upon payment of the purchase price agreed upon, to convey or assign, or cause to be conveyed or assigned, the premises to Tenant, its successors and assigns, in fee simple by a good and marketable title, good and good of record, with covenants against encumbrances, of special warranty and of further assurances, free and clear of all claims, easements, restrictions, and encumbrances or liens, and, in the event of personalty, by good and sufficient Bill of Sale; transfer of title as covenanted and all expenses incident thereto to be paid in accordance with the prevailing practice of the jurisdiction wherein the property is situate; cost of transfer, including taxes, water rent and other current expenses and rent hereunder to be adjusted as of the day of settlement. In the event Landlord's title shall be such as will not be guaranteed by any title guarantee company selected by Tenant and licensed to do business in the State where the premises are situate at such company's regular rates, Tenant may reject title to said property.

VIII. As partial consideration for the execution of this Lease and in further assurance of Tenant's use of the premises for operation as a gasoline filling and service station with the benefit of all rights appurtenant or desirable in connection therewith, Landlord agrees:

(a) That no building, sign or structure shall, for the duration of this Lease and any renewal hereof, be permitted on that property now owned by Landlord adjacent to the demised property on the East within Fifty (50) feet of the northerly right-of-way line of U. S. Highway 280, such setback line to be effective immediately and enforceable by either party hereto, their respective heirs, personal representatives, successors and assigns, Landlord does hereby give Tenant specific permission to remove trees or undergrowth from such area as would

affect the visibility of the station from U. S. Highway 280;

(b) To assure continued adequacy of the water supply and sewage utilities servicing the demised premises, Landlord does hereby grant Tenant, its successors and assigns, an easement of ingress and egress to the well and such portion of the septic system as is on adjacent property owned by Landlord as required for maintenance and repair, it being expressly understood and agreed that while such lines and utilities will be maintained by Landlord, in the event of their inadequacy or failure of operation, Tenant may make such changes and repairs as are necessary at Landlord's expense deducting the cost thereof from succeeding installments of rental falling due.

IX. Landlord hereby grants unto Tenant the right of occupying and using the demised premises, including the buildings and equipment to be erected thereon for the purpose of a drive-in gasoline filling and service station, but this shall not be construed to prevent any other lawful use of the demised premises.

X. Landlord further grants unto Tenant the right to improve, add to, change, raze, alter or handle the demised premises, including the buildings and equipment thereon, in any manner that Tenant may deem desirable, including the right to erect thereon a drive-in gasoline filling and service station of such style and design as Tenant, in its sole discretion, may elect, and the right to erect, install, maintain and operate on the demised premises, on, under and above the ground, such buildings and improvements, additions and equipment, tanks, driveways, signs, advertising devices, floodlights and other trade fixtures as Tenant, in its absolute discretion, may deem desirable; provided, however, that Tenant shall not raze any buildings or other improvements or make any structural changes to improvements so as to reduce the value thereof below the value of the buildings and improvements at the date such razing or structural changes are effected; and provided, further, that any damage caused by the removal upon the termination of this Lease of signs, equipment and other fixtures shall be repaired by the Tenant.

XI. It is understood and agreed that any buildings and driveways erected, constructed or built upon the demised premises shall, upon the termination of this Lease, become the property of the Landlord.

It is further understood and agreed that all equipment, signs, advertising devices, floodlights and all other trade fixtures installed under the authority of Landlord herein granted shall always be and remain the personal property of Tenant and may be removed by Tenant at any time.

XII. Landlord covenants that at the time of the

execution of this Lease, Landlord is the owner in fee simple of the demised premises by a good and marketable title, good and good of record, that it has full right to lease all of the demised premises for the term and renewals aforesaid, and will put Tenant in actual possession thereof at the beginning of the term.

XIII. It is understood and agreed between Landlord and Tenant that in the event Landlord without fault does not have such title as aforesaid to the demised premises, this Lease shall, at the option of Tenant, be and become null and void, without liability of Tenant to pay rent or perform any acts hereunder.

Landlord further covenants and agrees that Tenant, its successors or assigns, shall have the right to assign this Lease or sub-let the same or any part thereof; provided, however, that in the event of any such assignment or sub-letting, Tenant shall remain liable for the payment of any rentals due hereunder.

XIV. Landlord covenants and agrees that Tenant, its successors and assigns, upon payment of the rent and the performance of the covenants herein contained, shall and may peaceably and quietly have, hold and enjoy the demised premises during the term or renewal hereof as the case may be.

Landlord further covenants that it will do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged and delivered, all such further acts and papers as may be necessary for the better assuring unto Tenant, its successors and assigns, of the performance of all the covenants and agreements herein contained.

