


THIS INSTRUMENT PREPARED BY:

Gwen L. Windle, Esq.
Haskell Slaughter Young & Rediker, LLC
1400 Park Place Tower
2001 Park Place North
Birmingham, Alabama 35203


20080912000363480 1/26 \$8861.00
Shelby Cnty Judge of Probate, AL
09/12/2008 02:14:18PM FILED/CERT

**MORTGAGE, ASSIGNMENT OF RENTS,
SECURITY AGREEMENT AND FIXTURE FILING**

Mortgagor:

HIGGINBOTHAM OIL COMPANY, INC.
562 Cahaba Valley Road
Pelham, AL 35124

Mortgagee:

SUPERIOR BANK
17 North 20th Street
Birmingham, AL 35203

STATE OF ALABAMA)
 :
CHILTON COUNTY)
JEFFERSON COUNTY)
SHELBY COUNTY)
TUSCALOOSA COUNTY)

THIS MORTGAGE, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (herein called the "Mortgage") made as of this 9th day of September, 2008, by **HIGGINBOTHAM OIL COMPANY, INC.**, an Alabama corporation, as Mortgagor (herein called the "Mortgagor") to **SUPERIOR BANK**, a Federal Savings Bank (herein, together with its successors and assigns, called the "Lender").

Simultaneously with the execution hereof, the Lender is making a Revolving Loan in the original principal amount of \$200,000 and a Term Loan in the original principal amount of \$5,650,000 to the Mortgagor pursuant to a Revolving and Term Loan Agreement between Mortgagor and Lender of even date herewith (herein called the "Loan Agreement"; all capitalized terms not otherwise defined herein shall have the meaning attributed to such terms in the Loan Agreement), as evidenced by the Term Note and the Revolving Note. In consideration of the Loans and as security therefor, the Mortgagor has agreed to execute this Mortgage as security for the hereinafter defined Obligations.

NOW, THEREFORE, in consideration of the Loans and the promises and covenants contained herein and in the Loan Agreement, and in order to secure the payment of the Obligations with the interest thereon, and any extensions or renewals thereof and further to secure the performance of the covenants, conditions and agreements hereinafter set forth, the Mortgagor hereby does irrevocably grant, bargain, sell, convey, assign, alien, remise, release and confirm to the Lender, and to its successors and assigns, in fee simple, with right of entry and possession as provided below, and grants to the Lender a security interest in, the following (herein together called the "Mortgaged Property"):

(A) A fee simple interest in the land described in Exhibit A attached hereto and made a part hereof (herein called the "Fee Land") as well as all development rights, air rights, water, water rights and water stock relating to the Land, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments and appurtenances whatsoever in any way belonging, relating or appertaining to any of the Land, and the reversion and reversions, remainder and remainders, rents, issues, profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law and in equity of the Mortgagor of, in and to the same, including but not limited to the other rights herein enumerated.

(B) A leasehold interest in the land described in Exhibit B attached hereto and made a part hereof (herein called the "Leasehold Land" and together with the Fee Land, the "Land") pursuant to the leases described on Exhibit C attached hereto (together with any extensions, modification or amendments thereto, herein called the "Leasehold Leases"), as well as all development rights, air rights, water, water rights and water stock relating to the Leasehold Land, and all estates, rights, titles, interest, privileges, liberties, tenements, hereditaments and appurtenances whatsoever in any way belonging, relating or appertaining to any of the Leasehold Land, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law and in equity of the Mortgagor of, in and to the same, including but not limited to the other rights herein enumerated, and any interest in any fee, greater or lesser title to the Leasehold Land and the Improvements (as defined below) located thereon that Mortgagor may own or hereafter acquire (whether acquired pursuant to rights or options contained in the Leasehold Leases or otherwise) and all credits, deposits, options, privileges and rights of Mortgagor under the Leasehold Leases (including all rights of use, occupancy and enjoyment) and under any amendments, supplements, extensions, renewals, restatements, replacements and modifications thereof, including, without limitation, (a) the right to give consents, (b) the right, if any, to renew or extend the Leasehold Leases for a succeeding term or terms, (c) the right, if any, to purchase the Leasehold Land and Improvements located thereon and (d) the right to terminate or modify the Leasehold Leases.

(C) All present and future structures, buildings, improvements and appurtenances of any kind now or hereafter situated on the Land (herein called the "Improvements") and all fixtures, fittings, apparatus, equipment and appliances of every kind and character now or hereafter attached or appertaining to the Improvements and all extensions, additions, improvements, betterments, renewals, substitutions, accessions, attachments and replacements to any of the foregoing, including, without limitation, all plumbing fixtures, ornamental and decorative fixtures, elevators, gas, steam, electric, solar and other heating, lighting, ventilating, air conditioning, refrigerating, cooking and washing equipment and appliances and sprinkling, smoke, fire and intrusion detection devices, it

being intended and agreed that all such items will be conclusively considered to be a part of the real property conveyed by this Mortgage, whether or not attached or affixed to the Land.

(D) All appurtenances to the Land and all rights of the Mortgagor in and to any streets, roads, public places, easements or rights of way relating to the Land.

(E) All the Rents, revenues, receipts, royalties, issues, income and profits of the Land and the Improvements and all rights of the Mortgagor under all present and future leases and subleases affecting the Land and the Improvements.

(F) All proceeds and claims arising on account of any damage to or taking of the Land or any Improvements thereon or any part thereof and all causes of action and recoveries for any loss or diminution in the value of the Land or any Improvements.

(G) All building materials, fixtures, fittings and appliances of every kind and character now owned or hereafter acquired by the Mortgagor for the purpose of being used for or incorporated in the Improvements, whether such building materials, equipment, fixtures, fittings and appliances are actually located on or adjacent to the Land and whether in storage or otherwise, wheresoever the same may be located, including, without limitation, all lumber and lumber products, bricks, building stones and blocks, sand, cement, roofing and flooring material, paint, doors, windows, hardware, nails, insulations, wires and wiring, plumbing and plumbing fixtures, heating and air conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures and all gas, steam, electric, solar and other heating, lighting, ventilating, air conditioning, refrigerating, cooking and washing equipment and appliances.

(H) All general intangibles relating to the development or use of the Land, including, without limitation, all water and sewer allocations, all licenses, all governmental permits relating to construction on the Land, all names under or by which the Land or any Improvements on the Land may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks and goodwill in any way relating to the Land; and

(I) All shares of stock or other evidence of ownership of any part of the Land that is owned by the Mortgagor in common with others and all documents of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Land.

