


STATE OF ALABAMA)
 :
SHELBY COUNTY)


20060601000260340 1/12 \$199.00
Shelby Cnty Judge of Probate, AL
06/01/2006 03:59:02PM FILED/CERT

This instrument prepared by:
Frank C. Galloway III
Galloway & Somerville, LLC
11 Oak Street
Birmingham, AL 35213
(205) 871-2183

TRUSTEE IN BANKRUPTCY DEED

KNOW ALL MEN BY THESE PRESENTS, that whereas, André M. Toffel, is the duly qualified and acting Trustee of the Bankruptcy Estate of **Industrial Concrete Contractors, Inc.**, Bankruptcy Case No. **04-06671-TOM-7** filed in the United States Bankruptcy Court, Northern District of Alabama, Southern Division, and

WHEREAS, by the May 16, 2006 order of this Court (the "Order" - a copy of which is attached hereto as Exhibit A), André M. Toffel, as such trustee is to sell the hereinafter described real property (the "Property") to Grantees (as hereinafter defined) pursuant to the terms and conditions set forth therein;

WHEREAS, as contemplated by the Order; **Dennis Sammons and Blanche Sammons** (collectively referred to hereinafter as the "Grantees") agreed to pay the sum of **One Hundred Fifty-five Thousand and 00/100 Dollars (\$155,000.00)** for the purchase of the Property; and

WHEREAS, this instrument is in accordance with the terms of and duly authorized by 11 U.S.C. §363, and 11 U.S.C. §102(1), and

NOW, THEREFORE, by virtue of and in execution of the power granted to him by the Bankruptcy Code and of every other power and authority granted to him, hereto enabling, and in consideration of the payment of **One Hundred Fifty-five Thousand and 00/100 Dollars (\$155,000.00)** to the Trustee paid by Grantees the receipt of which is hereby acknowledged, André M. Toffel, as such Trustee, does hereby grant, bargain, sell and convey, subject to the matters set forth hereinbelow, unto Grantees all right, title and interest which the bankrupt debtor (Industrial Concrete Contractors, Inc.) had on the date of the commencement of the proceedings in bankruptcy and all right, title and interest in the following real property located in Shelby County, Alabama (previously defined as the "Property"):

Commence at the NW corner of Section 35, Township 24 North, Range 15 East; thence run Easterly along the North line thereof for 162.63 feet; thence 55°24'03" right run Southeasterly 653.92 feet; thence 55°23'00" left run Easterly 168.00 feet to the point of beginning; thence continue last described course for 140.00 feet to the 397 contour of Lay Lake; thence (along said contour the following described courses) 78°46'43" right for 56.47 feet; thence 9°08'47" left for 72.82 feet; thence 4°32'46" right for 33.09 feet; thence

16°58'27" right for 20.67 feet; thence 3°56'34" right for 22.50 feet; thence 36°26'30" right for 34.97 feet; thence 15°45'43" right for 37.67 feet; thence 50°33'02" right for 22.40 feet; thence 16°23'13" right for 25.01 feet; thence 16°24'36" right for 22.69 feet; thence 11°19'42" right for 20.26 feet; thence 8°55'30" left for 15.76 feet; thence 19°11' right for 11.15 feet; thence (leaving said contour) 12°45'01" left for 151.75 feet to the point of beginning

Along with a dominant estate in the following non-exclusive easements which easements shall run with the land and be appurtenant to the Property:

1. A non-exclusive easement for ingress and egress over the existing 30 ± feet wide roadway running from the Property to Shelby County Highway 46.
2. A non-exclusive easement for the installation, maintenance, repair, and replacement of a septic tank system and field lines serving such system for a single family residence on the Property (including up to one guest house); provided that there is no place on the Property where such system and lines could be wholly installed. Further, the use of such easement shall be restricted so that it may only be used to the extent necessary and not for the convenience of the owner(s) of the dominant estate thereof. The use of such easement shall be done in a manner so as to create the most minimal disturbance practicable to the owners' use and enjoyment of the 1.81 acres of land thereby burdened. Such easement shall be located on the following lands:

