

This instrument was prepared by:  
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1400 SouthTrust Tower  
Birmingham, Alabama 35203

**SECOND MORTGAGE**

STATE OF ALABAMA     )  
                              )  
SHELBY COUNTY         )

KNOW ALL PERSONS BY THESE PRESENTS: That Whereas, **HIGGINBOTHAM OIL COMPANY, INC.**, an Alabama corporation (hereinafter called "Mortgagor", whether one or more) is justly indebted to **BUXAHATCHEE ENTERPRISES, INC.**, an Alabama corporation (hereinafter called "Mortgagee"), in the sum of Seven Hundred Ninety Thousand One Hundred Sixty-Nine and 04/100 Dollars (\$790,169.04) (the "Indebtedness"), evidenced by Promissory Note of even date herewith from the Mortgagor to the Mortgagee (the "Promissory Note").

And Whereas, Mortgagor agreed, in incurring said Indebtedness, that this Mortgage should be given to secure the prompt payment thereof.

NOW THEREFORE, in consideration of the premises, said Mortgagor, and all others executing this Mortgage, do hereby grant, bargain, sell and convey unto the Mortgagee the following described real estate, situated in SHELBY COUNTY, State of Alabama, to-wit:

See Exhibit A for description of real estate

This Mortgage is second and subordinate to that certain mortgage to Central State Bank dated September 30, 1993, recorded as Inst. #1993-30366 in the Probate Office of Shelby County, Alabama.

Said property is warranted free from all encumbrances and against any adverse claims, except as stated herein and on the attached Exhibit A.

To Have And To Hold the above granted property unto the said Mortgagee, Mortgagee's successors, heirs and assigns forever; and for the purpose of further securing the payment of said Indebtedness, the undersigned agrees to pay all taxes or assessments when imposed legally upon said premises, and should default be made in the payment of same, the said Mortgagee may at Mortgagee's

**Inst # 1996-37114**

option pay off the same; and to further secure said Indebtedness, the Mortgagor agrees to keep the improvements on said real estate insured against loss or damage by fire, lightning and tornado for the fair and reasonable insurable value thereof (not to exceed \$1,195,000.00), in companies reasonably satisfactory to the Mortgagee, with loss, if any, payable to said Mortgagee, as Mortgagee's interest may appear, and to promptly deliver a certificate evidencing said policy, or any renewal of said policy to said Mortgagee; and if the Mortgagor fails to keep said property insured as above specified, or fails to deliver said certificate evidencing said policy to said Mortgagee, then the said Mortgagee, or assigns, may at Mortgagee's option insure said property for said sum, for Mortgagee's own benefit; the policy proceeds, if collected, to be credited on said Indebtedness, less reasonable and actual costs of collecting same and the balance paid immediately to the Mortgagor; all amounts so expended by said Mortgagee for taxes, assessments or insurance, shall become a debt to said Mortgagee or assigns, additional to the debt hereby specially secured, and shall be covered by this Mortgage and bear interest at the same rate as set out in the Promissory Note from the date of payment by said Mortgagee, or assigns, and be at once due and payable but only after Mortgagee has provided Mortgagor with thirty (30) days' advance written notice of the amount due.

Upon condition, however, that if the said Mortgagor pays said Indebtedness, and reimburses said Mortgagee or assigns for any amounts Mortgagee may have expended for taxes and assessments, and interest thereon, then this conveyance to be null and void; but should default be made in the performance of any of the Mortgagor's obligations hereunder (expressly excluding monthly payments of the Indebtedness as defined in the Promissory Note) or in the payment of any sum expended by the said Mortgagee or assigns, or should said Indebtedness hereby secured, or any part thereof, or the interest thereon, remain unpaid at maturity, then in any one of said events, the Mortgagee shall deliver to the Mortgagor written notice of such default or non-payment, and if uncured by Mortgagor upon expiration of thirty (30) days following Mortgagor's receipt of such notice, at Mortgagee's option, the whole of said Indebtedness hereby secured shall at once become due and payable, and this Mortgage be subject to foreclosure as now provided by law in case of past due mortgages, and the said