This instrument secures the Obligations. As used herein, "Obligations" shall mean: (1) the payment of all amounts now or hereafter becoming due and payable under the Revolving Note, the Term Note or other Loan Documents, including the principal amount of the Revolving Loan and the Term Loan, all interest (including interest that, but for the filing of a petition in bankruptcy, would accrue on any such principal) and all other reasonable fees, charges and costs (including reasonable attorneys' fees and disbursements) payable in connection therewith; (2) the observance and performance by the Mortgagor of all of the provisions of the Loan Documents; (3) the payment of all sums advanced or paid by the Lender in exercising any of its rights, powers or remedies under the Loan Documents, and all interest (including post-bankruptcy petition interest, as aforesaid) on such

sums provided for herein or therein; (4) the payment and performance of all other indebtedness, obligations and liabilities of the Borrower or other obligor to the Lender (including obligations of performance) of every kind whatsoever, arising directly between the Borrower and the Lender or acquired outright, as a participation or as collateral security from another person by the Lender, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter incurred, contracted or arising, joint or several, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced or whether they are evidenced by agreement or instrument, and whether incurred as maker, endorser, surety, guarantor, general partner, drawer, tortfeasor, account party with respect to a letter of credit, indemnitor or otherwise; and (5) all renewals, extensions, modifications and amendments of any of the foregoing, whether or not any renewal, extension, modification or amendment agreement is executed in connection therewith.

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto the Lender and to its successors and assigns forever, subject however to the terms and conditions contained herein;

PROVIDED, HOWEVER, that these presents are upon the condition that, if the Obligations shall be paid, at the times and in the manner stipulated in the Notes and other Loan Documents and the Mortgagor shall perform and observe or cause to be performed and observed all the covenants and promises contained in the Notes, this Mortgage and all the other Loan Documents, and any extension, renewal, substitution, modification or replacement thereof, all without fraud or delay, then this Mortgage, and all the properties, interest and rights hereby granted, bargained, and sold shall cease, terminate and be void, but shall otherwise remain in full force and effect.

ARTICLE I

COVENANTS OF THE MORTGAGOR

In addition to covenants contained elsewhere herein, the Mortgagor covenants and agrees with the Lender as follows:

1.1 Performance of Loan Documents. The Mortgagor covenants and agrees to pay, perform and observe all covenants, terms, conditions and obligations contained herein and in the other Loan Documents in accordance with their respective terms and to duly and punctually pay the principal and interest due under the Notes and all other Obligations secured hereby.

1.2 Warranty of Title. The Mortgagor covenants that it is lawfully seized of an indefeasible estate in fee simple in the Fee Land or a leasehold estate in the Leasehold Land and other real property hereby mortgaged and has good and absolute title to all existing personal property hereby mortgaged and has good right, full power and lawful authority to sell, convey and mortgage the same in the manner and form aforesaid; that the same is free and clear of all liens, charges and encumbrances whatsoever except as set forth in the title policies issued at Closing and that the Mortgagor will warrant and forever defend the title thereto unto the Lender and its successors and assigns against the claims of all persons whomsoever.

1.3 Further Assurances; After Acquired Property. The Mortgagor covenants and represents that all the Loan Documents executed by the Mortgagor have been duly executed and delivered and are valid and enforceable obligations of the Mortgagor in accordance with the terms thereof. The Mortgagor agrees to execute and deliver to the Lender on demand and at the Mortgagor's expense any documents, additional mortgages and instruments of further assurance required or desired by the Lender to effectuate, complete, enlarge, perfect, continue and preserve (a) the Obligations and (b) the lien of this Mortgage as a first lien upon all the Mortgaged Property, whether now owned or hereafter acquired by the Mortgagor. Upon any failure of the Mortgagor to execute and deliver any such instruments, the Lender may execute and record any such instruments for and in the name of the Mortgagor, and the Mortgagor irrevocably appoints the Lender the agent and the attorney-in-fact of the Mortgagor for such purpose. The lien hereof will automatically attach, without further act, to all after-acquired property attached to, made a part of or substituted for any of the Mortgaged Property or any greater interest acquired by Mortgagor in the Mortgaged Property.

1.4 Assignment of Leases and Rents.

(a) All the existing and future rents, revenues, royalties, issues, income and profits of the Mortgaged Property that arise from its use or occupancy, including, without limitation, security deposits and advance rentals (herein together called the "Rents") and all leases, subleases or management, leasing or occupancy agreements pertaining to the Land or the Improvements (herein together called the "Leases") are hereby absolutely and presently assigned to the Lender.

(b) The Mortgagor will not execute any Leases without first having received the prior written approval from the Lender of the form and content of the same. Without limiting the foregoing, any managing, leasing or similar fee shall be subordinated to the lien of this Mortgage.

(c) Without the prior written consent of the Lender, the Mortgagor will not accept prepayments of rent exceeding one month under any of the Leases, nor modify or amend any of the Leases, nor in any manner impair the Mortgagor's interest in the Rents. The Mortgagor will perform all covenants of the lessor under the Leases. Simultaneously with the execution hereof if requested by Lender, the Mortgagor will execute and deliver to the Lender for recordation an assignment of leases in form acceptable to the Lender.

(d) The Leases must provide, in a manner approved by the Lender, that the Leases are junior and subordinate to the lien of this Mortgage, and that the tenant will recognize as its lessor any person succeeding to the interest of the Mortgagor upon any foreclosure of this Mortgage.

(e) Nothing herein shall render the Lender liable under any existing or future Leases, regardless of the collection of Rents thereunder, for any of the covenants or agreements of the Mortgagor under such Leases.

1.5 Transfer Prohibited. If the Mortgaged Property, or any material part thereof, is sold, transferred, conveyed or encumbered in any manner, voluntarily or involuntarily without the Lender's prior written consent except as provided for in Section 4.6 of the Loan Agreement, then such sale, transfer, conveyance, or encumbrance shall constitute a default under this Mortgage and the Lender,

at its option, may declare the entire principal indebtedness plus accrued interest due and payable. If any of the stock or membership interest of Mortgagor shall be sold, conveyed, transferred, assigned or exchanged to or with someone other than one of the existing members after the execution and delivery of this Mortgage without the Lender's prior written consent, such transfer shall constitute a transfer or conveyance of the Mortgaged Property which is hereby prohibited. For purposes of this section, "material" shall mean personal property with a value in excess of \$25,000.00.

1.6 Compliance with Laws. The Mortgagor will promptly comply with all present and future laws, ordinances, rules, regulations and requirements of all governmental authorities having jurisdiction over the Mortgaged Property or any part thereof including, without limitation, all zoning regulations and building codes. Without the prior written consent of the Lender, the Mortgagor will not seek, make or consent to any change in the zoning or conditions of use of the Mortgaged Property. The Mortgagor will comply with and make all payments required under the provisions of any covenants, conditions or restrictions affecting the Mortgaged Property.

1.7 Books and Records; Financial Statements; Property Income and Expense Statement. The Mortgagor will keep true and correct financial books and records in which it will make full and correct entries of the operation of the Mortgaged Property sufficient to reflect correctly the results of all operations, leasing and other income-producing activities by the Mortgagor on the Mortgaged Property, and to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. The Lender will have the right to examine, copy and audit the Mortgagor's records and books of account at all reasonable times.