Commence at the NW corner of Section 35, Township 24 North, Range 15 East, thence run easterly along the North line thereof for 162.63 feet; thence 55°24'03" right run Southeasterly 435.89 feet to the point of beginning; thence continue last described course for 218.03 feet; thence 55°23'00" left run Easterly 168 feet; thence 69°28'57" right run southerly 151.75 feet to the 397 contour of Lay Lake; thence (along said contour the following described courses) 132°01'35" right for 18.66 feet; thence 86°18'51" left for 13.02 feet; thence 19°15'05" left for 39.83 feet; thence 3°11'47" left for 52.25 feet; thence 9°39'08" right for 34.85 feet; thence 61°28'24" for 44.90 feet; thence (leaving said contour) 61°19'27" right run Northwesterly 565.14 feet; thence 109°23'28" right run Northeasterly 147.82 feet to the point of beginning. Containing 1.81 acres.

Subject, however, to the following:

1. Ad valorem taxes owing on October 1, 2006 which are not yet due and payable;
2. Mineral, mining and other subsurface rights not owned by Seller;
3. Utility Easements serving the Property;
4. Residential subdivision covenants, restrictions and building lines of record, and all other matters of record.

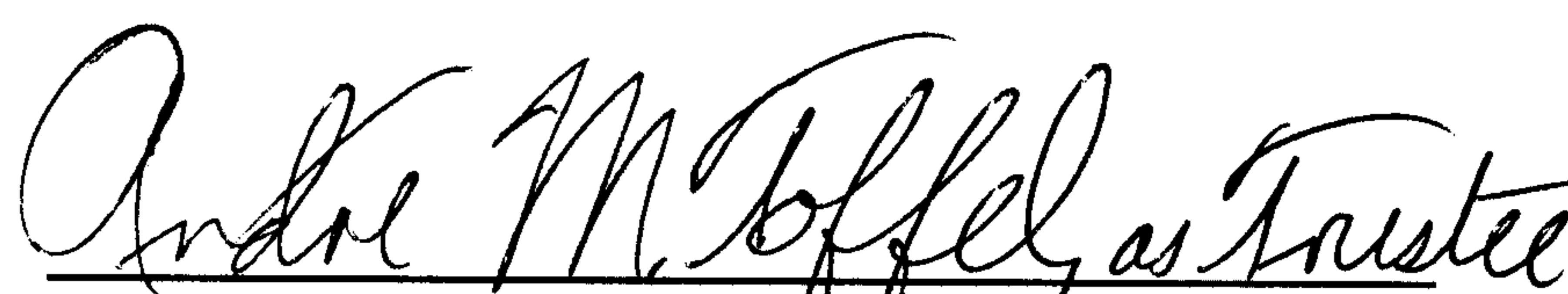
ANDRÉ M. TOFFEL HAS MADE NO AFFIRMATION OF FACT AND HAS MADE NO PROMISE RELATING TO THE REAL PROPERTY SUBJECT TO THIS CONVEYANCE WHICH HAS BECOME ANY BASIS OF THE BARGAIN MADE OR HAS CREATED OR AMOUNTED TO AN EXPRESSED WARRANTY THAT THE REAL PROPERTY DESCRIBED HEREIN ABOVE CONFORMS TO ANY SUCH AFFIRMATION OR PROMISE.

ANDRÉ M. TOFFEL IS SELLING THE BANKRUPTCY ESTATE'S INTEREST IN THE ABOVE-DESCRIBED REAL PROPERTY "AS-IS", "WHERE-IS", AND DISCLAIMS ANY IMPLIED WARRANTIES WITH RESPECT TO SUCH REAL PROPERTY.

TO HAVE AND TO HOLD all the right, title and interest in and to the Property unto Grantees, their heirs, successors and assigns forever.


IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 1st day of June, 2006

WITNESS:



André M. Toffel
as Trustee and only as Trustee
for the Bankruptcy Estate of
Industrial Concrete Contractors, Inc
Chapter 7 Bankruptcy Case # 04-06671-TOM-7

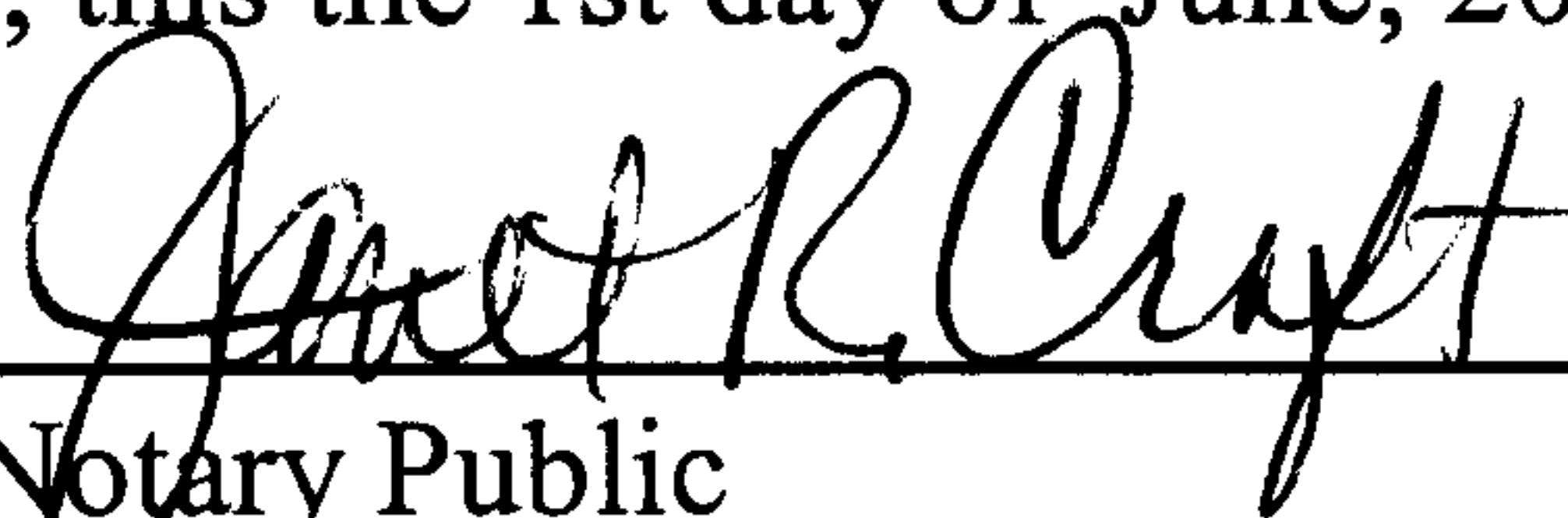
STATE OF ALABAMA)
 :
JEFFERSON COUNTY)


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Shelby Cnty Judge of Probate, AL
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I, the undersigned, a Notary Public in and for said County, in said State, do hereby certify that André M. Toffel, whose name as Trustee is signed to the foregoing Trustee in Bankruptcy Deed and who is known to me, acknowledged before me on this day that, being informed of the contents of said Trustee in Bankruptcy Deed, he, in his capacity as Trustee, executed the same voluntarily and with full authority on the day the same bears date.

Given under my hand and official seal, this the 1st day of June, 2006.

(SEAL)



Notary Public
My commission expires: 2/27/08

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

In Re:

INDUSTRIAL CONCRETE
CONTRACTORS, INC.,

Debtor.

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Case No. 04-06671-TOM-7

ORDER

This matter came for hearing before this Court on April 24, 2006 on the Trustee's Motion for Authority to Sell Property of the Estate Free and Clear of Liens and Other Interest. Said real property is located in Shelby County, Alabama and constitutes .64 acres (more or less) and is more particularly described in the attached Exhibit A (the "Property"). Present at the hearing and consenting to the Motion and relief requested were: André Toffel (the "Trustee"), Daniel D. Sparks and Frank C. Galloway III, attorneys for the Trustee, Industrial Concrete Contractors, Inc. (the "Debtor"), Richard Rutherford, Brent Davis as attorney both for Richard Rutherford and Debtor, and also for the purpose of this Motion, Mr. Davis appeared on behalf of Denise Rutherford and Industrial Communication Contractors, Inc. Steve Ball consented by telephone on behalf of Ernest and Brenda Swafford (the "Mortgagees") of the Property.

