

59
SUBLEASE AGREEMENT

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Shelby Cnty Judge of Probate, AL
02/02/1979 12:00:00AM FILED/CERT

SUBLEASE AGREEMENT made this 23rd day of August, 1978 by and between
ROBERT E. OWENS (herein called "Owens"), as Sublessor, and MID-SOUTH STEEL, INC.,
an Alabama corporation (herein called "Mid-South"), as Sublessee.

W I T N E S S E T H:

Pursuant to an Agreement and Assignment of Lease dated January 3, 1975
Owens acquired and assumed all of the rights and obligations of the lessee under
that certain Lease Agreement dated as of May 1, 1971 (herein referred to as the
"Master Lease" by and between the Industrial Development Board of the Town of
Pelham, as lessor, and Jamestown Corporation, which was bankrupt in 1975, as
lessee.

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First Alabama Bank of Tuscaloosa, N.A., formerly named The City National
Bank of Tuscaloosa, is trustee for the owners of certain Industrial Development
Revenue Bonds dated May 1, 1971 issued by the Lessor under the Master Lease,
pursuant to an Indenture dated May 1, 1971 (the "Indenture") between said bank
and said lessor. The rental payments under the Master Lease are pledged and the
property covered by the Master Lease is mortgaged to said trustee bank to secure
the payment of principal and interest on said bonds.

Owens and Mid-South have agreed that Mid-South will sublease from Owens
part of the property covered by the Master Lease for a period of two years, with
an option to renew the sublease for two years, upon the terms and conditions
herein set forth. Owens and Mid-South have also agreed that Mid-South will have
the option to purchase at any time during said sublease period all of the property
covered by the Master Lease.

Mid-South does not assume any of Owens' obligations under either the Agreement
and Assignment of Lease dated January 3, 1975 or the Master Lease dated May 1,
1971, except as expressly set forth herein.

NOW, THEREFORE, in consideration of the premises, and of the mutual promises,
covenants and agreements herein contained, the parties hereto hereby covenant,
agree and bind themselves as follows:

ARTICLE I

THE MASTER LEASE AND THE AGREEMENT AND ASSIGNMENT OF LEASE

Owens covenants and agrees to pay the rents reserved in the Master Lease
and to perform and observe all of the other covenants and stipulations contained

Johnston, Lorton Proctor
David L. Proctor
122 7th Bank for Savings
Birmingham, Ala. 35203

in the Master Lease and in the Agreement and Assignment of Lease so far as the same ought to be performed and observed by Owens. Mid-South expressly does not assume, and does not agree to perform and observe, Owens' covenants and agreements under either the Master Lease or the Agreement and Assignment of Lease, and Mid-South's obligations and undertakings will only be as described, defined and determined under this Sublease Agreement.

ARTICLE II

DEMISE CLAUSE

Section 2.1 Demise of the Premises. Owens, for and in consideration of the rents, covenants and agreements hereinafter described on the part of Mid-South to be kept paid, kept and performed, does hereby sublease to Mid-South, and Mid-South does hereby sublease, take and hire from Owens, all of the property described in Exhibit "A" hereto attached and made a part hereof, the bathroom facilities *and two adjoining shop offices* located on the ground floor of the building south of and adjacent to the property described in Exhibit "A", which building is generally referred to as the mini-motel, and the unimproved area measuring approximately 105 feet by 115 feet lying to the west of the property described in Exhibit "A" and east of Cahaba Valley Creek (such property being herein referred to as the "Premises"), together with the non-exclusive right to use other portions of the property described in Section 1.4 of the Master Lease for parking, raw materials and finished goods storage and other purposes related to Mid-South's business which do not obstruct or interfere with the following:

- The property subleased by Owens to General Electric Credit Corporation of Georgia under that certain Lease dated October 7, 1977 on which are stored certain concrete panels owned by said sublessee.
- The ready-mix concrete plant location and improvements subleased by Owens to T. H. Kittrell and Oak Mountain Ready-Mix, Inc. under that certain Lease agreement which became effective March 10, 1977.
- The shop area and offices (not including the bathroom facilities), generally referred to as the mini-motel facility, located south of the main plant building which is part of the Premises.