1.8 Performance by the Lender. The Mortgagor will, at its own expense, appear in and defend any action or proceeding that might affect the Lender's security or the rights or powers of the Lender or that purports to affect any of the Mortgaged Property. If the Mortgagor fails to perform any covenant, condition, term or agreement contained in this Mortgage or the Leases, or if any action or proceeding of any kind (including but not limited to any bankruptcy, insolvency, arrangement, reorganization or other debtor-relief proceeding) is commenced which might affect the Lender's interest in the Mortgaged Property or the Lender's right to enforce its security, then the Lender may, at its option, take any actions and disburse any sums as may be necessary or desirable to protect or enforce this Mortgage or to remedy the failure of the Mortgagor to perform its covenants (without, however, waiving any default of the Mortgagor). The Mortgagor agrees to pay all reasonable expenses of the Lender thus incurred (including, without limitation, fees and disbursements of counsel). Any such expenses incurred by the Lender will be additional Obligations of the Mortgagor to the Lender secured by this Mortgage, will bear interest as specified in the Notes and will be payable by the Mortgagor upon demand. The Lender shall be the sole judge of the necessity for any such actions and of the amount to be paid or expended in connection therewith. The Lender is hereby empowered to enter and to authorize others to enter upon the Land or any part thereof for the purpose of performing or observing any defaulted covenant, condition, term or agreement hereof, without thereby becoming liable to the Mortgagor or any party in possession holding under the Mortgagor. This paragraph will not be construed to require the Lender to incur any expenses or take any actions.

Fixture Filing

20080912000363480 7/26 \$8861.00
Shelby Cnty Judge of Probate, AL
09/12/2008 02:14:18PM FILED/CERT

1.9 Personal Property.

(a) This Mortgage constitutes a SECURITY AGREEMENT AND FIXTURE FILING with respect to all personal property in which the Lender is granted a security interest hereunder and constitutes a lien on such property, and the Lender shall have all the rights and remedies of a secured party under the Alabama Uniform Commercial Code as well as all other rights and remedies available at law or in equity. The Mortgagor hereby agrees to execute and deliver on demand and to file with the appropriate filing officer or office such security agreements, financing statements, continuation statements or other instruments as the Lender may require in order to impose or perfect, or continue the perfection of, the lien or security interest created hereby. Notwithstanding the foregoing, the Lender may execute and record any such instruments, and the Mortgagor irrevocably appoints the Lender the agent and the attorney-in-fact of the Mortgagor and authorizes the Lender to make filings for such purpose. Upon the occurrence of an Event of Default hereunder, the Lender shall have the right to cause any of the Mortgaged Property which is personal property and subject to the security interest of the Lender hereunder to be sold at any one or more public or private sales as permitted by applicable law, and the Lender shall further have all other rights and remedies, whether at law, in equity or by statute, as are available to secured creditors under applicable law. At Lender's option, Lender may proceed as to both the personal property and the real property conveyed hereby or any Security Documents in accordance with the rights and requirements with respect to the real property. Any such disposition may be conducted by an employee or agent of the Lender. Any person, including both the Mortgagor and the Lender, shall be eligible to purchase any part or all of such property at such disposition.

(b) The expenses of retaking, holding, preparing for sale, selling or the like shall be borne by the Mortgagor and shall include the Lender's attorneys' fees and legal expenses. Upon demand of the Lender the Mortgagor shall assemble such personal property and make it available to the Lender at the Land, a place which is hereby deemed to be reasonably convenient to the Lender and the Mortgagor. The Lender shall give the Mortgagor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or other intended disposition is to be made, and if such notice is sent to the Mortgagor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to the Mortgagor.

1.10 Expenses. The Mortgagor will pay or reimburse the Lender for all costs and expenses (including, without limitation, attorneys' fees) incurred by the Lender in connection with the closing of the Loans (whether or not collected at closing and including, without limitation, recording taxes, all title, recording, survey, and legal fees and expenses), in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is involved or is made a party, or appears as party plaintiff or defendant, affecting the Notes, Mortgage, the other Loan Documents, the Mortgagor or the Mortgaged Property, including, without limitation, the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property or any action to protect the security hereof or to enforce any provision hereof and in any situation where the Lender employs an attorney to protect the Lender's rights hereunder, whether or not legal

proceedings are commenced or involved. Any such expenses incurred by the Lender will be additional Obligations of the Mortgagor to the Lender secured by this Mortgage, will bear interest at the rate specified in the Notes and will be payable by the Mortgagor upon demand.

1.11 Monthly Insurance Premium and Tax Deposits. At any time upon the demand by Lender, the Mortgagor will pay to the Lender on the first day of each month, together with and in addition to the regular installment of principal and interest on the Notes, an amount equal to one-twelfth (1/12) of the yearly taxes, assessments, rental payments and hazard insurance premiums as estimated by the Lender to be sufficient to enable the Lender to pay, at least thirty (30) days before they become due, all taxes, assessments, casualty insurance premiums and other similar charges against the Mortgaged Property or any part thereof. Such added payments shall not be deemed to be trust funds but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereof. Such amounts shall be used by the Lender to pay ad valorem taxes, assessments and casualty insurance premiums when due. Upon demand of the Lender, the Mortgagor agrees to deliver to the Lender such additional moneys as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, assessments, insurance premiums and similar charges. In the event of an occurrence of an Event of Default under any of the Loan Documents as herein or therein defined, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any such amount remaining to the Mortgagor's credit.

1.12 Other Taxes, Utilities and Liens.

(a) The Mortgagor will pay promptly when and as due, and will promptly deliver to the Lender receipts for the payment of, all taxes, assessments, water rates, dues, rent, charges, fines and impositions of every nature whatsoever levied, assessed or imposed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, district or other taxing authority upon the Mortgagor or in respect of the Mortgaged Property or any part thereof, or any lien or charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of the Mortgage for any amounts secured hereby or would have priority over or equality with the Mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) The Mortgagor will promptly pay all charges by utility companies, whether public or private, for electricity, gas, water, sewer or other utilities.

(c) The Mortgagor will promptly pay and will not suffer any mechanic's, laborer's, statutory or other lien which might or could be prior to or equal to the lien of the Mortgage to be created or to remain outstanding upon any of the Mortgaged Property.

(d) The Mortgagor will promptly pay the rent when due and comply with all other obligations thereunder so as to keep the Leasehold Leases in full force and effect.

(e) In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured by mortgages or the manner of collecting taxes so as to affect adversely the Lender with respect to the Loans, the entire balance of the principal sum secured by the Mortgage and all interest accrued thereon shall without notice become due and payable forthwith at the option of the Lender.