As a basis of the granting of this motion, this Court makes several findings of fact and conclusions of law thereon as set forth herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Mortgagees were, at the relevant times referenced herein, the owners of the real property located in Shelby County, Alabama which is more particularly described in the attached Exhibit B. Such real property is henceforth referred to as the "Parent Tract" and the legal description

EXHIBIT A

thereto is referred to hereinafter as "Correct Legal Description". *The Property is fully included within the Parent Tract.* On September 14, 2000, the Mortgagees executed a deed purporting to convey the Parent Tract to Debtor (the "Swafford Deed"). Said instrument was recorded in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Office") on September 18, 2000 as Instrument 2000-32352. Contemporaneous with the execution and delivery of the Swafford Deed, on September 14, 2000 Debtor executed a purchase money mortgage to Mortgagees securing \$60,000 of the Debtor's \$160,000 purchase price for the Parent Tract (the "Swafford Mortgage" which mortgage was recorded in the Probate Office on September 18, 2000 as Instrument 2000-32353).

The Swafford Mortgage and the Swafford Deed contained an erroneous legal description (the "Erroneous Legal Description") in that while the dimensions and square footage of the property measurements predominantly were correct¹, the point of beginning as described was erroneously located north of its intended mark. The correct legal description of the Parent Tract is that legal description that is shown on the attached Exhibit B (the "Correct Legal Description").

Then, on or about May 29, 2002, Debtor purported to convey the Parent Tract, using the Erroneous Legal Description, to Industrial Communications Contractors, Inc.²

¹ There are three consecutive calls in both the Swafford Mortgage and the Swafford Deed (25.09 feet, 30.05 feet and 18.00 feet) that are corrected in the Correct Legal Description to two calls (34.97 feet and 37.67 feet) as measured by this Court's appointed surveyor, Thomas E. Simmons. While the difference between these two groups of calls is immaterial to the fair market value of the Property, it is appropriate for this Court to note the difference and clarify that the Correct Legal Description is the governing and effectual description of the Property.

² This Court notes that in the record instruments discussed herein there is an entity identified as Industrial Communications Contractors, Inc. However, this Court takes judicial notice of and finds that no such entity exists in the records of the Alabama Secretary of State. Rather, there is an entity with a very similar title that is shown to be properly incorporated and registered with the Alabama Secretary of State that is entitled Industrial Communication Contractors, Inc. The registered agent and incorporator therefore is Denise Rutherford, the wife of Richard Rutherford, the principal of Debtor. This Court finds that the name Industrial Communications Contractors, Inc. is a "d/b/a" for Industrial Communication Contractors, Inc. and that as per the matters discussed in this Order, the entities are one and

("Communication"-- said instrument, which was recorded in the Probate Office on July 8, 20002 as Instrument 2002-0708000313990, is henceforth referred to as "Communication Deed #1"). A subsequent effort to "correct" Communication Deed #1 was undertaken as evidenced by the instrument recorded in the Probate Office on November 19, 2002 as Instrument 2002-1119000577970 ("Communication Deed #2").

Debtor has eight (8) judgment liens recorded in the Probate Office against it; one of such judgments predates the recordation of Communication Deed #1, but as shown hereinbelow, such distinction is inconsequential. The judgments are listed on the attached Exhibit C. These judgment creditors are collectively referred to hereinafter as the "Judgment Creditors".

There is an instrument obtained by Richard Rutherford purporting to be a contract signed between Communication and Dennis Sammons to purchase the Property for a sales price of \$155,000. Richard Rutherford is a principal in Debtor. Dennis Sammons and his mother, Blanche Sammons (collectively referred to hereinafter as "Sammons") desire to purchase the Property jointly pursuant to the terms of the aforesaid agreement, notwithstanding their understanding that by virtue of this order Communication has no interest therein. Debtor, Communication, Trustee, Mortgagee and Sammons, all seek to have this Court enter the necessary orders so as to facilitate the sale of the Property to Sammons. To that end, all of said parties consented to this Court's findings set forth hereinafter.