Owens will not renew or extend either of the two other subleases, referred to above, or enter into any additional subleases of any part of the property covered by the Master Lease, for any term ending after August 31, 1982.

Section 2.2. Rights of Access. Owens and Mid-South agree that each will provide the other, and both will provide the other sublessees referred to in Section 2.1 above, and/or any other sublessees of Owens of any portion of the property, adequate ingress and egress to and from the Premises covered by this Sublease and the other properties covered by the Master Lease.

Section 2.3. Quiet Enjoyment. If Mid-South performs the terms of this Sublease, Owens will warrant and defend Mid-South in the enjoyment and peaceful possession of the Premises during the term of this Sublease without any interruption by the lessor under the Master Lease or by any other person rightfully claiming under the Master Lease or any other instrument.

Section 2.4. Condition to Sublease. This Sublease Agreement shall not become effective unless and until Owens has given the lessor under the Master Lease appropriate notice of his intention to enter into this Sublease Agreement, in compliance with the terms of the Master Lease.

ARTICLE III

DURATION OF SUBLEASE TERM AND RENTAL PROVISIONS

Section 3.1. Term Of Sublease. The term of this Sublease shall begin on September 1, 1978 and, subject to the provisions hereof, continue until midnight on August 31, 1980. Mid-South shall be permitted such possession of the Premises as may be necessary and convenient for it to construct or install any machinery and equipment or other improvements, as permitted by the Master Lease, and to make any repairs or restorations which Mid-South deems necessary, prior to commencement of the sublease term, but such period shall not exceed 10 days.

Section 3.2. Option To Renew. Mid-South shall have the right and option to extend and renew the term of this Sublease for a period of two years, commencing on September 1, 1980 and ending at midnight on August 31, 1982, at the same rental and upon the other terms and conditions herein set forth. Such right of renewal shall be exercisable by Mid-South's giving Owens written notice of its election to exercise such option on or before June 1, 1980.

Section 3.3 Rental. The rent payable by Mid-South to Owens under this Sublease shall be at the rate of \$4,200.00 per month, payable monthly in advance, and payable in two checks as follows: (i) One check payable to the lessor under the Master Lease for the Basic Rent and Additional Rent, computed on a monthly basis, payable by Owens under Section 3.2 of the Master Lease and (ii) one check

payable to First National Bank of Tuscumbia for the balance of the \$4,200.00 per month sublease rental. Owens has made valid assignments of such sublease rentals to said lessor and said bank. Notwithstanding the foregoing, Mid-South will pay the first month's and the 24th month's rent in advance and the entire \$8,400.00 will be paid directly to said lessor under the Master Lease. Any installment of rent not paid on the due date thereof shall bear interest until paid at the rate of 9% per annum.

Section 3.4. Obligations Of Mid-South Conditional. The obligation of Mid-South to pay the sublease rental reserved herein, to make all other payments provided for herein and to perform and observe the other agreements and covenants on its part herein contained are subject to the condition that the Master Lease continues in full force and effect. Notwithstanding the foregoing, Mid-South may at its own cost and expense and in its own name or in the name of Owens, prosecute or defend any action or proceeding, or take any other action involving third persons which Mid-South deems reasonably necessary in order to secure or protect its rights of use and occupancy and the other rights hereunder.

ARTICLE IV

MAINTENANCE, TAXES AND INSURANCE

Section 4.1. Maintenance, Alterations and Improvements.

(a) Mid-South will at its own expense keep the Premises in as reasonably safe condition as its operations permit, and keep the Premises in good order and repair. Mid-South agrees to pay all gas, electric, water, sewer and all other charges for the operation, maintenance, use and upkeep of the Premises.

