

20130801000313420 1/8 \$36.00  
Shelby Cnty Judge of Probate, AL  
08/01/2013 12:36:35 PM FILED/CERT

2013 53957  
Recorded in the Above  
MORTGAGE Book & Page  
07-24-2013 10:02:22 AM  
Source Of Title: DEED 834 / 45  
W. Hardy McCollum - Probate Judge  
Tuscaloosa County, Alabama

***This instrument prepared by:***

Ray D. Gibbons, Esq.  
Gibbons Graham LLC  
100 Corporate Parkway, Suite 125  
Birmingham, Alabama 35242

Tuscaloosa County Source of Title: Deed Book 834, Page 45 (Parcel 3)

**FIRST AMENDMENT TO LEASEHOLD MORTGAGE /  
MORTGAGE AND SECURITY AGREEMENT**

**THIS FIRST AMENDMENT TO LEASEHOLD MORTGAGE / MORTGAGE AND SECURITY AGREEMENT** (the "Mortgage") is made and entered into as of July 12, 2013, among **HIGGINBOTHAM OIL COMPANY, INC.**, an Alabama corporation (successor by merger to Sunny Stores, Inc.), having an address of 555 Castlebridge Lane, Birmingham, Alabama 35243, Attention: Mr. Burnie A. Higginbotham, Jr. ("Higginbotham Oil"), **BURNIE ARNOLD HIGGINBOTHAM** and his wife **VIOLA E. HIGGINBOTHAM**, both individual residents of the State of Alabama, having an address of P.O. Box 1807, Pelham, Alabama 35124 (hereinafter referred to collectively as the "Mortgagors" and each singularly as a "Mortgagor"), and **SERVISFIRST BANK**, an Alabama banking corporation, having an address of 850 Shades Creek Parkway, Suite 200, Birmingham, Alabama 35209, Attention: Mr. Stephen Davis (the "Bank"). Any capitalized term used herein but not defined shall have the meaning ascribed to such term in that certain Credit Agreement dated as of April 9, 2012 among Mortgagors, Higginbotham Enterprises, Inc. and Bank (as amended from time to time, the "Credit Agreement").

**WHEREAS**, Mortgagors executed and delivered in favor of Bank that certain Leasehold Mortgage / Mortgage and Security Agreement, dated as of April 9, 2012, a counterpart of which was recorded (i) in the office of the Judge of Probate of Jefferson County, Alabama in Book LR201213 at Page 4906, (ii) in the office of the Judge of Probate of Shelby County, Alabama as Instrument No. 20120425000142420, and (iii) in the office of the Judge of Probate of Tuscaloosa County, Alabama in Mortgage Book 2012 at Page 24054 (as amended from time to time, the "Mortgage"); and

**WHEREAS**, concurrently herewith, Bank is extending to Higginbotham Oil a new term loan in the principal amount of \$383,975.00 (the "2013 Term Loan A"), as evidenced by that certain Term Note A (2013) of even date herewith, executed and delivered by Higginbotham Oil in favor of Bank in the principal amount of \$383,975.00 (as amended from time to time the "2013 Term Note A"); and

**WHEREAS**, Mortgagors and Bank desire to amend the Mortgage in order to provide that the Obligations secured thereunder shall include the 2013 Term Loan A.

**NOW, THEREFORE**, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Mortgagors and Bank hereby agree that the Mortgage is amended as follows:

1. The Mortgage is hereby amended to provide that (i) the 2013 Term Loan A shall constitute one of the "Loans" under the Mortgage, (ii) the 2013 Term Loan A shall constitute part of the "Obligations" under the Mortgage, and (iii) the 2013 Term Note A shall constitute one of the "Notes" under the Mortgage.


2. To secure the Obligations, each Mortgagor does hereby convey, mortgage and warrant, grant, bargain, sell, assign, transfer, pledge and set over, re-convey, re-mortgage and re-warrant, re-grant, re-bargain, re-sell, re-assign, re-transfer, re-pledge and re-set over to Bank, its successors and assigns, all of such Mortgagor's Interest (as defined in the Mortgage), in and to the Mortgaged Property (as defined in the Mortgage).

3. Mortgage tax is being paid upon the recording of this Amendment in the amount of \$576.00 with respect to the 2013 Term Note A.

4. Except as hereinafter expressly amended, the terms of the Mortgage are hereby ratified and affirmed.

5. In the event of any conflict between the provisions of the Mortgage, as hereby amended, and the provisions of the Credit Agreement, the provisions most favorable to Bank shall control.

