

**BEFORE THE MISSISSIPPI COMMISSION  
ON ENVIRONMENTAL QUALITY**

**MISSISSIPPI COMMISSION ON  
ENVIRONMENTAL QUALITY**

**COMPLAINANT**

**VS.**

Order No. **5079 05**

**FIRST INDUSTRIAL REALTY TRUST, Inc.  
311 SOUTH WACKER DRIVE, SUITE 4000  
CHICAGO, ILLINOIS 60606**

**RESPONDENT**

**RESTRICTIVE USE AGREED ORDER**

COME NOW the Mississippi Commission on Environmental Quality (Commission) and First Industrial Realty Trust, Inc. (Respondent) in the above captioned cause agree as follows:

1. The purpose of this Restrictive Use Agreed Order is to restrict the use and activities on the Site described below to insure protection of human health and the environment.
2. The Respondent has an interest in a tract of land located at 6266 Hurt Road, Horn Lake, Mississippi, known as the "Former Dover Elevator Facility Restricted Area" and hereafter referred to as the "Site." Attachment I is a survey plat depicting the boundaries of the Site. A legal description of the Site follows:

"Legal description of 0.82, more or less, acres of land being located in the northwest quarter of the southeast quarter of Section 34, Township 1 South, Range 8 West, City of Horn Lake, Mississippi;

Beginning at a point south 00 degrees 00 minutes 00 seconds east 836.75 and south 90 degrees 00 minutes 00 seconds east 266.04 feet from the northeast corner of the southeast quarter of Section 34, Township 1 South, Range 8 West; thence north 90 degrees 00 minutes 00 seconds east 197.00 feet to a point; thence south 00 degrees 00 minutes 00 seconds to a point; thence south 90 degrees 00 minutes 00 seconds west 197.00 feet to a point; thence north 00 degrees 00 minutes 00 seconds east 182.00 feet to the point of beginning containing 0.82, more or less, acres of land."

3. The Site is contaminated with Total Petroleum Hydrocarbons – Diesel Range Organics (TPH-DRO) at levels in excess of the Target Remediation Goals (TRGs) as established by the Mississippi Department of Environmental Quality (MDEQ).

*Lester*

Restrictive Use Agreed Order  
First Industrial Realty Trust, Inc.  
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4. The staff of the Commission has evaluated this Restrictive Use Agreed Order and believes once the requirements of it have been completed that (1) the Site will be protective of the public health and the environment and (2) no further corrective action will be required at this time.
5. The following is a description of all restrictions and requirements for the Site:
  - (a) There shall be no excavating, drilling or other activities that could create exposure to contaminated media without prior approval from MDEQ.
  - (b) The groundwater at the Site shall not be used without prior approval from MDEQ;
  - (c) All monitoring wells at the Site shall be protected and maintained. In the event that a monitoring well is destroyed or damaged, a plan for repair, reinstallation or abandonment of the well(s) must be submitted to MDEQ for approval within 30 days after a well is destroyed or damaged;
  - (d) No wells shall be installed without prior approval from MDEQ;
  - (e) All required groundwater monitoring shall be conducted as described in the approved Compliance Monitoring Plan, dated September 23, 2005, unless otherwise approved by MDEQ;
  - (f) A sign of a size, shape, construction, and layout approved by MDEQ, shall be posted at the physical location of the site and shall read as follows:

**STOP – CALL BEFORE YOU DIG**  
**(601) 961-5171**  
**Request to Speak with Someone in the**  
**Groundwater Assessment and Remediation Branch**  
**Regarding Former Dover Elevator Facility Restricted Area**
  - (g) All required institutional controls shall be implemented;
  - (h) Beginning on July 1, 2006, and annually thereafter, Respondent shall submit certification in a form required by MDEQ that all the requirements listed in #5 (a) through (g) have been maintained. The annual certification must include a list of all surface owners and leaseholders of the Site.
6. Respondent shall retain responsibility for the requirements listed in #5 above, until the Commission approves the transfer of those responsibilities to another party (e.g., the prospective purchaser) by entering into an Agreed Order with the other party.