Based on the foregoing, this Court finds orders and adjudges as follows:

the same; hence, hereinafter this Court will employ the defined term "Communication" to describe such entity.

1. The motion is granted and said sale is approved with the Property to be sold free and clear of all liens, encumbrances, or other interests, and any such liens, encumbrances or interests shall attach to the proceeds of the sale received by the Trustee to the same extent, in the same order, and to the same priority as they had against the Property.
2. The conveyance of the Property shall also include conveyance of a non-exclusive easement for ingress and egress to the Property from Shelby County Road #47 which dominant estate rights run with the land and inure to the benefit of the owner(s) of the land constituting the Parent Tract. The Trustee is hereby empowered and authorized to effect such sale.
3. Trustee shall hold the remaining proceeds of the sale until further determination by this Court regarding the validity and priority of any liens, encumbrances, or other interests, which shall be attached to the proceeds only.
4. The legal descriptions in the Swafford Deed and in the Swafford Mortgage each contain an erroneous legal description that is hereby remedied and modified by replacing such legal descriptions with the Correct Legal Description;
5. The Communication Deed #1 and Communication Deed #2 are invalid and *void ab initio* as such conveyances were done for no and/or insufficient consideration and, as a matter of law, are *void ab initio*; and

Further, according to the records of the Corporations Division of the Alabama Secretary of State, in December of 2004, someone filed papers with said office purporting to dissolve the Debtor as a legal entity. Obviously, as the Debtor had filed for bankruptcy on August 8, 2004, no such filing should have occurred, and this Court hereby orders that such effort to dissolve Debtor

is *void ab initio*. Additionally, Trustee may present this order to the Alabama Secretary of State so as to clarify that Debtor is *not* dissolved.

IT IS HEREBY DONE AND ORDERED THIS 16th day of May, 2006.

/s/ Tamara O. Mitchell
United States Bankruptcy Judge

cc Debtor
Brent Davis
Andre M. Toffel
Daniel D. Sparks
Frank C. Galloway III
Steve Ball



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Shelby Cnty Judge of Probate, AL
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EXHIBIT A

That certain parcel of land located in Shelby County, Alabama which is more particularly described as:

COMMENCE AT THE NW CORNER OF SECTION 35, TOWNSHIP 24 NORTH, RANGE 15 EAST; THENCE RUN EASTERLY ALONG THE NORTH LINE THEREOF FOR 162.63 FEET; THENCE 55°24'03" RIGHT RUN SOUTHEASTERLY 653.92 FEET; THENCE 55°23'00" LEFT RUN EASTERLY 168.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE LAST DESCRIBED COURSE FOR 140.00 FEET TO THE 397 CONTOUR OF LAY LAKE; THENCE (ALONG SAID CONTOUR THE FOLLOWING DESCRIBED COURSES) 78°46'43" RIGHT FOR 56.47 FEET; THENCE 9°08'47" LEFT FOR 72.82 FEET; THENCE 4°32'46" RIGHT FOR 33.09 FEET; THENCE 16°58'27" RIGHT FOR 20.67 FEET; THENCE 3°56'34" RIGHT FOR 22.50 FEET; THENCE 36°26'30" RIGHT FOR 34.97 FEET; THENCE 15°45'43" RIGHT FOR 37.67 FEET; THENCE 50°33'02" RIGHT FOR 22.40 FEET; THENCE 16°23'13" RIGHT FOR 25.01 FEET; THENCE 16°24'36" RIGHT FOR 22.69 FEET; THENCE 11°19'42" RIGHT FOR 20.26 FEET; THENCE 8°55'30" LEFT FOR 15.76 FEET; THENCE 19°11' RIGHT FOR 11.15 FEET; THENCE (LEAVING SAID CONTOUR) 12°45'01" LEFT FOR 151.75 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