1.13 Insurance.

(a) Mortgagor shall keep the Improvements insured, and shall maintain during the entire term of this Mortgage, comprehensive general liability coverage and such other coverages requested by Lender or required under the Leasehold Leases, by carrier(s), in amounts and in form at all times satisfactory to Lender, which carrier(s), amounts and form shall not be changed without the prior written consent of Lender. All such policies of insurance shall be issued by insurers qualified under the laws of the state in which the Land is located, duly authorized and licensed to transact business in such state and reflecting a rating of AA or better. Mortgagor shall maintain all coverages on the Mortgaged Property as are required by Lender at the closing of the Loans, and all other coverages as may be deemed necessary by Lender from time to time during the term of the Loans. Any failure by Lender to insist on full compliance with all of the above insurance requirements at closing does not constitute a waiver of Lender's right to subsequently require full compliance with these requirements. All policies required hereunder shall be indicated by evidence of insurance on the Accord 28 form of certificate (as such form may be updated and renamed from time to time), naming Lender as loss payee and as additional insured. Unless Mortgagor provides Lender with evidence of the insurance coverage required by this Mortgage, Lender may purchase insurance at Mortgagor's expense to protect Lender's interests in the Mortgaged Property and to maintain the insurance required by this Mortgage. This insurance may, but need not, protect Mortgagor's interests. The coverage purchased by Lender may not pay any claim made by Mortgagor or any claim that is made against Mortgagor in connection with the Mortgaged Property or any required insurance policy. Mortgagor may later request to cancel any insurance purchased by Lender, but only after providing Lender with evidence that Mortgagor has obtained insurance as required by this Mortgage. If Lender purchases insurance for the Mortgaged Property or insurance otherwise required by this Mortgage, Mortgagor will be responsible for the costs of that insurance, including interest and other charges imposed by Lender in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance Mortgagor is able to obtain on its own. If the Land is located in a flood hazard area or if required pursuant to §102 of the Flood Disaster Protection Act of 1973, flood insurance in an amount acceptable to the Lender shall also be provided by the Mortgagor. The Mortgagor shall deliver to the Lender receipts evidencing the payment of all such insurance policies and renewals. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the Obligations secured hereby, all right, title and interest of the Mortgagor in and to all insurance policies then in force shall pass to the purchaser or grantee.

(b) The Lender is hereby authorized and empowered to adjust or compromise any loss under any insurance policies on the Mortgaged Property and to collect and receive the proceeds

from any such policy or policies. Each insurance company is hereby authorized and directed to make payment for all such losses directly to the Lender instead of to the Mortgagor and the Lender jointly. After deducting from said insurance proceeds any expenses incurred by it in the collection or handling of such proceeds, the Lender may apply the net proceeds, in its sole discretion, either toward restoring the Improvements or as a credit on any portion of the Obligations secured hereby whether then matured or to mature in the future, or at the option of the Lender, such sums either wholly or in part may be paid over to the Mortgagor to be used to repair the Improvements or to construct new improvements in their place or for any other purpose or object satisfactory to the Lender without affecting the lien of the Mortgage for the full amount secured hereby before such payment took place. The Lender shall not be held responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure. With respect to those parcels of the Mortgaged Property in which Lender has a leasehold interest, Lender's rights under this section shall be subject to the Leasehold Lease with respect to such property.

1.14 Condemnation. If all or any part of the Land or the Improvements shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, the Obligations secured hereby shall at the option of the Lender become immediately due and payable. The Lender shall be entitled to all compensation, awards and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute in its own or the Mortgagor's name any action or proceeding relating to any condemnation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Lender, which, after deducting therefrom all its expenses, including attorney's fees, may release any moneys so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the payment of the Obligations secured hereby, and any balance of such moneys then remaining shall be paid to the Mortgagor. The Mortgagor agrees to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require. With respect to those parcels of the Mortgaged Property in which Lender has a leasehold interest, Lender's rights under this section shall be subject to the Leasehold Lease with respect to such property.

1.15 Care of the Property; Inspection.

(a) The Mortgagor will preserve and maintain the Mortgaged Property in good condition and repair and will not commit or suffer any waste and will not do or suffer to be done anything which will increase the risk of fire or other hazard to the Mortgaged Property or any part thereof or which might invalidate any insurance carried on the Mortgaged Property.

(b) Except as otherwise provided herein, no buildings, fixtures, personal property or other part of the Mortgaged Property shall be removed, demolished or substantially altered without the prior written consent of the Lender. The Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage, furniture, furnishings, equipment, appliances, machinery, fixtures or appurtenances which are subject to the lien hereof and which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, not exceeding in

value at the time of disposition thereof Twenty-Five Thousand Dollars (\$25,000.00) in any one year, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, appliances, machinery, fixtures or appurtenances not necessarily of the same character but of at least equal value to the Mortgagor and costing not less than the amount realized from the property sold or otherwise disposed of, and such replacement or substitute property shall forthwith become, without further action, subject to the lien of this Mortgage.

(c) If the Mortgaged Property or any part thereof is damaged by fire or any other cause, the Mortgagor will give immediate written notice of the same to the Lender.

(d) If all or any part of the Mortgaged Property shall be damaged by fire or other casualty, the Mortgagor will promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether insurance proceeds exist, are made available or are sufficient. If any part of the Mortgaged Property shall be physically damaged through condemnation, the Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to the Lender.

1.16 Estoppel Affidavits. Within ten (10) days after written request from the Lender, the Mortgagor shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of and interest on the Notes and stating whether or not any offsets or defenses exist against such principal and interest, specifying the nature of the same.

1.17 Environmental Matters.

(a) The Mortgagor represents and warrants that the Mortgagor and the tenants of the Mortgaged Property will fully comply with all applicable federal, state or local laws, ordinances and regulations governing or pertaining to the use, generation, manufacture, release, storage or disposal of hazardous, toxic or dangerous waste, substances or materials (herein collectively called "Hazardous Substances") defined as such in or for purposes of CERCLA and all other applicable federal, state or local laws, ordinances and regulations. The Mortgagor will adequately secure, protect and supervise the Mortgaged Property to prevent unregulated, unpermitted or illegal generation, manufacture, release, storage or disposal of any Hazardous Substance.

(b) The Mortgagor further agrees to indemnify the Lender from loss (including, without limitation, attorneys' fees) arising directly or indirectly by reason of the violation, whether past, present or future, of the foregoing warranties, representations and agreements or arising from the presence, existence, use, generation, manufacture, release, storage or disposal of any Hazardous Substance on the Mortgaged Property.

(c) Subject to Section 3.2 of the Environmental and Hazardous Substance Indemnity Agreement, the Lender shall have the right, without prior notice, to conduct an inspection of the Mortgaged Property for Hazardous Substances, including, without limitation, asbestos, at any time during the term of the Loans and in sufficient detail to permit the Lender to determine whether Hazardous Substances are present, in use or have been disposed of on the Mortgaged Property. The Mortgagor will pay or reimburse the Lender for all reasonable expenses incurred in connection with

any environmental inspection of the Mortgaged Property and any such expenses will be additional Obligations of the Mortgagor to the Lender secured by this Mortgage, will bear interest as specified in the Notes and will be payable on demand. The Lender is hereby empowered to enter and to authorize others to enter upon the Land or Improvements for the purpose of performing an environmental inspection, without thereby becoming liable to the Mortgagor or any party in possession holding under the Mortgagor.

1.18 Covenants as to Leasehold Leases.

(a) The Mortgagor will at all times fully perform and comply with all agreements, covenants, terms, and conditions imposed on or assumed by the Mortgagor as lessee under the Leasehold Leases, and if the Mortgagor shall fail to do so, the Lender may without notice to Mortgagor, but shall not be obligated to, take any action reasonably necessary to prevent or to cure any default by the Mortgagor in the performance of or compliance with any of its covenants or obligations under the Leasehold Leases. On receipt by the Lender from a lessor under a Leasehold Lease of any written notice of default by the lessee thereunder, the Lender may rely thereon and take any action as aforesaid to cure such default even though the existence of such default or the nature thereof is questioned or denied by the Mortgagor or by any party on behalf of it. The Mortgagor hereby expressly grants to the Lender, and agrees that the Lender shall have the absolute and immediate right to enter in and on the Mortgaged Property or any part thereof, without becoming a mortgagee-in-possession, to such extent and as often as the Lender, in its reasonable discretion, deems necessary or desirable in order to prevent or to cure any such default by the Mortgagor; provided, however, that the Lender shall use reasonable care upon entering and in taking action hereunder to not unreasonably interfere with the business operations of Mortgagor conducted upon or about the Mortgaged Property. The Lender may pay and expend such sums of money as the Lender in its reasonable discretion deems necessary for any such purpose, and the Mortgagor hereby agrees to pay the Lender, promptly upon written demand, all such sums paid and expended by the Lender.