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7. Prior to any change in use of the Site or any portion of the Site, notice shall be given to the MDEQ.
8. Notice must be provided to MDEQ 30 days prior to any property transaction involving the Site. Any conveyance must contain as covenants the requirements listed in #5 with a statement that the covenants run with the land and continue into perpetuity unless otherwise ordered by the Commission.
9. Within fifteen (15) days after execution of this Restrictive Use Agreed Order, Respondent shall file the Restrictive Use Notice, as approved by MDEQ, in the office of the Chancery Clerk of the County in which the Site is located for recording onto the land deed records in the appropriate sectional index.
10. Within forty-five (45) days after execution of this Restrictive Use Agreed Order, the Respondent is required to submit to MDEQ certification signed by the Chancery Clerk of the County in which the Site is located that the requirements under paragraph 9 of this Restrictive Use Agreed Order have been completed.
11. Nothing in this Restrictive Use Agreed Order shall be construed to convey or determine any interest in property.
12. Nothing in this Restrictive Use Agreed Order shall be construed to be an allocation of costs or an indemnification by the State, MDEQ, or the Commission.
13. Nothing in this Restrictive Use Agreed Order shall limit the rights of the MDEQ or the Commission in the event Respondent fails to comply with this Restrictive Use Agreed Order. The Restrictive Use Agreed Order shall be strictly construed to apply to those matters expressly resolved herein.
14. Nothing contained in this Restrictive Use Agreed Order shall limit the rights of Complainant to take enforcement or other actions against Respondent for violations not addressed herein and for future violations of environmental laws, rules, and regulations.
15. This Restrictive Use Agreed Order does not resolve any issues regarding liability and/or penalties for any violation of any federal and/or state order, permit, law, rule and/or regulation. The Commission specifically reserves any such action.
16. Respondent understands and acknowledges that it is entitled to an evidentiary hearing before the Commission pursuant to Section 49-17-31 of the Mississippi Code Annotated (Supp. 1996), and that it has made an informed waiver of that right.

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First Industrial Realty Trust, Inc.  
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So ORDERED and AGREED, this the 15<sup>th</sup> day of Nov, 2005.

Charles H. Chisolm

Charles H. Chisolm  
Executive Director  
Mississippi Commission on  
Environmental Quality

AGREED, this the 28<sup>th</sup> day of October, 2005.

BY: B. Olszewski

TITLE: Sr. Environmental Risk Analyst  
First Industrial Realty Trust, Inc.

STATE OF Illinois

COUNTY OR PARISH OF Cook

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, on this the 28<sup>th</sup> day of October, 2005 within my jurisdiction, the within named Ben Olszewski acknowledged that (he) (she) is Sr. Environmental Risk Analyst of First Industrial Realty Trust, Inc., and that for and on behalf of the said corporation, and as its act and deed (he)(she) executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.