Mortgagee, agents or assigns shall be authorized to take possession of the premises hereby conveyed, and with or without first taking possession, after giving twenty-one (21) days' notice, by publishing once a week for three consecutive weeks, the time, place and terms of sale, by publication in some newspaper published in said County and State, sell the same in lots or parcels or *en masse* as Mortgagee, agents or assigns deem best, in front of the Court House door of said County (or the division thereof) where said property is located, at public outcry, to the highest bidder for cash, and apply the proceeds of the sale: First, to the expense of advertising, selling and conveying, including a reasonable and actual attorney's fee; Second, to the payment of any amounts that may have been expended, or that it may then be necessary to expend, in paying insurance, taxes or other encumbrances, with interest thereon; Third, to the payment of said indebtedness in full, whether the same shall or shall not have fully matured at the date of said sale, but no interest shall be collected beyond the day of sale; and Fourth, the balance, if any, to be turned over to the said Mortgagor, and undersigned further agrees that said Mortgagee, agents or assigns may bid at said sale and purchase said property, if the highest bidder therefor; and undersigned further agrees to pay a reasonable attorney's fee to said Mortgagee or assigns for the foreclosure of this Mortgage in Chancery, should the same be so foreclosed, said fee to be a part of the debt hereby secured.

IN WITNESS WHEREOF, the undersigned Mortgagor has caused this Mortgage to be executed this 7<sup>th</sup> day of November, 1996.

HIGGINBOTHAM OIL COMPANY, INC.

By: [Signature]  
Its President

STATE OF ALABAMA )  
COUNTY OF Shelby )

I, the undersigned Notary Public in and for said County, in said State, hereby certify that **BURNIE A. HIGGINBOTHAM, JR.**, whose name as President of Higginbotham Oil Company, Inc., an Alabama corporation, is signed to the foregoing Second Mortgage and who is known to me, acknowledged before me on this day that, being informed of the contents of the Second Mortgage, he executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 7<sup>th</sup> day of November, 1996.

[Signature]  
NOTARY PUBLIC

My Commission Expires: 10/10/98

[SEAL]



Exhibit A

A parcel of land in the NE 1/4 of Fractional Section 22, Township 22 South, Range 2 West, Shelby County, Alabama, described as follows: Commence at the SE corner of the NW 1/4 of the NE 1/4 of Section 22, Township 22 South, Range 2 West; thence run North 0 deg. 45 min. 00 sec. East along the East line of said 1/4 1/4 a distance of 642.00 feet to a point on the North side of Alabama Highway No. 25; thence continue on the last described course and run North 0 deg. 45 min. 00 sec. East a distance of 518.00 feet to a point on the South side of the Old Highway No. 25; thence run South 56 deg. 30 min. 00 sec. West, along said South side of the Old Highway No. 25, a distance of 903.60 feet; thence run South 58 deg. 10 min. 00 sec. West along said South side of the Old Highway No. 25 a distance of 834.00 feet; thence run South 0 deg. 45 min. 00 sec. West a distance of 234.60 feet; thence run South 89 deg. 59 min. 60 sec. East a distance of 125.00 feet; thence run South 0 deg. 45 min. 00 sec. West a distance of 222.57 feet to a set 1/2 rebar, said point being the point of beginning; thence continue on the last described course and run South 0 deg. 45 min. 00 sec. West a distance of 349.43 feet to a found concrete monument marking the North right of way line of Alabama Highway No. 25; thence

run South 74 deg. 30 min. 09 sec. East, along said right of way line a distance of 99.45 feet to a found concrete monument marking the North right of way line of Alabama Highway No. 25, said point being situated on a curve to the left having a central angle of 20 deg. 56 min. 45 sec., a radius of 1382.75 feet; thence run along the arc a distance of 505.50 feet; thence run North 59 deg. 12 min. 39 sec. West a distance of 138.72 feet; thence run North 28 deg. 58 min. 47 sec. West a distance of 305.00 feet to a set 1/2 inch rebar; thence run South 65 deg. 51 min. 40 sec. West a distance of 325.40 feet to a set 1/2 inch rebar and the point of beginning; being situated in Shelby County, Alabama.

Subject to:

1. Ad valorem taxes due for the year 1996 and subsequent years.
2. Transmission Line Permit(s) to Alabama Power Company as shown by instrument(s) recorded in Deed Book 106 page 26 in the Probate Office.
3. Mortgage from Buxahatchee Enterprises, Inc. to Central State Bank dated September 30, 1993, in the original principal amount of \$425,000.00, and recorded as Inst. #1993-30366 in the Probate Office.

Inst # 1996-37114

11/07/1996-37114  
02:06 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
004 MCD 1201.30