(b) The Mortgagor will not provide notice to not extend the term of the Leasehold Leases, fail to exercise an option to extend the term thereof or otherwise surrender its leasehold estate in the Leasehold Leases and interest hereinabove described or terminate or cancel the Leasehold Leases and will not, without the express written consent of the Lender, which shall not be unreasonably withheld or delayed, modify, change, supplement, alter, or amend the Leasehold Leases either orally or in writing, and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Leasehold Leases (each, a "Lease Modification") without the prior written consent thereto by the Lender shall be void and of no force and effect; provided, however, that the Lender's failure to consent to a Lease Modification shall not affect same unless and to the extent such Lease Modification materially prejudices the Lender's rights hereunder or the Lender's ability to enforce this Agreement.

(c) The Mortgagor agrees to cooperate with the Lender in obtaining any agreement with the lessor of a Leasehold Lease reasonably necessary to protect the interest of the Lender in the Leasehold Lease or in providing any required Notice to said lessor.

(d) The Mortgagor absolutely and unconditionally authorizes the Lender, at the Lender's election, upon the occurrence of any Event of Default, to transfer all right title and interest of the Mortgagor in and to any leasehold interest in the Mortgaged Property, including, without limitation, any interest in a Leasehold Lease to any third party who acquires the Mortgaged Property or any part thereof, upon such terms and conditions as the Lender may elect in its sole discretion. In furtherance of this authorization, the Mortgagor irrevocably appoints the Lender as its Attorney-in-Fact to affect such transfer or assignment of a Leasehold Lease.

ARTICLE II

EVENTS OF DEFAULT AND REMEDIES

2.1 Events of Default. The following shall be "Events of Default" hereunder, and the term "Event of Default" as used herein shall mean any one or more of the following events:

(a) The failure by the Mortgagor to pay when due principal, interest or any other amount due under the Revolving Note, the Term Note or other Loan Documents, which failure is not cured by any applicable cure period;

(b) Upon the occurrence of a default under Section 1.5 hereof or upon the failure of the Mortgagor to insure the Mortgaged Property as required by the Loan Documents or any Lease applicable to a Mortgaged Property;

(c) The failure by the Mortgagor to perform any other covenant, condition or agreement contained in this Mortgage and the continuation of such failure for a period of fifteen (15) days;

(d) The termination of a Leasehold Lease; or

(e) The occurrence of any other event which under the Loan Agreement constitutes an "Event of Default" thereunder.

2.2 Remedies. Upon the occurrence of an Event of Default, the Lender may, at its continuing option, and without notice to or demand upon the Mortgagor

(a) Declare all or any part of the Obligations secured by this Mortgage and the interest accrued thereon to be due and payable immediately;

(b) Enter onto and take possession of the Mortgaged Property and manage and operate the same, all as more particularly provided hereafter;

(c) Collect the Rents as more particularly provided hereinafter;

(d) Cause all or any part of the Mortgaged Property to be sold under the power of sale granted by this Mortgage in any manner permitted by applicable law as more particularly provided hereinafter; or

(e) Exercise any other right or remedy granted hereunder or under any of the other Loan Documents or available at law or in equity.

2.3 Right of Lender to Enter and Take Possession.

(a) If an Event of Default shall have occurred, upon demand of the Lender the Mortgagor shall forthwith surrender to the Lender the actual possession of the Mortgaged Property, and if and to the extent permitted by law, the Lender may enter and take possession of all or any part of the Mortgaged Property and may exclude the Mortgagor and its agents and employees wholly therefrom.

(b) Upon every such entering upon or taking of possession, the Lender may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof and, from time to time (i) make all necessary and proper maintenance, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property, (ii) insure or keep the Mortgaged Property insured, (iii) manage and operate the Mortgaged Property and exercise all the rights and powers of the Mortgagor in its name or otherwise with respect to the same and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted the Lender, all as the Lender from time to time may determine to be to its best advantage, and the Lender may collect and receive all the Rents of such Mortgaged Property including those past due as well as those accruing thereafter.

(c) The Lender may deduct from such Rents (i) all expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), (ii) the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements and purchases and acquisitions, (iii) the cost of such insurance, (iv) such taxes, assessments and other charges prior to the lien of this Mortgage as the Lender may determine to pay, (v) other proper charges upon the Mortgaged Property or any part thereof, and (vi) the reasonable compensation, expenses and disbursements of the attorneys and agent of the Lender. The Lender shall apply the remainder of the moneys so received to the payment of Obligations secured by this Mortgage, whether due or to become due, in whatever order and proportions the Lender elects in its absolute discretion and without regard to the adequacy of its security.

(d) Whenever all such Events of Default have been cured and satisfied, the Lender may, at its option, surrender possession of the Mortgaged Property to the Mortgagor, its successors or assigns. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur.

2.4 Collection of Rents. If an Event of Default shall have occurred, the Lender may collect the Rents itself or by an agent or receiver. No action taken by the Lender to collect any Rents will make the Lender a "mortgagee-in-possession" of the Mortgaged Property, and possession by a court-appointed receiver will not be considered possession by the Lender. All Rents collected by the Lender or a receiver will be applied first to pay all expenses of collection, and then to the payment of all costs of operation and management of the Mortgaged Property, and then to the payment of Obligations secured by this Mortgage in whatever order and proportions the Lender elects in its absolute discretion and without regard to the adequacy of its security.

2.5 Power of Sale. If an Event of Default shall have occurred, the Lender may sell the Mortgaged Property at public outcry to the highest bidder for cash in front of the courthouse door in the county where the Land is located, either in person or by auctioneer, after having first given notice of the time, place and terms of sale, together with a description of the property to be sold, by publication once a week for three (3) successive weeks prior to said sale in some newspaper published in said county. Upon payment of the purchase money, the Lender or any person conducting the sale for the Lender is authorized to execute to the purchaser at said sale a deed or if the Mortgaged Property is a leasehold interest, an assignment of the Leasehold Lease and other conveyance instruments, to the property so purchased. The Lender may bid at said sale and purchase said property or any part thereof if the highest bidder therefor. At any foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner the Lender may elect in its sole discretion.

2.6 Application of Sale Proceeds. The proceeds of any sale under this Mortgage will be applied in the following manner:

First, to the payment of the costs and expenses of the sale, including but not limited to the Lender's fees, legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Lender, together with interest at the rate provided under the Notes on all advances made by the Lender.

Second, to the payment of all sums expended by the Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the rate provided herein.

Third, to the payment of the Obligations secured by this Mortgage, whether due or to become due, in whatever order and proportions the Lender elects in its absolute discretion and without regard to the adequacy of its security.