From the Northwest corner of Section 35, Township 24 North, Range 15 East, Shelby County, Alabama, run Easterly along the North line thereof 162.63 feet, thence $55^{\circ}24'03''$ right run Southeasterly 435.89 feet to the point of beginning of the parcel herein described; from said point run South $34^{\circ}33'39''$ East 218.03 feet; thence North $90^{\circ}00'00''$ East 308.00 feet to the 397 contour of Lay Lake of the Coosa River; thence run the following calls along said contour:

Thence (along said contour the following described courses) $78^{\circ}46'43''$ right for 56.47 feet; thence $9^{\circ}08'47''$ left for 72.82 feet; thence $4^{\circ}32'46''$ right for 33.09 feet; thence $16^{\circ}58'27''$ right for 20.67 feet; thence $3^{\circ}56'34''$ right for 22.50 feet; thence $36^{\circ}26'30''$ right for 34.97 feet; thence $15^{\circ}45'43''$ right for 37.67 feet; thence $50^{\circ}33'02''$ right for 22.40 feet; thence $16^{\circ}23'13''$ right for 25.01 feet; thence $16^{\circ}24'36''$ right for 22.69 feet; thence $11^{\circ}19'42''$ right for 20.26 feet; thence $8^{\circ}55'30''$ left for 15.76 feet; thence $19^{\circ}11'$ right for 11.15 feet; thence North $68^{\circ}24'17''$ West continuing along said slough a distance of 18.66 feet to a point; thence South $25^{\circ}16'52''$ West continuing along said slough a distance of 13.02 feet to a point; thence South $6^{\circ}01'47''$ West continuing along said slough a distance of 39.83 feet to a point; thence continue along said contour line South $2^{\circ}50'00''$ West for 52.25 feet; thence leaving said contour line run North $51^{\circ}36'51''$ West 571.95 feet; thence North $64^{\circ}38'07''$ East 148.00 feet back to the beginning point, containing 2.0 acres, more or less.

EXHIBIT C

The following judgments appear of record:

1. Instrument #20020607000270600, styled: ReadyMix USA, Inc. vs. Industrial Concrete Contractors, Inc., in the amount of \$17,297.62, plus \$160.00 costs of suit. Ben R. Zarzaur, Attorney of record for plaintiff.
2. Instrument #20020826000404720, styled: PiRod, Inc. vs. Industrial Concrete Contractors, Inc., in the amount of \$5,325.00, plus \$124.00 costs of suit. A. J. Beck, attorney of record for plaintiff.
3. Instrument #20030127000046210, styled: Alabama Department of Industrial Relations vs. Industrial Concrete Contractors, Inc., in the amount of \$696.84, plus \$62.31 interest and penalty in the amount of \$69.68.
4. Instrument #20030225000116300, styled: State of Alabama vs. Industrial Concrete Contractors, Inc., in the amount of \$10,735.93, plus penalty and interest due thereon.
5. Instrument #20030409000216150, styled: Graybar Electric Company, Inc. vs. Industrial Concrete Contractors, Inc., in the amount of \$8,179.75, plus \$144.00 costs of suit. Charles R. Johanson, III, Attorney of record for plaintiff.
6. Instrument #20030709000433110, styled: Rental Service Corporation vs. Industrial Concrete Contractors, Inc., in the amount of \$13,808.40, plus \$160.00 costs of suit. Charles N. Parnell, III, Attorney of record for plaintiff.
7. Instrument #20030806000510040, styled: State of Alabama vs. Industrial Concrete Contractors, Inc., in the amount of \$8,568.57, plus penalty and interest due thereon.
8. Instrument #20030821000554570, styled: Mayer Electric Supply, Inc. vs. Industrial Concrete Contractors, Inc., in the amount of \$30,172.37, plus \$176.30 costs of suit. Zarzaur & Schwartz, P.C., Attorneys of record for plaintiff.

Shelby County, AL 06/01/2006
State of Alabama
Deed Tax: \$155.00