(b) Mid-South may, at its expense, install in the buildings or on other parts of the Premises any machinery, equipment or other personal property used in the operation of Mid-South's business, and any such machinery, equipment and other personal property owned by Mid-South may be removed by it at any time and from time to time while it is not in default under the terms of this Sublease Agreement; provided, however, that any damage to the Premises occasioned by such removal shall be repaired by Mid-South at its own expense. All such property owned by Mid-South shall be plainly and visibly marked to identify it as the property of Mid-South.

(c) Mid-South may, also at its own expense, make structural



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changes, additions, improvements or alterations to the buildings and other parts of the Premises that it deems desirable for its business purposes, provided such structural changes, additions, improvements or alterations do not substantially reduce the value of the property covered by the Master Lease. It is understood that any such changes proposed by Mid-South will require Owens' prior written approval and also may first require compliance by Owens with the provisions of Section 4.1(c) of the Master Lease.

(d) Mid-South will not permit any mechanics' or other liens to stand against the Premises for labor or material hired or purchased by Mid-South. Mid-South may, however, in good faith contest any such mechanics' or other liens and in such event may permit any such liens to remain unsatisfied and undischarged during the period of such contest and any appeal therefrom unless by such action the lien of the trustee bank under the Indenture on the property covered by the Master Lease, or any part thereof, shall be subject to loss or forfeiture, in either of which events such mechanics' or other liens shall be promptly satisfied by Mid-South.

Section 4.2. Taxes, Other Governmental Charges and Utility Charges.

Mid-South will pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Premises or any machinery, equipment or other property installed or brought by Mid-South on the Premises, including without limitation any taxes levied on or with respect to the income or profits of Mid-South from its business operations conducted on the Premises, and (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Premises. Owens will pay, as the same become due, all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on any of the property covered by the Master Lease, including the Premises.

Section 4.3. Insurance Required. Owens will continuously maintain in effect during the term of this Sublease the insurance coverages required under Sections 4.3, 4.4 and 4.5 of the Master Lease and Mid-South will be named as an insured party under all of such policies, as its interest may appear. Mid-South will pay the cost of such insurance coverages, as additional rent, during the term of this Sublease. Any additional liability or hazard insurance coverages

obtained by Mid-South in connection with its business operations on the Premises will name as additional insureds Owens, the trustee under the Indenture and the lessor under the Master Lease, as their respective interests may appear.

ARTICLE V

PROVISIONS RESPECTING DAMAGE, DESTRUCTION AND CONDEMNATION

Section 5.1. Damage and Destruction. If the Premises are destroyed in part or are damaged by fire or other casualty, to an extent which does not interrupt the normal business operations of Mid-South at the Premises, Mid-South will continue to pay the sublease rental hereunder and Owens, or the lessor under the Master Lease at Owens' direction and expense, will promptly repair, rebuild or restore the property damaged or destroyed to substantially the same condition as it existed prior to the event causing such damage or destruction.

If the Premises are destroyed in whole or in part or are damaged by fire or other casualty to such an extent that Mid-South's normal business operations cannot continue to be conducted on the Premises, Owens shall promptly comply with the second and third paragraphs of Section 5.1 of the Master Lease and sublease rentals hereunder shall abate for the period during which the Premises are not usable by Mid-South for its normal business operations.

Section 5.2. Condemnation. In the event that all of the Premises, or such part of the Premises as shall render the remaining portion of the Premises unsuitable for Mid-South's normal business operations, shall be taken under the exercise of the power of eminent domain this Sublease Agreement shall automatically terminate and, subject to the provisions of the Master Lease, Mid-South shall be entitled to so much of the award as relates to the value of the subleasehold estate of Mid-South hereunder.