Fourth, to the remainder, if any, to the person or persons appearing of record to have an interest in the property sold.

2.7 Lender's Option on Foreclosure. At the option of the Lender, this Mortgage may be foreclosed as provided by law or in equity, in either event a reasonable attorneys' fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. The Lender may, at its

option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and in the event the Lender exercises its option to foreclose the Mortgage in equity, the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights will not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Lender to collect the sums secured hereby.

2.8 Receiver.

(a) If an Event of Default shall have occurred, the Lender, upon application to a court of competent jurisdiction, shall be entitled, without notice and without regard to the adequacy of any security for the Obligations or the solvency of any party bound for its payment, to the appointment of a receiver to take possession of and to operate the Mortgaged Property and to collect the Rents.

(b) The Mortgagor will pay to the Lender upon demand all expenses, including receiver's fees, attorneys' fees, costs and agent's compensation, incurred pursuant to the provisions of this paragraph. All such expenses will be additional Obligations secured by this Mortgage, will bear interest as specified in the Notes and will be payable upon demand.

2.9 Waiver of Manner of Sale. The Mortgagor waives all rights to direct the order or manner in which any of the Mortgaged Property will be sold in the event of any sale under this Mortgage, and also any right to have any of the Mortgaged Property marshaled upon any sale. The Lender may in its discretion sell any real and personal property together or in parts, in one or more sales, and in any sequence the Lender selects.

2.10 Suits to Protect the Mortgaged Property. The Lender shall have power (a) to institute and maintain such suits and proceedings as it may deem expedient to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property and in the Rents and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, such enactment, rule or order would impair the security hereunder or be prejudicial to the interest of the Lender.

ARTICLE III

GENERAL PROVISIONS

3.1 Waiver of Exemption. The Mortgagor waives all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and the Mortgagor waives the benefit of any statute regulating the obtaining of a deficiency judgment or requiring that the value of the premises be set off against any part of the Obligations secured hereby.

3.2 Delay or Omission No Waiver. No delay or omission of the Lender or of any holder of the Notes to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every right, power and remedy given by this Mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

3.3 No Waiver of One Default to Affect Another.

(a) No waiver of any Event of Default hereunder shall extend to or shall affect any subsequent or any other Event of Default or shall impair any rights, powers or remedies consequent thereto.

(b) If the Lender (i) grants forbearance or an extension of time for the payment of any sums secured hereby, (ii) takes other or additional security for the payment thereof, (iii) waives or does not exercise any right granted herein or in the other Loan Documents, (iv) releases any part of the Mortgaged Property from the lien of this Mortgage or otherwise changes any of the terms of the Notes or this Mortgage, (v) consents to the filing of any map, plat or replat of the Land, (vi) consents to the granting of any easement on the Land, (vii) makes or consents to any agreement subordinating the lien hereof, or (viii) enters into any agreement with the Mortgagor or any partner or stockholder of the Mortgagor or any one or more of them changing any term of the Loan Documents or releasing any partner or stockholder of the Mortgagor or any security or respecting any matter whatsoever, then any such act or omission shall not release, discharge, modify, change or affect the original liability under the Notes, this Mortgage or otherwise of the Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted upon an Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, the Lender, without notice to any party is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the Obligations secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

3.4 Discontinuance of Proceedings; Position of Parties Restored. In case the Lender shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, then and in every such case the Mortgagor and the Lender shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding has been taken.

3.5 Remedies Cumulative. No right, power or remedy conferred upon or reserved to the Lender by this Mortgage is intended to be exclusive of any right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or now or hereafter existing at law or in equity or

by statute. The Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

3.6 Notices. All notices given under this Mortgage must be in writing and must be served as provided for in the Loan Agreement.

3.7 Inspection.

(a) The Lender and its respective agents and representatives will have the right at any reasonable time to enter the Mortgaged Property and inspect all parts thereof. The Lender will also have the right to examine, copy and audit the books, records, accounting data and other documents of the Mortgagor relating to the Mortgaged Property.

(b) The Lender is under no duty to supervise or inspect the Mortgaged Property or the operation of the Mortgaged Property or to examine any books and records. Any inspection or examination by the Lender is for the sole purpose of protecting the Lender's security and preserving the Lender's rights under this Mortgage. No default of the Mortgagor will be waived by any inspection by the Lender.

3.8 Status and Authority. If the Mortgagor is a corporation, limited liability company or partnership:

(a) The Mortgagor warrants that (i) it is duly organized and validly existing, in good standing under the laws of the State of Alabama, (ii) it has the power, authority and legal right to carry on the business now being conducted by it and to engage in the transactions contemplated by the Loan Documents and (iii) the execution and delivery of the Loan Documents and the performance and observance of the provisions thereof have been duly authorized by all necessary action.

(b) The Mortgagor agrees that so long as any of its obligations hereunder or under the Loan Documents remain unsatisfied, it will not dissolve or liquidate (in whole or in part) its existence and that it will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another corporation or partnership without the prior written consent of the Lender.

3.9 Successors. The terms of this Mortgage will bind and benefit the heirs, legal representatives, successors and assigns of the Mortgagor and the Lender.

3.10 Amendments. This Mortgage may not be modified or amended except by a written agreement signed by the parties. Mortgagor agrees that any modification entered into by the parties, including, without limitation, any changes in the interest rate, payment schedule, maturity date or increases in the amount outstanding, shall not affect or impair the priority of the lien of this Mortgage.

3.11 Applicable Law. This Mortgage shall be governed by the laws of the State of Alabama.

3.12 Counterparts. This Mortgage may be executed in counterparts, but all counterparts shall constitute but one and the same document.

3.13 Entire Agreement. This Mortgage and the other Loan Documents constitute the entire agreement between the parties and supersede all prior agreements and understandings including, without limitation, any loan commitment letter from the Lender to the Mortgagor.

3.14 Severability. The provisions of this Mortgage are severable, and the invalidity or unenforceability of any one or more provisions of this Mortgage will in no way affect any other provision.

3.15 Interpretation. The term "Mortgagor" includes both the original Mortgagor and any subsequent owner or owners of any of the Mortgaged Property, and the term "Lender" includes the original Lender, and also any future owner or holder, including pledgees, assignees and participants, of the Notes or any interest therein. Whenever the context requires, all words used in the singular will be construed to have been used in the plural, and vice versa, and each gender will include any other gender. The captions of the paragraphs of this Mortgage are for convenience only and do not define or limit any terms or provisions.

Signature Page to Follow

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage, Assignment of Rents, Security Agreement and Fixture Filing to be executed by its duly authorized officer on the day and year first above written.

MORTGAGOR:

HIGGINBOTHAM OIL COMPANY, INC.

By: [Signature]
Its: President

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Burnie A. Higginbotham, whose name as President of HIGGINBOTHAM OIL COMPANY, INC. an Alabama 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 the said instrument, he/she 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, this 9th day of September, 2008.