\* \* \* \* \*

  
20130801000313420 2/8 \$36.00  
Shelby Cnty Judge of Probate, AL  
08/01/2013 12:36:35 PM FILED/CERT

2013 53958  
Recorded in the Above  
MORTGAGE Book & Page  
07-24-2013 10:02:22 AM



2013 53959

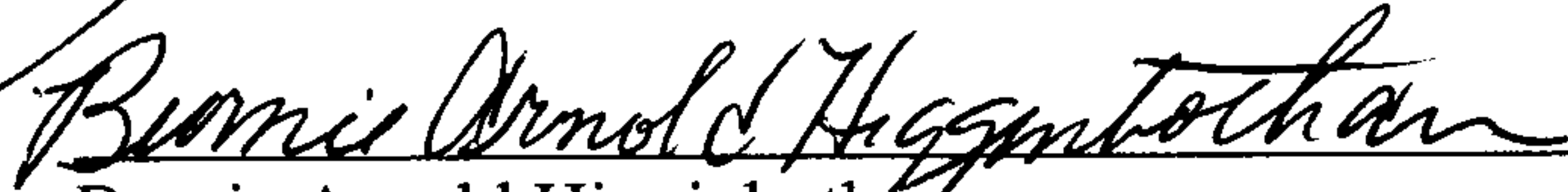
IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first above written.

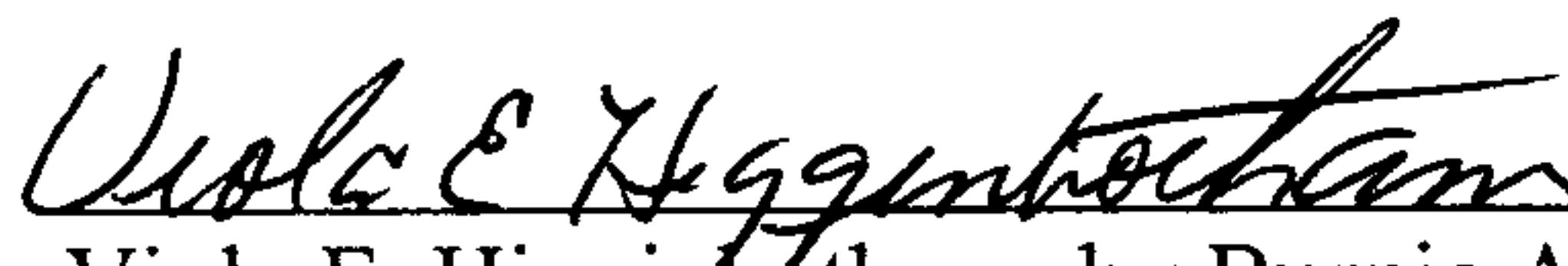
Recorded in the Above  
MORTGAGE Book & Page  
07-24-2013 10:02:22 AM

HIGGINBOTHAM OIL COMPANY, INC.,  
an Alabama corporation

By: 

Burnie A. Higginbotham, Jr., its President

  
Burnie Arnold Higginbotham



Viola E. Higginbotham, by Burnie Arnold  
Higginbotham, her attorney-in-fact

SERVISFIRST BANK,  
an Alabama banking corporation

By: 

Its: SVP

STATE OF ALABAMA  
COUNTY OF Shelby

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Burnie A. Higginbotham, Jr., whose name as President of Higginbotham Oil Company, Inc., an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

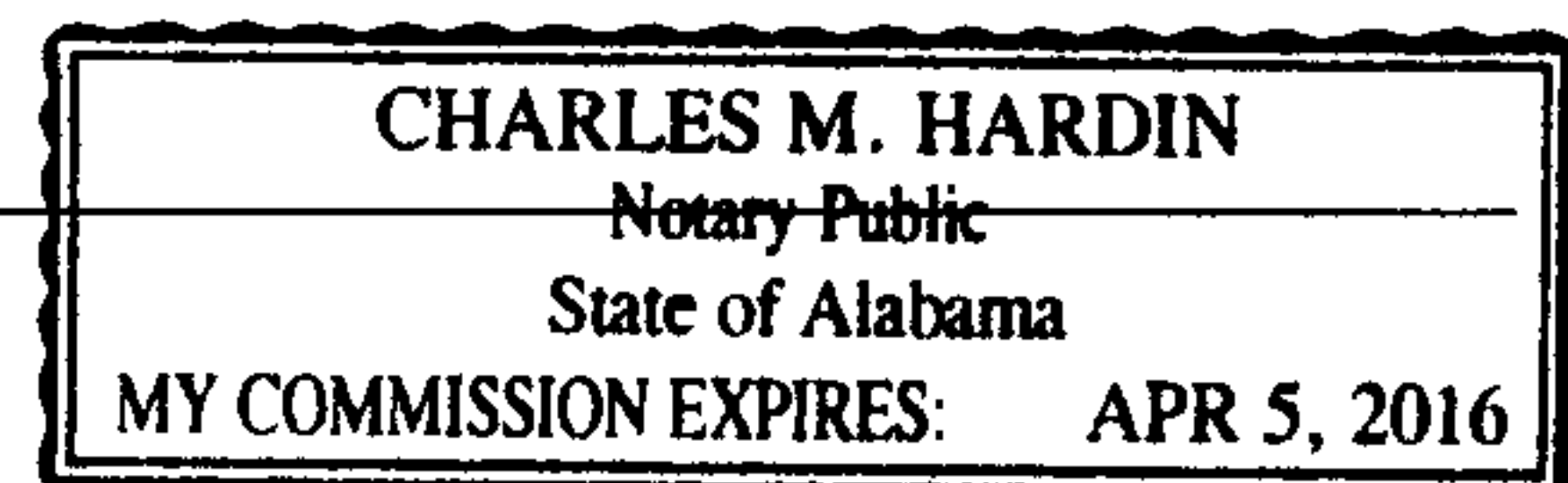
Given under my hand and official seal, this the 12 day of July, 2013.