XV. Tenant shall have the right, at its option, to terminate this Lease at any time, in the event the licenses, permits and franchises, or any of them for maintaining and operating a drive-in gasoline filling and service station upon the demised premises shall be revoked, or any renewal thereof denied, by any duly constituted authority without fault on the part of Tenant, its successors and assigns, or if Tenant, its successors and assigns, shall be otherwise prevented, without fault, from conducting its drive-in gasoline filling and service station upon the demised premises.

It is further understood and agreed between Landlord and Tenant that the right of Tenant, its successors and assigns, to terminate this Lease under the terms of this Paragraph shall be without liability to either party, other than the payment by Tenant to Landlord of rental hereunder proportionately to the date of such termination.

XVI. Tenant shall, during the term of this Lease, or any renewal thereof, pay the water rent, all charges for electric current used on the demised premises and the taxes on removable personal property owned by Tenant. Landlord shall, during the term of this Lease, or any renewal thereof, pay all taxes and assessments on the demised premises and on the use thereof, including all taxes on personal property owned by the Landlord.

XVII. Tenant covenants promptly to execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State, County and City Governments and of any and all their Departments, Bureaus, and Agencies applicable to said premises, or to the operation thereof as a drive-in gasoline filling and service station, breach of which resulted from act of Tenant; all of the foregoing to be at Tenant's own cost and expense, save and except only structural changes to (but not repairs to) the demised premises and any building erected thereon, which shall be at Landlord's own expense.

XVIII. Landlord covenants and agrees to warrant, protect and defend Tenant, its successors and assigns, from and against all or any loss or damage that Tenant may sustain by reason of the enforcement of any mortgage or other lien upon the demised premises or by reason of the creation of any ground rent thereon. In the event of any default under any mortgage, lien or lease, hereinabove referred to, Tenant, its successors and assigns, may, at its option, cure such default and make any payments required and deduct from the rent payable by Tenant hereunder any sum so expended. Landlord agrees to secure the written consent of the mortgagee, lienor or landlord, as the case may be, permitting Tenant, its successors and assigns, to cure any such default at any time and to deduct any amounts expended in doing so from the rent payable by Tenant hereunder.

XIX. Landlord shall, during the term of this Lease, or any renewal thereof, carry and pay the cost of fire, extended coverage and vandalism and malicious mischief insurance on all improvements on the demised premises belonging to Landlord. Certificate of Insurance evidencing this coverage will be filed with the Tenant. In the event of loss covered by such insurance, Landlord shall promptly apply the amount recovered from such insurance to the repair or replacement of the property lost, damaged or destroyed. In the event that Landlord fails to carry or pay for the aforesaid insurance, Tenant may, at its option, take out such insurance and make any payments therefor for the account of Landlord and charge the same against the rent payable by Tenant hereunder or may require Landlord to reimburse Tenant therefor in whole or in part.

XX. Tenant agrees, at Tenant's sole cost and expense, to do all painting of the improvements on the demised premises and to perform minor repairs so as to maintain such improvements (except roof) in as good condition as when received except for damage or destruction caused by ordinary deterioration and depreciation or by casualty. Landlord agrees to maintain the roof of buildings upon the demised premises and to make all repairs to the improvements thereon not required to be made by Tenant. Except for major damage to or destruction of the premises by fire or other casualty, all repairs or replacements to be made by Landlord which shall be necessary to permit the continued operation of the premises as a gasoline service station shall be commenced promptly and, in any event, within five (5) days after notice from Tenant. Any other repairs or replacements required to be made by Landlord shall be commenced within thirty (30) days after notice from Tenant. In the event Landlord shall fail to commence repairs or replacements as herein required, or shall fail diligently to prosecute the same to completion, Tenant shall have the right to make or complete such repairs and replacements at the expense of Landlord (any rental payable hereunder may be retained by Tenant and used for such purpose) or Tenant may cancel this Lease upon written notice to Landlord of Tenant's intention so to do. No rental shall accrue or be payable during the period of any reconstruction which may in any manner interfere with the conduct of Tenant's business upon the premises.

XXI. In the event of any change in grade of any streets, alleys or highways abutting the demised premises, or the condemnation, or other taking of the whole or any part of the demised premises which Tenant shall deem to have rendered the demised premises, or such portion thereof as shall remain after such condemnation or other taking, unsuitable for the purpose of a drive-in gasoline filling and service station, Tenant may, at its option, terminate this Lease, in which event all liability on the part of Tenant shall cease upon payment of rent proportionately to the date of such termination; or Tenant may continue in possession of the remaining portion of the demised premises, in which event there shall be a proportionate reduction in rental in the same ratio as the area taken shall bear to the entire area included in this demise.

XXII. In the event of any such condemnation proceeding, or other taking of the demised premises or any part thereof, Tenant shall have any and all right or rights of action against any public or private authority that shall institute and prosecute such condemnation proceeding for all damages which may accrue to Tenant by reason of any loss, damage or injury to any of its property that shall then be in, on, under or about the demised premises; and such right or rights of action shall be in addition to the rights of Tenant to terminate this Lease as above set forth.