Regina M. Johnson

NOTARY PUBLIC

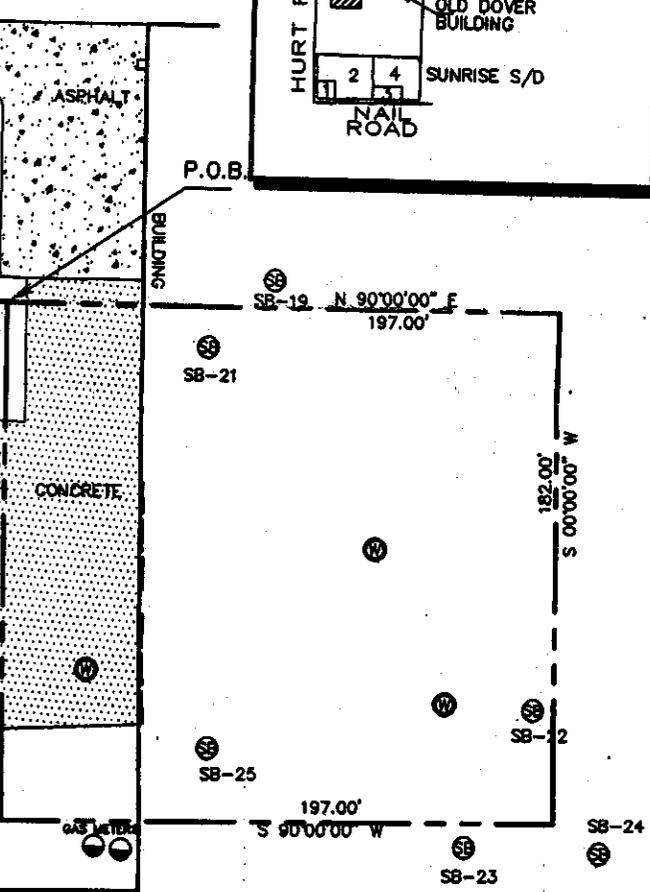
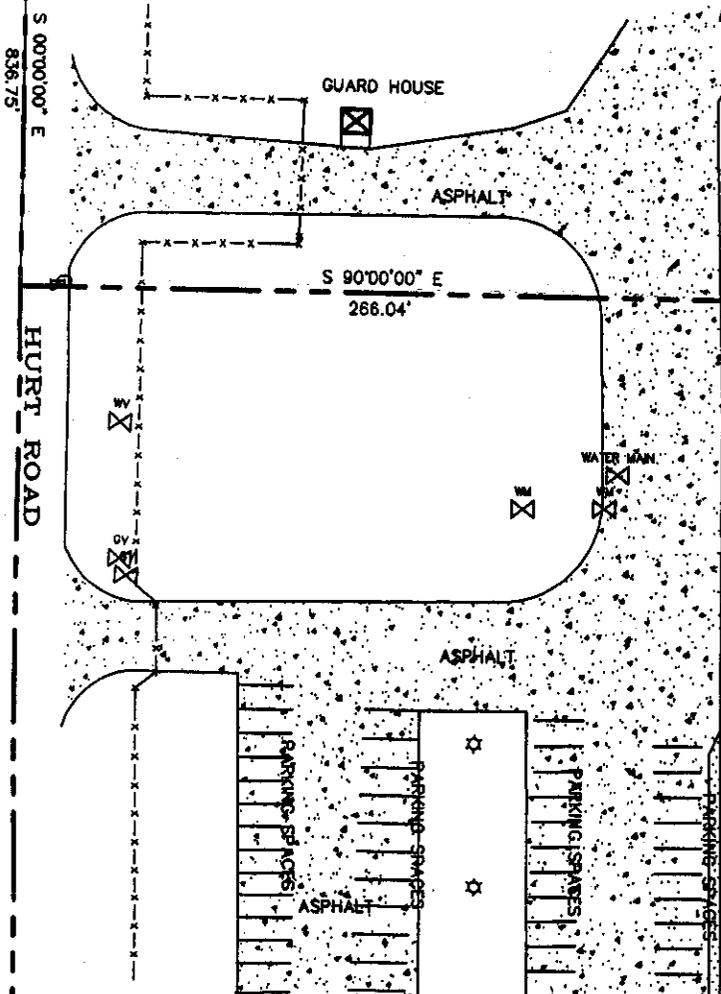
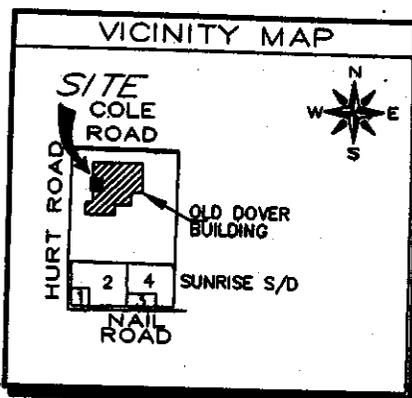
MY COMMISSION EXPIRES: 10/5/08

**Attachment 1**

**Survey Plat for the Dover Elevator Facility**

**Horn Lake, MS**

NORTHWEST CORNER OF  
SOUTHEAST QUARTER OF  
SECTION 34,  
TOWNSHIP 1 SOUTH,  
RANGE 8 WEST.



LEGAL DESCRIPTION OF 0.82, MORE OR LESS, ACRES OF LAND BEING LOCATED IN THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 SOUTH, RANGE 8 WEST, CITY OF HORN LAKE, MISSISSIPPI;

BEGINNING AT A POINT SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 836.75 AND SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 266.04 FEET FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 SOUTH, RANGE 8 WEST; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 197.00 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS 182.00 FEET TO A POINT; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS WEST 197.00 FEET TO A POINT; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 182.00 FEET TO THE POINT OF BEGINNING CONTAINING 0.82, MORE OR LESS, ACRES OF LAND

- x-x-x = CHAIN LINK FENCE
- ⊗ = WATER VALVE
- ⊗ = GAS METERS
- ⊗ = LIGHT POLE
- ⊗ = GAS VALVE
- ⊗ = MONITORING WELL
- = DOOR
- ⊗ = WATER METER
- ⊗ = SOIL BORINGS

"AS BUILT" SURVEY

**SFS**

891 RASCO ROAD EAST  
SOUTHAVEN, MISSISSIPPI 38671

**SMITH  
& FORSYTHE**  
SURVEYING, INC.

(662) 393-3348  
FAX (662) 393-0714



DEED BEARINGS

"AS BUILT"  
SURVEY

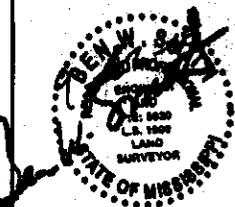
6266 HURT ROAD  
CITY OF HORN LAKE  
  
DESOTO COUNTY, MISSISSIPPI  
SECTION 34, T-1-S, R-8-W  
DEED BOOK 146, PAGE 445  
CENSUS TRACT # 702  
CLASS "B" SURVEY

CKD\_BY\_( )  
DATE: SEPTEMBER 22, 2005  
FILE: DOVER/MF  
W.O. NUMBER:  
SCALE: 1" = 50'