ARTICLE VI

ASSIGNMENT AND SUBLEASING

Mid-South may assign this Sublease Agreement and the subleasehold interest created hereby and may sublease the Premises or any part thereof, with the prior written consent of Owens, which consent will not be unreasonably withheld, subject to the provisions of the Master Lease. No such assignment or subleasing and no dealings or transactions between Mid-South and any assignee or sublessee of Mid-South's interest hereunder shall, however, in any way relieve Mid-South from primary liability for any of its obligations hereunder. In the event of



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any such assignment or subleasing Mid-South shall continue to remain primarily liable for the payment of all sublease rentals to be paid by it and for the performance and observance of the other agreements and covenants on its part herein provided to be performed and observed by it.

ARTICLE VII

PARTICULAR COVENANTS OF MID-SOUTH

Section 7.1. General Covenants. Mid-South will not do or permit anything to be done on or about the Premises that will affect, impair or contravene any policies of insurance that may be carried on the Premises or any part thereof against loss or damage by fire, casualty or otherwise. Mid-South will, in the use of the Premises and the public roads abutting the same, comply with all lawful requirements of all governmental bodies, but Mid-South may, at its own expense and in good faith, contest the validity or applicability of any such requirements.

Section 7.2. Inspection Of Premises. Mid-South will permit Owens, the lessor under the Master Lease, the trustee bank under the Indenture and their duly authorized agents at all reasonable times to enter upon, examine and inspect the Premises.

Section 7.3. Special Covenants. During the term of this Sublease:

(a) Mid-South will duly pay and discharge all taxes, assessments and other governmental charges and liens lawfully imposed on Mid-South under the terms of this Agreement and upon the properties of Mid-South, provided that Mid-South shall not be required to pay any taxes, assessments or other governmental charges so long as in good faith it shall contest the validity thereof by appropriate legal proceedings.

(b) Mid-South will maintain and preserve its Certificate of Incorporation and its corporate existence and organization, and its authority to do business in the State of Alabama, and will not voluntarily dissolve without first discharging its obligations under this Sublease Agreement, and will comply with all valid laws, ordinances, regulations and requirements applicable to it or to its business operations. Subject to Article VI above, Mid-South will not transfer or dispose of all or substantially all of its assets, and will not be a party to any merger, consolidation or other reorganization, unless the transferee, surviving or successor corporation or other entity expressly assumes all of its

liabilities under this Sublease Agreement.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

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Section 8.1 Events Of Default Defined. The following shall be events of default under this Sublease Agreement and the terms "event of default" or "default" shall mean, whenever they are used in this instrument, any one or more of the following events:

(a) Failure to pay any installment of rent under Section 3.3 hereof for a period of five days after the due date.

(b) Failure by Mid-South to observe or perform any covenant, condition or agreement on its part to be observed or performed, except as referred to in subsection (a) next preceding, for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, given to Mid-South by Owens, unless Owens and Mid-South agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period Owens will not unreasonably withhold his consent to an extension of such time if corrective action is instituted by Mid-South promptly upon receipt of the written notice and is diligently pursued until the default is corrected.

(c) The dissolution or liquidation of Mid-South or the filing by Mid-South of a voluntary petition in bankruptcy, or failure by Mid-South promptly to lift any execution, garnishment or attachment of such consequence as will impair its ability to carry on its operations at the Premises, or Mid-South's seeking of or consenting to or acquiescing in the appointment of a receiver of all or substantially all of its properties or of the Premises, or any assignment by Mid-South for the benefit of its creditors, or the commission by Mid-South of any act of bankruptcy.

Section 8.2. Remedies On Default. Whenever any such event of default shall have happened and be continuing, Owens may take any of the following remedial steps:

(a) Re-enter and take possession of the Premises, without terminating this Sublease Agreement, exclude Mid-South from possession thereof and sublease the Premises or any part thereof for the account of Mid-South, holding Mid-South liable for the difference in the rent and other amounts payable

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by such sublessee in such subleasing and the rentals and other amounts payable by Mid-South hereunder.

(b) Terminate this Sublease Agreement, exclude Mid-South from possession of the Premises and, if Owens elects to do so, sublease the same for the account of Owens, holding Mid-South liable for all rent due up to the date of such sublease made for the account of Owens.