XXIII. Landlord covenants and agrees in the event of any change in grade of any streets, alleys or highways abutting the demised premises, or the condemnation, or other taking of any part of the demised premises, under which Tenant elects to continue in possession, that Landlord will reimburse and indemnify Tenant against all cost, damage and expense in re-adapting the demised premises for use as a drive-in gasoline filling and service station.

XXIV. Landlord represents that the demised premises may be occupied and used by Tenant, its successors and assigns, for the purpose of a drive-in gasoline filling and service station, that all licenses, permits and franchises for such use and occupancy have been obtained and are in full force and effect, and that the premises may be lawfully used for the erection of buildings and the installation of equipment necessary or desirable for such use and occupancy. In the event licenses, permits and franchises, or any of them for maintaining and operating a drive-in gasoline filling and service station upon the demised premises shall be revoked, or any renewal thereof denied, by any duly constituted authority without fault on the part of Tenant, its successors and assigns, Tenant shall have the right, at its option, to terminate this Lease.

XXV. It is understood and agreed that either party to this Lease shall have the right to terminate the same at any time upon the breach or non-performance by the other party of any covenant herein contained, provided that said breach or default of such covenant shall continue for a period of thirty (30) days after notice by the one party to the other of such breach or default, which notice shall specify the breach or default complained of, and the manner of its correction.

XXVI. It is further understood and agreed that no waiver of any breach or non-performance of any covenant herein contained shall operate as a waiver of said covenant itself or any subsequent breach thereof.

XXVII. If Landlord's right to annul or cancel this Lease arises from a default in Tenant's obligation to pay rent hereunder, Landlord shall be entitled to the benefit of all the provisions of law for the recovery of lands and tenements held over by Tenant in Shelby County, including the benefit of any public, general or local laws relating to the speedy recovery of possession of lands and tenements held over by Tenant in Shelby County that are now in force or may hereafter be enacted. If, however, the right of Landlord to cancel this Lease arises from the default by Tenant in respect of any covenant or agreement herein contained, other than the obligation to pay rent, any action or proceeding by Landlord, if

contested by Tenant, shall be such only as will permit review by the Supreme Court of Alabama.

XXVIII. No notice hereunder shall be sufficient, unless in writing, and if to Landlord sent by registered mail addressed to it at 3001 Dolly Ridge Drive, Birmingham, Alabama, and if to Tenant, sent by registered mail addressed to it at P. O. Box 1474, Baltimore, Maryland 21203 . Either party may change its place of notice by giving notice as provided in this Paragraph.

XXIX. Rentals hereunder shall be paid by check to Landlord at the address set forth in Paragraph XXVIII above unless the same shall be changed by Landlord as provided in Paragraph XXVIII.

XXX. Tenant shall not be bound by any assignment or change in interest of Landlord, whether recorded or unrecorded, until Tenant shall receive by registered mail at its office in Baltimore, Maryland , actual notice of such assignment, it being distinctly understood and agreed that until such actual notice is received by Tenant, payment to Landlord as herein provided shall be sufficient receipt to Tenant for any payment made by Tenant during the occupancy of the demised premises.

XXXI. The terms, covenants and conditions of this Lease shall be binding upon, and inure to the benefit of each of the parties hereto, their heirs, personal representatives, successors and assigns, and shall run with the land.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed, and their respective seals affixed thereto, the day and year first above written.

WITNESS:

Edna S. Adams

Max Gray (SEAL)
Max Gray

PPH

Esther A. Gray (SEAL)
Esther A. Gray

"LANDLORD"

HUFFSTUTLER-WALTERS OIL COMPANY, INC.

By Lawrence A. Kaufman
Lawrence A. Kaufman
President

"TENANT"

ATTEST:

Nelson K. Cooper, Jr.
Nelson K. Cooper, Jr.
Secretary

STATE OF ALABAMA)
)
CITY OF BIRMINGHAM)

I, Edna S. Adams, a Notary Public in and for said City and State, hereby certify that MAX GRAY and ESTHER A. GRAY, his wife, whose names are signed to the foregoing Lease, and who are known to me, acknowledged before me on this day that, being informed of the contents of the Lease, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 20th
day of July, 1964.

Edna S. Adams
Notary Public

My Commission Expires:

Sept. 4, 1967

STATE OF MARYLAND)
)
CITY OF BALTIMORE)

SS:

I, Louisa M. Roth, a Notary Public in and for said City and State, hereby certify that LAWRENCE A. KAUFMAN, whose name as President of HUFFSTUTLER-WALTERS OIL COMPANY, INC., a corporation, is signed to the foregoing Lease, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Lease, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and seal of office this 17th
of July, 1964.