[SEAL]



Notary Public

My Commission Expires: \_\_\_\_\_

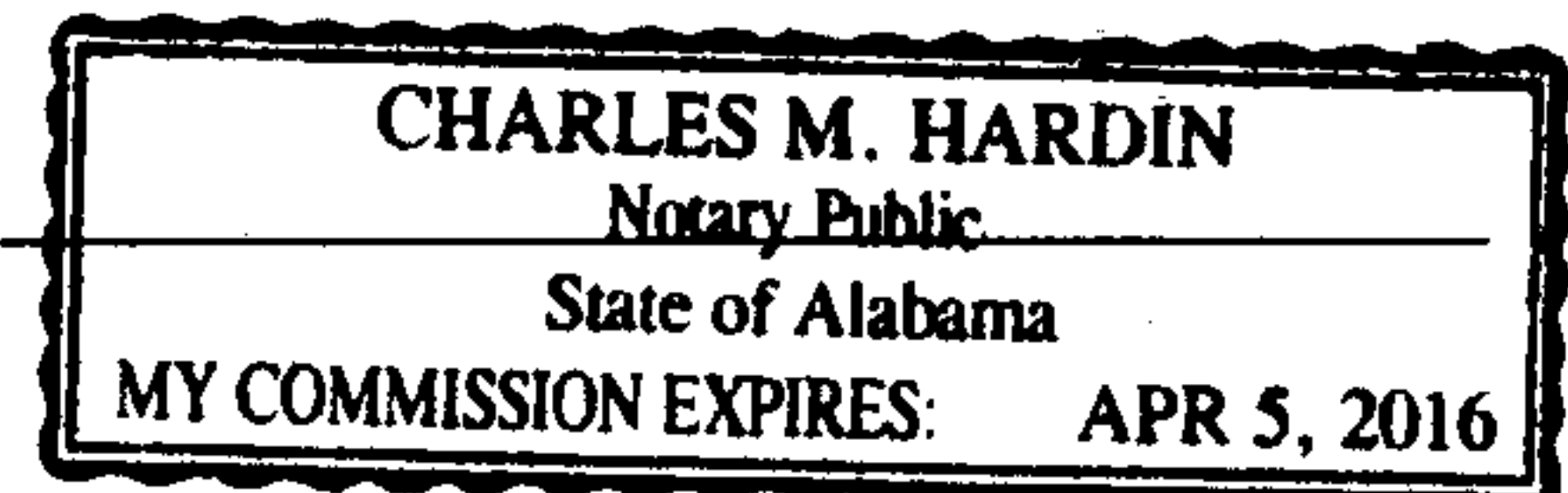


STATE OF ALABAMA  
COUNTY OF Shelby

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Burnie Arnold Higginbotham, whose name 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 said instrument, he executed the same voluntarily.

Given under my hand and official seal, this the 12<sup>th</sup> day of July, 2013.