(c) Take whatever at law or in equity may appear necessary or desirable to collect the sublease rent then due and to enforce any obligation or covenant or agreement of Mid-South under this Sublease Agreement

Section 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to Owens is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Sublease Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof but any such right or power may be exercised from time to time and as often as may be deemed expedient.

Section 8.4. Agreement To Pay Attorney's Fees and Expenses. In the event that either party hereto should default under any of the provisions of this Sublease Agreement, and the party not at fault should employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of defaulting party hereunder, the defaulting party will on demand therefor pay to the party not in default the reasonable fees of such attorneys and such other expenses so incurred.

Section 8.5. No Additional Waiver Implied By One Waiver. In the event any agreement contained in this Sublease Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE IX

MID-SOUTH'S OPTION TO PURCHASE

Section 9.1. Owens hereby gives and grants to Mid-South the irrevocable right and option, exercisable at any time during the ^{initial} term of this Sublease Agreement and ^{if there is a} ~~any extension or~~ renewal hereof, ^{at any time prior to March 1, 1982,} to purchase all of the property covered by the Master Lease (including all of the cranes owned by Owens and now

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in the main plant building on the Premises) by exercising Owens' option to purchase under Section 9.1(a) of the Master Lease and to pay or deliver to Owens at the closing of such purchase by Mid-South of all of said property (i) an amount equal to the then balance in the Reserve Fund provided for under paragraph 3 et. seq. of the Agreement and Assignment of Lease, (ii) a satisfaction of the mortgage given by Owens on certain real estate in accordance with paragraph 9 of said Agreement and Assignment of Lease, and (iii) cash in an amount equal to the difference between \$500,000.00 (plus an escalation amount computed at the rate of 5% per annum of said \$500,000.00 from September 1, 1978 to the date of closing provided that if the closing is after September 1, 1980 the per annum rate of escalation for the period from September 1, 1980 to the date of closing shall be equal to the percentage increase, if any, in the index used by the United States Government to determine increases in Social Security benefits for the period from September 1, 1980 to the date of closing) and the remaining outstanding principal amount of the Bonds, as defined in the Master Lease, required to be paid to the trustee bank under the Indenture upon the exercise of the option to purchase the property under Section 9.1(a) of the Master Lease, (iv) any amount previously paid by Owens, or for which Owens is then obligated, under the last sentence of Section 4.2 above, and (v) the policy of insurance on Owens' life held by the trustee bank under paragraph 8 of the Agreement and Assignment of Lease, or, if Owens is then deceased, the entire proceeds of such policy collected by the trustee bank (but Mid-South assumes no responsibility for said policy's being kept in force). The effect of (iii) in the next preceding sentence is that Mid-South also will pay, if such option is exercised, all expenses necessary to effect a redemption of the Bonds and all interest on the Bonds and other amounts described or referred to in Sections 6.4 and 9.1(a) of the Master Lease. Mid-South's option under this section shall be exercisable during the option period by giving written notice of the election to exercise such option to Owens, whereupon Owens and Mid-South will cooperate fully in complying with the applicable notice and closing provisions under Section 9 of the Master Lease.

Section 9.2. Notwithstanding the language in Section 9.1 above, if Mid-South elects to exercise its option under that section, the batch plant and other machinery and equipment subleased by Owens to T. H. Kittrell and Oak Mountain Ready-Mix, Inc. will not be included in the properties purchased by

Mid-South but will remain the properties of Owens and he shall have a period of six months after Mid-South exercises its option to remove the same from the property.

ARTICLE X

MISCELLANEOUS

Section 10.1. Binding Effect. This Sublease Agreement shall inure to the benefit of, and shall be binding upon, Owens and Mid-South and their respective heirs, personal representatives, successors and assigns, subject to any limitations in that regard herein set forth.