[NOTARIAL SEAL]

[Signature]
Notary Public

Print Name: Wanda Hollis Williams

My Commission Expires: 4-14-10

Exhibit A
(Fee Land)


20080912000363480 21/26 \$8861.00
Shelby Cnty Judge of Probate, AL
09/12/2008 02:14:18PM FILED/CERT

PARCEL I:

A parcel of land situated in the Northeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 2, Township 21 South, Range 6 West, Tuscaloosa County, Alabama, said parcel being all of Lot Numbers 3 through 16 and Lots 23 through 33, all in Block 2, according to the Map of Caffee Junction, as recorded in Plat Book 3, page 67 in the Office of the Judge of Probate, Tuscaloosa County, Alabama, along with portions of vacated streets and alleys all being more particularly described as follows:

Commence at a 3" capped pipe marking the Northwest corner of said $\frac{1}{4}$ - $\frac{1}{4}$ section and run East along the North line thereof for a distance of 119.80 feet to a found 1" rebar; thence leaving said North line deflect right $88^{\circ}45'00''$ and run in a Southerly direction for a distance of 30.00 feet to a set $\frac{5}{8}$ " capped rebar stamped CA-560LS and the Point of Beginning of the property herein described; thence deflect left $88^{\circ}45'00''$ and run in an Easterly direction for a distance of 550.00 feet to a set $\frac{5}{8}$ " capped rebar stamped CA-560LS; thence turn an interior angle to the left of $91^{\circ}15'00''$ and run in a Southerly direction for a distance of 135.00 feet to a set nail; thence turn an interior angle to the left of $315^{\circ}24'53''$ and run in a Northeasterly direction for a distance of 12.00 feet to a set nail; thence turn an interior angle to the left of $95^{\circ}15'00''$ and run in a Southeasterly direction for a distance of 68.24 feet to a set $\frac{5}{8}$ " capped rebar stamped CA-560LS, said point being on the Northwestern-most right of way of U.S. Highway 11, said point also being on a curve turning to the left, said curve having a radius of 2291.83 feet, a central angle of $00^{\circ}07'37''$, a chord length of 5.07 feet, and an interior angle to the left to chord of $91^{\circ}05'00''$; thence run in a Southwesterly direction along the arc of said curve and along said right of way for a distance of 5.07 feet; thence turn an exterior angle to the right from the chord of said curve of $178^{\circ}01'39''$ and run in a Southwesterly direction along said right of way for a distance of 194.50 feet to a set nail; thence leaving said right of way turn an interior angle to the left of $97^{\circ}45'46''$ and run in a Northwesterly direction for a distance of 108.39 feet to a set cross on a concrete sidewalk; thence turn an interior angle to the left of $207^{\circ}16'00''$ and run in a Westerly direction for a distance of 397.69 feet to a set nail in a paved drive; thence turn an interior angle to the left of $91^{\circ}15'00''$ and run in a Northerly direction for a distance of 282.07 feet to the Point of Beginning.

Less and except any part of subject property lying within a road right of way.

PARCEL II:

Part of the NE $\frac{1}{4}$ of Section 3, Township 24 North, Range 12 East, more particularly described as follows:

Beginning at the Northeast corner of Lot 16 of Fancher Subdivision, as recorded in Map Book 4, page 31, in the Probate Office of Shelby County, Alabama; and run thence Northerly along the West line of Hick's Street a distance of 320.31 feet to a point on the intersection point of said Hick's Street and Alabama Highway No. 25; thence turn $82^{\circ}46'$ left and run Northwesterly along

the South right of way line of said Highway #25 a distance of 150.0 feet to a point; thence turn 97°14' left and run Southerly a distance of 327.31 feet to the Northwest corner of said Lot 16 of said Fancher Subdivision; thence turn 82°46' left and run Easterly along the North line of said Lot 16 a distance of 150.0 feet to the point of beginning.

Situated in Shelby County, Alabama.

PARCEL III:

A parcel of land situated in the Northwest ¼ of the Southeast ¼ of Section 26, Township 22 North, Range 14 East, Chilton County, Alabama and being more particularly described as follows:

Commence at the Southeast corner of the Northwest ¼ of the Southeast ¼ of said Section 26 and run in a Westerly direction along the South line thereof for a distance of 502.20 feet to a point on the Eastern most right of way line of U.S. Highway 31 (120' right of way); thence turn an interior angle to the left of 120°12'20" and run in a Northwesterly direction along said right of way line for a distance of 1047.57 feet to the Point of Beginning; thence continue along the last described course and along said right of way line for a distance of 248.90 feet; thence leaving said right of way line turn an interior angle to the left of 66°57'00" and run in a Northeasterly direction for a distance of 166.00 feet; thence turn an interior angle to the left of 113°03'03" and run in a Southeasterly direction for a distance of 183.90 feet; thence turn an interior angle of 89°59'57" and run in a Southwesterly direction for a distance of 152.75 feet to the Point of Beginning.

LESS AND EXCEPT that portion lying on the north property line and reflected as "Area of Deed Conflict" as reflected on the survey of Michael R. Bridges of Gonzalez-Strength & Associates, Inc. dated 9/2/2008.

PARCEL IV:

Commence at the SE corner of the SE 1/4 of Section 19, Township 20 South, Range 5 West, Tuscaloosa County, Alabama; thence run North 2°45' West, along the East line of said 1/4 - 1/4 section a distance of 909.70 feet; thence 94°52' left and travel 340.0 feet to the Point of Beginning of said parcel of land; thence 94°52' right and travel 94.13 feet to a point on the Southerly right of way of U.S. Highway No. 11; thence 76°25'30" left, and run along said right of way a distance of 171.84 feet; thence 10°36'15" left and run 66.10 feet along said right of way to a concrete monument and beginning of denied access of I-59; thence 39°06'45" left and run along I-59 right of way a distance of 407.71 feet; thence 16°05'30" left and run a distance of 16.49 feet; thence 101°58' left and run a distance of 292.10 feet; thence 115°48' left and run a distance of 150.45 feet; thence 69°24' right and run a distance of 187.40 feet; thence 69°24' left and run a distance of 15.0 feet; thence 85°08' right and run a distance of 134.4 feet to the point of beginning.

Less and except any portion of subject property lying within a road right of way.

SOURCE OF TITLE: Deed Book 834, page 45

PARCEL VI:

Part of the SE 1/4 of the SW 1/4 of Section 13, and the NE 1/4 of the NW 1/4 of Section 24, Township 19 South, Range 3 West, Jefferson County, Alabama, and being more particularly described as follows:

Commence at the SE corner of the SE 1/4 of the SW 1/4 of Section 13; thence West along the South line of said section, 658.33 feet; thence 90°00'00" right, 25.49 feet to the point of beginning; thence 114°59'31" left, 197.70 feet to the Easterly right of way of a proposed road; thence 86°59'17" right along said right of way 165.82 feet to a curve to the right, said curve having a central angle of 91°14'08" and a radius of 50.00 feet; thence along the arc of said curve and right of way, 79.62 feet to the Southerly right of way of Alabama Highway 150 and a curve to the right, said curve having a central angle of 01°46'34" and a radius of 3,759.72 feet; thence along the arc of said curve and right of way 116.55 feet; thence tangent to said curve and along said right of way 41.50 feet; thence 90°00'00" right leaving said right of way 220.00 feet to the point of beginning.

Less and except any portion of subject property lying within a road right of way.