Charles M. Hardin [SEAL]  
Notary Public  
My Commission Expires: \_\_\_\_\_

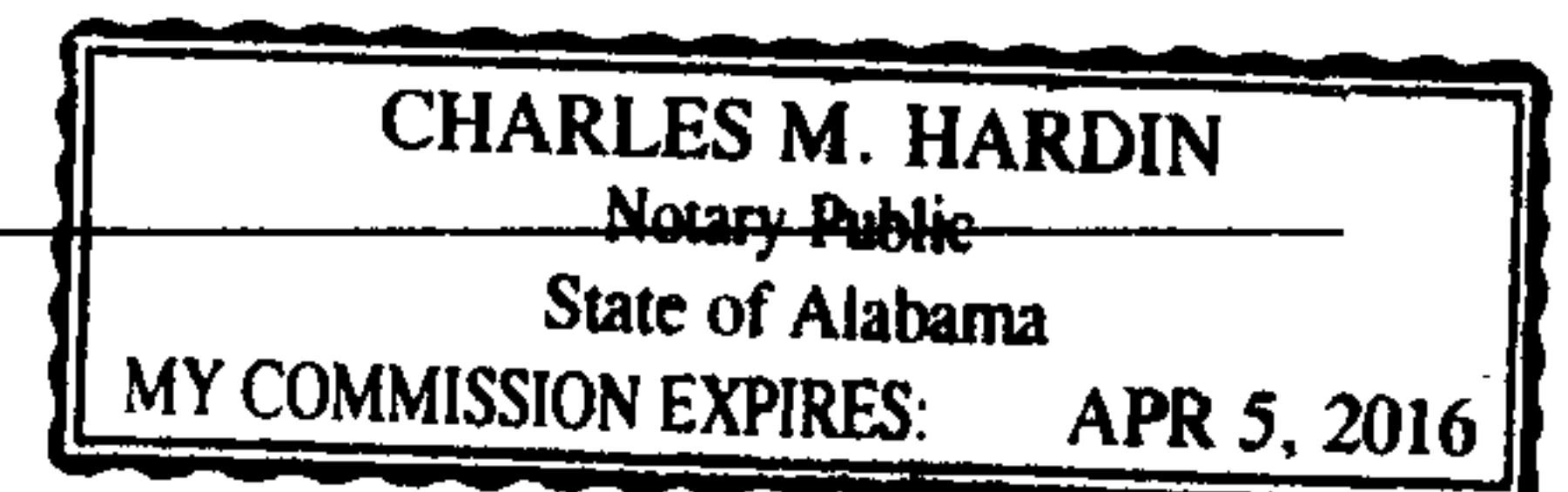


STATE OF ALABAMA  
COUNTY OF Shelby

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Burnie Arnold Higginbotham, in his capacity as attorney-in-fact for Viola E. Higginbotham, whose name 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 said instrument, he, as such attorney-in-fact and with full authority, executed the same voluntarily for and as the act of Viola E. Higginbotham.

Given under my hand and official seal, this the 12<sup>th</sup> day of July, 2013.

Charles M. Hardin [SEAL]  
Notary Public  
My Commission Expires: \_\_\_\_\_

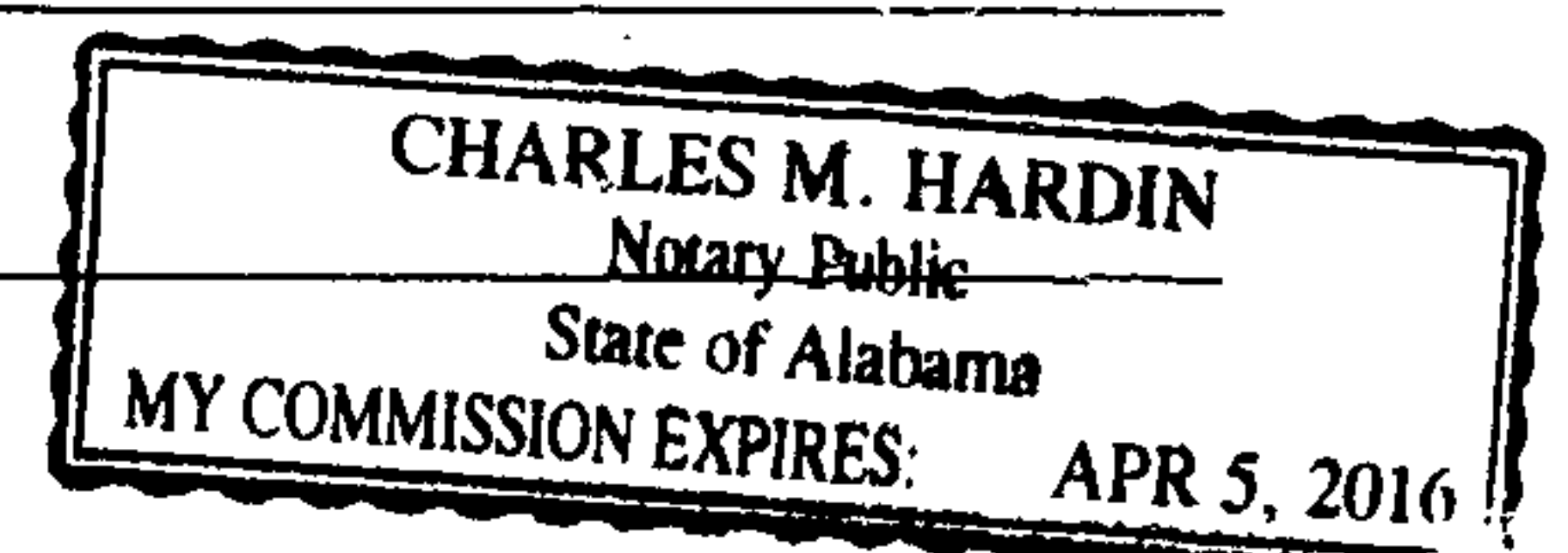


STATE OF ALABAMA  
COUNTY OF Shelby

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Stephen Davis, whose name as Sr. Vice President of ServisFirst Bank, an Alabama banking 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 said instrument, (s)he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this the 12<sup>th</sup> day of July, 2013.