Louisa M. Roth
Notary Public

My Commission Expires:

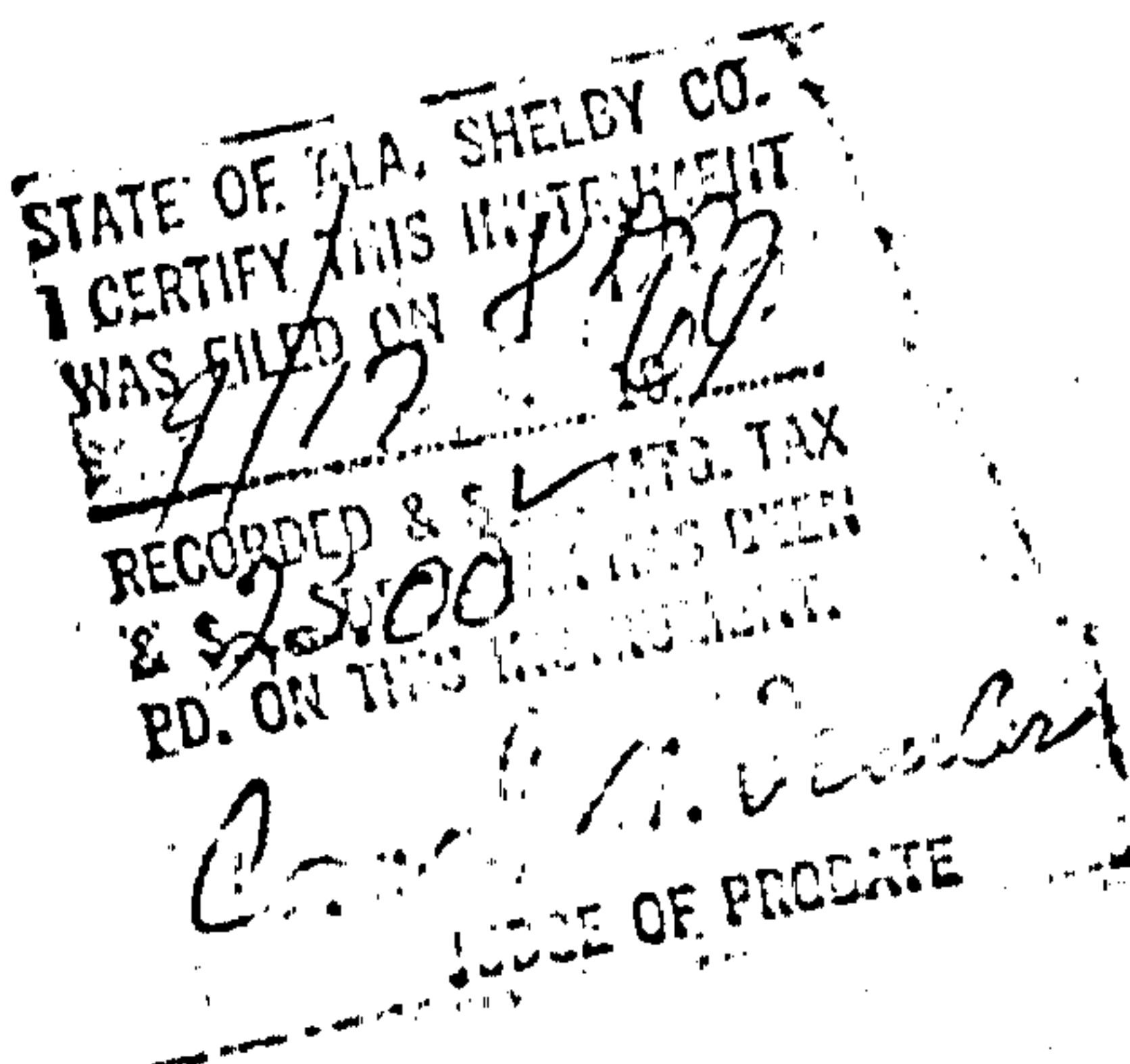
May 3, 1965

SCHEDULE "A"

GRAY - HUFFSTUTLER-WALTERS HEAD LEASE

U. S. Highway 280
Shelby County, Alabama

- 6 - Gasoline Computer Pumps
- 2 pr. - 6 ft., 6-tube fluorescent "V"-type
island light fixtures
- 2 - Island Light Poles
- 2 - 6 ft., 4-tube fluorescent area light
fixtures
- 2 - Davit-type area light poles
- 1 - 3/4 H. P. Air Compressor
- 1 - 6000-gal. U. G. Gasoline Storage Tank
- 2 - 3000-gal. U. G. Gasoline Storage Tanks



Jaf.
m. h.
E. A. D.

BOOK 232 PAGE 25A