Section 10.2. Severability. In the event any provision of this Sublease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.3. Notices. All notices, certificates or other communications required or permitted hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered or certified mail, postage prepaid, addressed as follows:

If to Owens, P. O. Box 459, Pelham, Alabama, 35124.

If to Mid-South, 921 Sun Valley Road, Birmingham, Alabama, 35215.

A duplicate copy of each such notice, certificate or other communication given hereunder by either party to the other shall also be given to the Lessor under the Master Lease, and the trustee bank under the Indenture.

IN WITNESS WHEREOF, Owens and Mid-South have caused this Sublease Agreement to be executed in two or more counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument, as of the date first above written.

Robert E. Owens
Robert E. Owens

MID-SOUTH STEEL, INC.

By H. Elmer Massey
Its President

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STATE OF ALABAMA]

JEFFERSON COUNTY]

I, the undersigned Notary Public in and for said county and said state, hereby certify that J. Elmer Massey, whose name as President of Mid-South Steel, Inc., a corporation, is signed to the foregoing Sublease Agreement, and who is known to me and known to be such officer, acknowledged before me on this day that, being informed of the contents of said Sublease Agreement, 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 23rd day of August, 1978.

Patricia June Cates
Notary Public

My Commission Expires: April 6, 1982

STATE OF ALABAMA]

_____ COUNTY]

I, the undersigned Notary Public in and for said county and said state, hereby certify that Robert E. Owens, who signed the foregoing Sublease Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Sublease Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 23rd day of August, 1978.

Patricia June Cates
Notary Public

My Commission Expires: April 6, 1982

GUARANTEE

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FOR VALUE RECEIVED, the undersigned J. Elmer Massey hereby unconditionally guarantees to Robert E. Owens payment and performance of all of the obligations and undertakings of Mid-South Steel, Inc., an Alabama corporation, under the above and foregoing Sublease Agreement.

WITNESS my hand this 23rd day of August, 1978.

J. Elmer Massey
J. Elmer Massey

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STATE OF ALABAMA]

JEFFERSON COUNTY]

I, the undersigned Notary Public in and for said County and said State, hereby certify that J. Elmer Massey, who signed the foregoing Guarantee and who is known to me, acknowledged before me on this day that, being informed of the contents of said Guarantee, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office this 23rd day of August, 1978.

Patricia Juan Bates
Notary Public

My Commission Expires: April 6, 1982

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DESCRIPTION: Commence at the Southwest Corner of the Southeast One-Quarter of the Northwest Quarter of Section 12, Township 20 South, Range 3 West; run thence in an Easterly-direction along the South Line of said Quarter-Quarter for a distance of 1,091.53 feet; thence turn an angle to the left of 69 degrees, 31 minutes, 20 seconds and run in a Northeasterly direction along the center line of the Old Birmingham Montgomery Highway for a distance of 497.33 feet; thence turn an angle to the left of 90 degrees, and run in a Northwesterly direction for a distance of 30 feet; thence turn an angle to the left of 90 degrees and run in a Southwesterly direction for a distance of 101 feet; thence turn an angle to the right of 69 degrees, 30 minutes and run in a Westerly direction for a distance of 100.48 feet to the point of beginning, from the point of beginning thus obtained thence continue along last described course for a distance of 875.82 feet; thence turn an angle to the left of 90 degrees and run in a Southerly direction for a distance of 104.52 feet; thence turn an angle to the left of 90 degrees, 05 minutes, 24 seconds and run in an Easterly direction for a distance of 870.90 feet; thence turn an angle to the left of 87 degrees, 10 minutes, 36 seconds and run in a Northerly direction for a distance of 103.27 feet to the point of beginning.

By: Jimmy A. Gay REG. NO. 8799
PRESIDENT: COULTER & GAY ENG. CO. INC.

STATE OF ALA. SHELBY CO.
I CERTIFY THIS

1979 FEB 22 AM 8:32

Thomas A. Ligon, Jr.
JUDGE OF PROBATE

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Rec. 2100
Index 100
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Exhibit "A"