Charles M. Hardin [SEAL]  
Notary Public  
My Commission Expires: \_\_\_\_\_





STATE OF ALABAMA )  
COUNTY OF \_\_\_\_\_)

# AFFIDAVIT

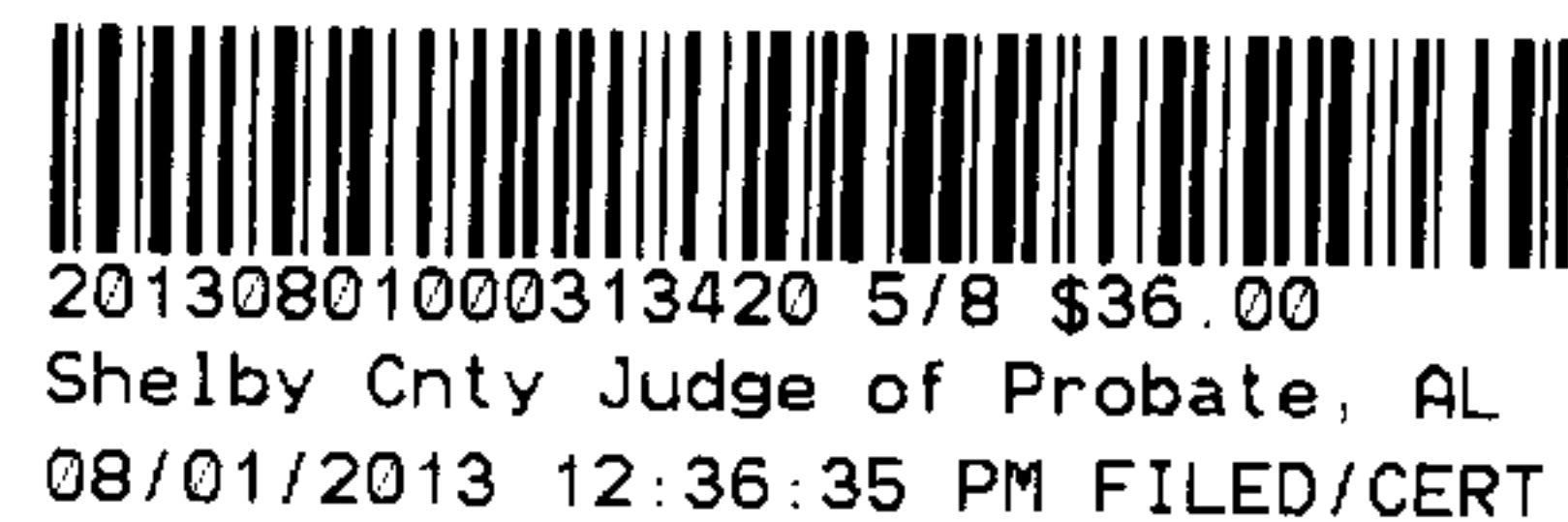
Before me, the undersigned Notary Public in and for said county and in said state, personally appeared (i) Burnie A. Higginbotham, Jr., as President of Higginbotham Oil Company, Inc., an Alabama corporation, (ii) Burnie Arnold Higginbotham, and (iii) Burnie Arnold Higginbotham, in his capacity as attorney-in-fact for Viola E. Higginbotham (collectively, the "Mortgagors" and each singularly a "Mortgagor"), who are known to me, and who being first duly sworn to me, depose and say as follows:

1. That Mortgagors are the mortgagors under that certain First Amendment to Leasehold Mortgage / Mortgage and Security Agreement (the "Mortgage Amendment") among Mortgagors and ServisFirst Bank (the "Bank"), which is to be recorded in the Office of the Judge of Probate of each of Jefferson, Shelby and Tuscaloosa Counties in the State of Alabama. A copy of the form of the Mortgage Amendment is attached hereto.

2. The percentage of value of the properties on a County by County basis is as follows:

<u>County</u>	<u>Percentage</u>
Jefferson	20.0%
Shelby	66.5%
Tuscaloosa	13.5%
Total	100%

2013 53961  
Recorded in the Above  
MORTGAGE Book & Page  
07-24-2013 10:02:22 AM



3. The maximum amount of new principal indebtedness to be secured in connection with the Mortgage Amendment is \$383,975.00, on which amount the Mortgagors are required to pay the applicable privilege and recording tax.

\* \* \* \* \*

4. That the undersigned have executed this Affidavit for the purpose of establishing the amount of the recording tax to be collected for the recordation of the Mortgage Amendment and making a distribution of such tax as provided for under Alabama law.