PARCEL VIII:

A parcel of land situated in the Northeast 1/4 of Section 36, Township 19 South, Range 3 West, Shelby County, Alabama, being more particularly as follows:


Begin at the intersection of the Northernmost right of way line of Valleydale Road (80' right of way) and the Westernmost right of way line of Old Montgomery Highway (100' right of way) and run in a Southwesterly direction along said Northernmost right of way for a distance of 342.64 feet; thence leaving said right of way, turn an interior angle of 61°48'21" to the left and run in a Northerly direction for a distance of 527.97 feet to a point on the Eastern boundary line of the Northeast 1/4 of the Northeast 1/4 of said section; thence turn an interior angle of 89°29'00" to the left and run in an Easterly direction along said boundary for a distance of 101.62 feet to a point on the Westernmost right of way line of Old Montgomery Highway; thence leaving said boundary, turn an interior angle of 127°20'06" to the left and run in a Southeasterly direction along said right of way for a distance of 327.65 feet; thence turn an interior angle of 145°25'00" to the left and run in a Southerly direction along said right of way for a distance of 102.95 feet to the Point of Beginning.

Less and except any portion of subject property lying within a road right of way.

PARCEL IX:

Lot No. 1, according to Chesser Survey a Commercial Subdivision, as recorded in Map Book 10, page 1, in the Probate Office of Shelby County, Alabama.

Exhibit B
Leasehold Land


20080912000363480 24/26 \$8861.00
Shelby Cnty Judge of Probate, AL
09/12/2008 02:14:18PM FILED/CERT

PARCEL V:

A parcel of land situated in the Southeast $\frac{1}{4}$ of Section 31, Township 19 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of said Southeast $\frac{1}{4}$ and run along the South line of said $\frac{1}{4}$ for a distance of 1826.71 feet; thence leaving said South line turn an exterior angle to the right of $57^{\circ}00'07''$ and run in a Northwesterly direction for a distance of 1246.66 feet to the Point of Beginning, said point also being a set capped rebar stamped GSA CA-560-LS; thence turn an exterior angle to the right of $179^{\circ}51'10''$ and run in a Northwesterly direction for a distance of 373.65 feet to a found $\frac{5}{8}''$ rebar, said point also being on the Southeasterly right of way line of Alabama State Highway 119(200' ROW); thence turn an interior angle to the left of $88^{\circ}42'48''$ and run in a Northeasterly direction along said Southeasterly right of way line for a distance of 161.52 feet to a found $\frac{5}{8}''$ rebar; thence leaving said Southeasterly right of way line turn an interior angle to the left of $89^{\circ}49'44''$ and run in a Southeasterly direction for a distance of 374.06 feet to a found cross; thence turn an interior angle to the left of $89^{\circ}59'00''$ and run in a Southwesterly direction for a distance of 152.01 feet to the Point of Beginning.

PARCEL VII:

Commence at the Northwest corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and run in an Easterly direction along the Northerly line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 474.70 feet to the point of beginning; thence continue along the last stated course a distance of 82.20 feet to a point; thence $117^{\circ}04'$ to the right in a Southwesterly direction a distance of 170.91 feet to a point on the Northeasterly right of way line of U.S. Highway No. 280; thence $89^{\circ}59'$ to the right in a Northwesterly direction along the Northeasterly right of way line of U.S. Highway No. 280 a distance of 73.20 feet to a point; thence $90^{\circ}01'$ to the right in a Northeasterly direction a distance of 133.51 to the point of beginning.

TOGETHER WITH:

Commence at the Northwest corner of the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama and run in an Easterly direction along the Northerly line of said $\frac{1}{4}$ - $\frac{1}{4}$ section a distance of 305.42 feet to the point of beginning; thence continue along the last stated course a distance of 169.28 feet to a point; thence $117^{\circ}04'$ to the right in a Southwesterly direction a distance of 133.51 feet to a point on the Northeasterly right of way line of U.S. Highway 280; said point lying on a curve to the right having a central angle of $1^{\circ}31'58''$ and a radius of 5639.58 feet; thence $89^{\circ}59'$ to the right (angle measured to tangent) and run along the arc of said curve to the right and along said right of way line for a distance of 150.86 feet to a point; thence $88^{\circ}29'02''$ to the right (angle measured to tangent) in a Northwesterly direction a distance of 54.60 feet to the point of beginning.

LESS AND EXCEPT:

That portion of the above described parcel subject to a Joint Use Agreement between Higginbotham Oil company, Inc. and Shoney's, Inc. dba Captain D's Restaurant and more particularly described as follows:

A part of the NW 1/4 of the SE 1/4 of Section 36, Township 18 South, Range 2 West, being more particularly described as follows:


Commence at the Northwest corner of said 1/4 - 1/4 section and run Easterly along the North line of said 1/4 - 1/4 section a distance of 523.21 feet to the point of beginning; thence continue along last stated course a distance of 33.69 feet to a point; thence 117°04' to the right in a Southwesterly direction a distance of 170.91 feet to a point on the Northeasterly right of way line of U.S. Highway No. 280; thence 89°59' to the right in a Northwesterly direction along said right of way line a distance of 30.0 feet to a point; thence 90°01' to the right in a Northeasterly direction a distance of 155.59 feet to the point of beginning.

PARCEL VII HEREINABOVE BEING FURTHER AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A parcel of land situated in the Northwest 1/4 of the Southeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northwest corner of Lot 1, Andress Survey, as recorded in Map Book 18, page 118, in the Office of the Judge of Probate, Shelby County, Alabama, said point also being on the North line of said 1/4 - 1/4; thence run in a Westerly direction along said North line for a distance of 370.42 feet to the Point of Beginning; thence leaving said North line, turn a deflection angle of 63°03'42" to the left and run in a Southwesterly direction for a distance of 154.86 feet to a point on the Northernmost right of way line of U.S. Highway 280 (260' right of way); thence turn an interior angle of 89°37'16" to the left and run in a Northwesterly direction along said right of way for a distance of 43.55 feet to the point of commencement of a non-tangent curve to the left, said curve having a radius of 5639.58 feet, a central angle of 01°32'02", an exterior angle of 180°05'57" to the right to chord for a chord distance of 150.98 feet; thence run along arc of said curve and along said right of way for a distance of 150.99 feet; thence leaving said right of way, turn an interior angle of 90°05'49" to the left from chord of said curve and run in a Northeasterly direction for a distance of 54.85 feet to a point on the North line of said 1/4 - 1/4; thence turn an interior angle of 117°19'10" to the left and run in an Easterly direction along said North line for a distance of 217.79 feet to the Point of Beginning.

Exhibit C
Leasehold Leases


20080912000363480 26/26 \$8861.00
Shelby Cnty Judge of Probate, AL
09/12/2008 02:14:18PM FILED/CERT

Ground Lease between Burnie Higginbotham Sr. and Viola Higginbotham and Higginbotham Oil Company, Inc. dated September 1, 2008 as evidenced by Memorandum of Lease dated as of September 9, 2008.

Ground Lease between Andress Company, Inc. and Higginbotham Oil Company, Inc., dated August 7, 2001, as evidenced by Memorandum of Lease dated as of September 9, 2008

539662.1