HIGGINBOTHAM OIL COMPANY, INC.,  
an Alabama corporation

By: [Signature]  
Burnie A. Higginbotham, Jr., its President

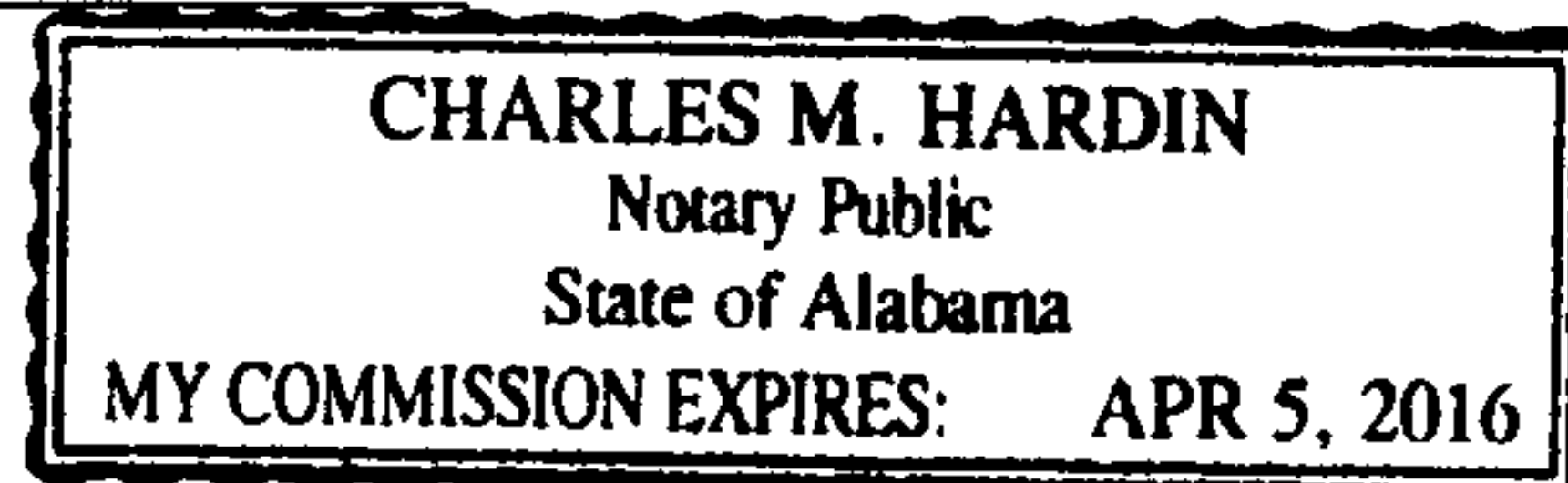
Sworn to and subscribed before me  
this 15 day of July, 2013.

2013 53962  
Recorded in the Above  
MORTGAGE Book & Page  
07-24-2013 10:02:22 AM

Charles M. Hardin  
Notary Public


[NOTORIAL SEAL]

My commission expires: \_\_\_\_\_



[Signature]  
Burnie Arnold Higginbotham

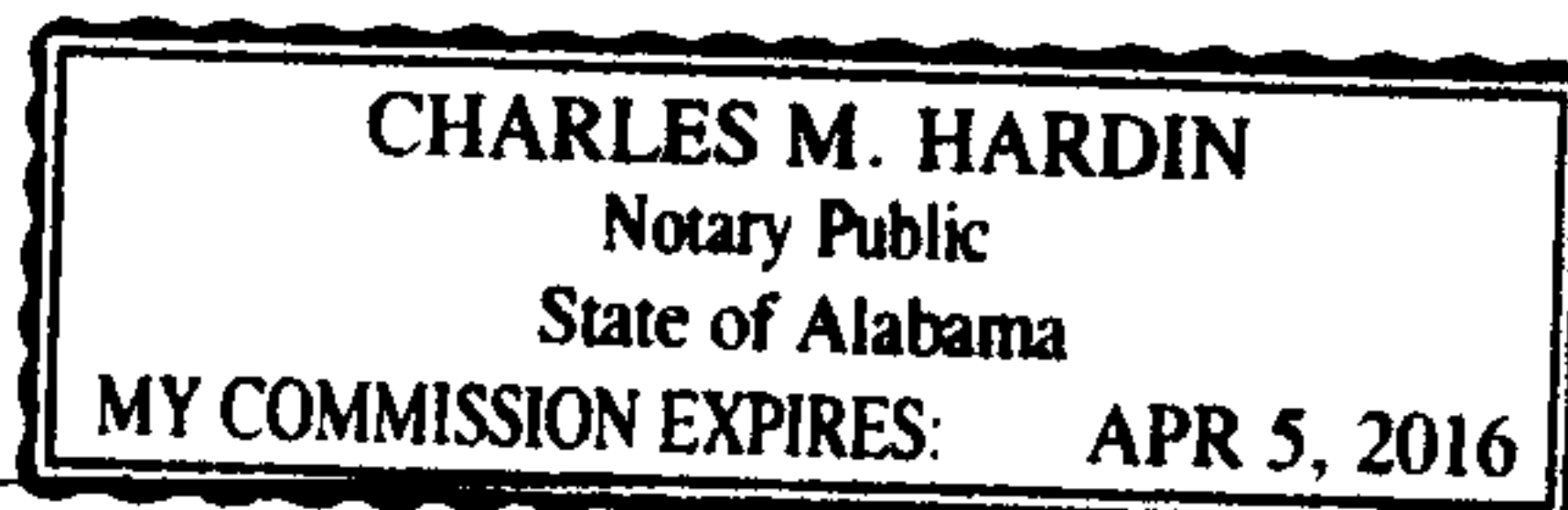
Sworn to and subscribed before me  
this 15 day of July, 2013.

  
20130801000313420 6/8 \$36.00  
Shelby Cnty Judge of Probate, AL  
08/01/2013 12:36:35 PM FILED/CERT

Charles M. Hardin  
Notary Public

[NOTORIAL SEAL]

My commission expires: \_\_\_\_\_



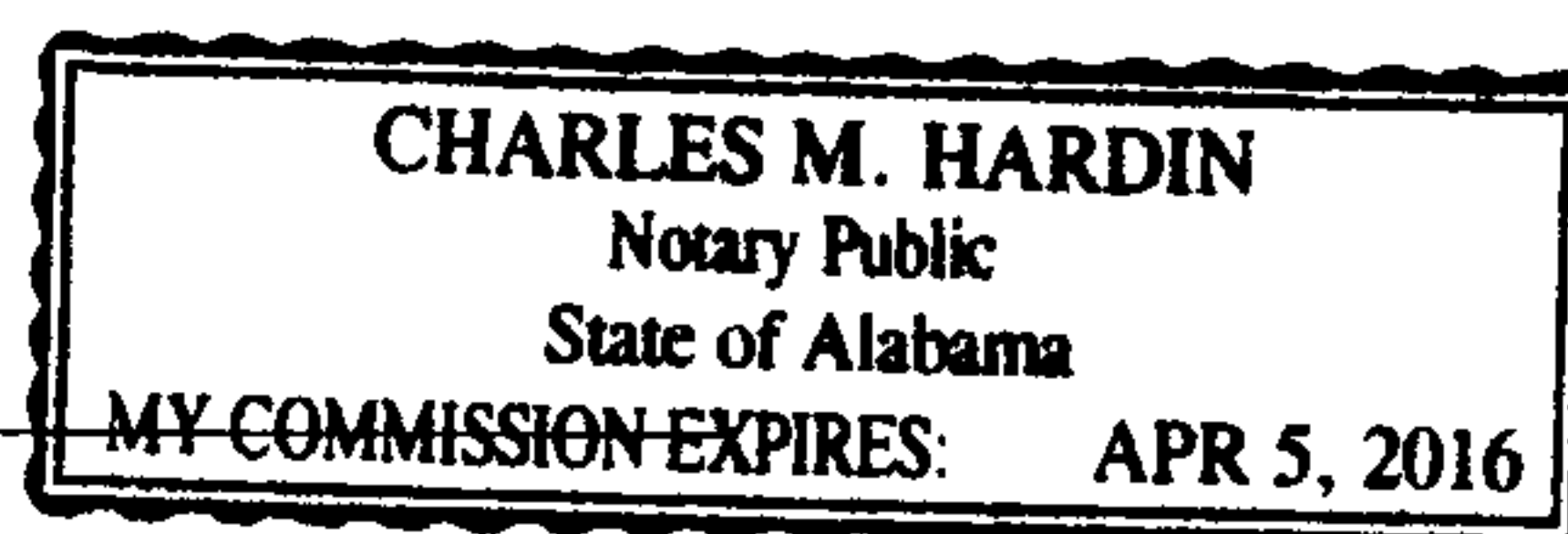
[Signature]  
Viola E. Higginbotham, by Burnie Arnold  
Higginbotham, her attorney-in-fact

Sworn to and subscribed before me  
this 15 day of July, 2013.

Charles M. Hardin  
Notary Public

[NOTORIAL SEAL]

My commission expires: \_\_\_\_\_





**EXHIBIT "A"**

**Legal Description**

(Parcel 1 Intentionally Deleted)

**Parcel 2:**

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 degrees 00 minutes 00 seconds right, 25.49 feet to the point of beginning; thence 114 degrees 59 minutes 31 seconds left, 197.70 feet to the easterly right of way of a proposed road; thence 86 degrees 59 minutes 17 seconds right along said right of way, 165.82 feet to a curve to the right, said curve having a central angle of 91 degrees 14 minutes 08 seconds 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 degrees 46 minutes 34 seconds 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 degrees 00 minutes 00 seconds right leaving said right of way, 220.00 feet to the point of beginning.

**Parcel 3:**

Surface rights only in and to the following:

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 degrees 45 minutes West along the east line of said quarter-quarter Section, a distance of 909.70 feet; thence 94 degrees 52 minutes left and travel 340.0 feet to the point of beginning of said parcel of land; thence 94 degrees 52 minutes right and travel 94.13 feet to a point on the southerly right of way of U.S. Highway No. 11; thence 76 degrees 25 minutes 30 seconds left, and run along said right of way, a distance of 171.84 feet; thence 10 degrees 36 minutes 15 seconds 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 degrees 06 minutes 45 seconds left and run along I-59 right of way, a distance of 407.71 feet; thence 16 degrees 05 minutes 30 seconds left and run a distance of 16.49 feet; thence 101 degrees 58 minutes left and run a distance of 292.10 feet; thence 115 degrees 48 minutes left and run a distance of 150.45 feet; thence 69 degrees 24 minutes right and run a distance of 187.40 feet; thence 69 degrees 24 minutes left and run a distance of 15.0 feet; thence 85 degrees 08 minutes right and run a distance of 134.4 feet to the point of beginning.

(Parcel 4 Intentionally Deleted)

**Parcel 5:**

A parcel of land situated in the southeast quarter of Section 31, Township 19 South, Range 2 West, Huntsville Meridian, Shelby County, Alabama, and being more particularly described as follows:

Commence at the southwest corner of the southeast quarter of said Section 31; thence in an Easterly direction, along and with the south line of Section 31, 1826.71 feet to a point; thence with a deflection of 129 degrees 59 minutes 55 seconds left (a right interior angle of 57 degrees 00 minutes 05 seconds), a distance of 399.97 feet to a point on the northerly right of way margin of Oak Mountain Park Road; thence continue last described course, a distance of 845.59 feet to the point of beginning; thence continue along last course, 349.11 feet to a point; thence with a deflection of 91 degrees 18 minutes 39 seconds right, 160.0 feet to a point; thence with a deflection of 90 degrees 00 minutes 00 seconds right, 349.02 feet to a point; thence with a deflection of 90 degrees 00 minutes 00 seconds right, 152.01 feet to the point of beginning, forming a closing interior angle of 91 degrees 18 minutes 39 seconds. Situated in Shelby County, Alabama.



Together with full rights of ingress and egress in, on, over, through and across the most northerly 25 foot strip of land parallel to the right of way line of Alabama Highway 119 bounded by the north property line of the property described above, and by the southerly right of way of Alabama Highway 119, as described in Real Record 154, page 727, in the Probate Office.

**Parcel 6:**

The following is a description of a tract of land situated in the SW  $\frac{1}{4}$  of the NE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of the Section 3, Township 24 North, Range 12 East, Shelby County, Alabama, and being more particularly described as follows:

Beginning at the NE corner of the Lot 16 of Fancher Subdivision as recorded in Map Book 1, Page 31 in the Office of the Judge of Probate of Shelby County, Alabama, thence run 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 #25 thence turn  $82^{\circ}-46'$  left run northwesterly along the south right-of-way line of said Highway #25 a distance of 150 feet to a point; thence turn  $97^{\circ}-14'$  left and run southerly a distance of 327.31 feet to the NW corner of said lot 16 of said Fancher subdivision thence turn  $82^{\circ}-46'$  left and run easterly along the north line of said lot 16 a distance of 150.00 feet to the point of beginning and subject to all agreements, easements and/or restrictions of probated records or applicable law.

**Parcel 7:** (Shelby County, Alabama)

Commence at the northwest corner of the N.W.  $\frac{1}{4}$  of the S.E.  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West, 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 feet to the point of beginning.

***AND ALSO:***

Commence at the northwest corner of the N.W.  $\frac{1}{4}$  of the S.E.  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West 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 No. 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 Northeasterly direction a distance of 54.60 feet to the point of beginning.



20130801000313420 8/8 \$36.00  
Shelby Cnty Judge of Probate, AL  
08/01/2013 12:36:35 PM FILED/CERT

Book/Pg: 2013/53957  
Term/Cashier: SCAN2 / White  
Tran: 11376.715923.904130  
Recorded: 07-24-2013 10:04:46  
MTG Mortgage Tax  
PJF Probate Judge Fee  
SOT Source of Title  
REC Recording Fee  
Total Fees: \$ 600.00

576.00  
2.00  
1.00  
21.00

2013 53963.001  
Recorded in the Above  
MORTGAGE Book & Page  
07-24-2013 10:02:22 AM  
Source Of Title: DEED 834 / 45  
# Hardy McCallum - Probate Judge  
Tuscaloosa County, Alabama