I HEREBY CERTIFY THAT I, OR SOMEONE UNDER MY DIRECT SUPERVISION, SURVEYED THE ABOVE DESCRIBED PROPERTY AND THAT THIS PLAT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. THIS SURVEY WAS MADE BY USING PHYSICAL FEATURES FOUND ON THE GROUND AND FROM AVAILABLE RECORDED INFORMATION AND THIS SURVEY ALSO MEETS THE MINIMUM STANDARDS SET FORTH BY THE STATE OF MISSISSIPPI

THIS IS TO CERTIFY THAT THIS PROPERTY IS NOT LOCATED IN A HUD IDENTIFIED SPECIAL 100 YEAR FLOOD HAZARD AREA ACCORDING TO FEMA MAP N. 28033C0040 E, DATED JUNE 19, 1997

THIS SURVEY IS SUBJECT TO ALL CODES, REGULATIONS AND RESTRICTIONS, SUBDIVISION COVENANTS, EASEMENTS AND RIGHTS OF WAY OF RECORD.



BEN W. SMITH  
MISSISSIPPI R.L.S. NO. 1909

## COUNTY OF DESOTO

## Mississippi Department of Environmental Quality

## NOTICE OF LAND USE RESTRICTIONS

A Restrictive Use Agreed Order has been developed with regard to property located at 6226 Hurt Road, Horn Lake, Mississippi, as shown in the attached survey plat. This property, hereafter referred to as the "Site," is situated in Section 34, Township 1 South, Range 8 West, DeSoto County, Mississippi, and being more particularly described by metes and bounds as follows, to-wit:

"Legal description of 0.82, more or less, acres of land being located in the northwest quarter of the southeast quarter of Section 34, Township 1 South, Range 8 West, City of Horn Lake, Mississippi;

Beginning at a point south 00 degrees 00 minutes 00 seconds east 836.75 and south 90 degrees 00 minutes 00 seconds east 266.04 feet from the northeast corner of the southeast quarter of Section 34, Township 1 South, Range 8 West; thence north 90 degrees 00 minutes 00 seconds east 197.00 feet to a point; thence south 00 degrees 00 minutes 00 seconds to a point; thence south 90 degrees 00 minutes 00 seconds west 197.00 feet to a point; thence north 00 degrees 00 minutes 00 seconds east 182.00 feet to the point of beginning containing 0.82, more or less, acres of land."

The Restricted Use Areas of the Site are contaminated with Total Petroleum Hydrocarbons- Diesel Range Organics (TPH-DRO) at levels in excess of the Target Remediation Goals (TRGs) as established by the Mississippi Department of Environmental Quality (MDEQ). In order to protect public health and the environment, certain restrictions must be placed on the use of the Restricted Areas of the Site.

The following is a listing of all restrictions for the Restricted Areas of the Site:

1. There shall be no excavating, drilling or other activities to depths that could create exposure to contaminated media without approval from MDEQ;
2. The groundwater at the Site shall not be used, unless otherwise approved by MDEQ;
3. All monitoring wells at the Site shall be protected and maintained. In the event that a monitoring well is destroyed or damaged, a plan for repair, reinstallation or abandonment of the well(s) must be submitted to MDEQ for approval; and
4. No wells shall be installed without prior approval from MDEQ.

Prior to executing any deed or other instrument conveying an interest in the Restricted Areas of the Site, the following conditions must be met:

1. Any conveyance of the Restricted Areas of the property must contain as covenants the restrictions listed above with a statement that the covenants run with the land and continue into perpetuity unless otherwise ordered by the Mississippi Commission on Environmental Quality;
2. Notice must be provided to MDEQ at least 30 days prior to any property transaction involving the Site; and
3. Prior to any change in use of the Site or any portion of the Site, notice shall be given to the MDEQ.

This Notice may be executed in counterparts.

The parties that have a legal or equitable surface interest in the Site follow:

First Industrial Realty Trust, Inc.  
311 South Wacker Drive, Suite 4000  
Chicago, Illinois 60606

COUNTY OF DESOTO

Executed, this the 28<sup>th</sup> day of October, 2005.

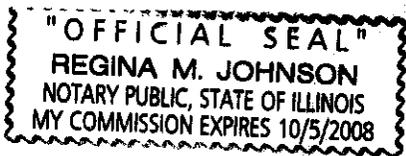
[Signature]

First Industrial Realty Trust, Inc.

STATE OF Illinois

COUNTY OR PARISH OF Cook

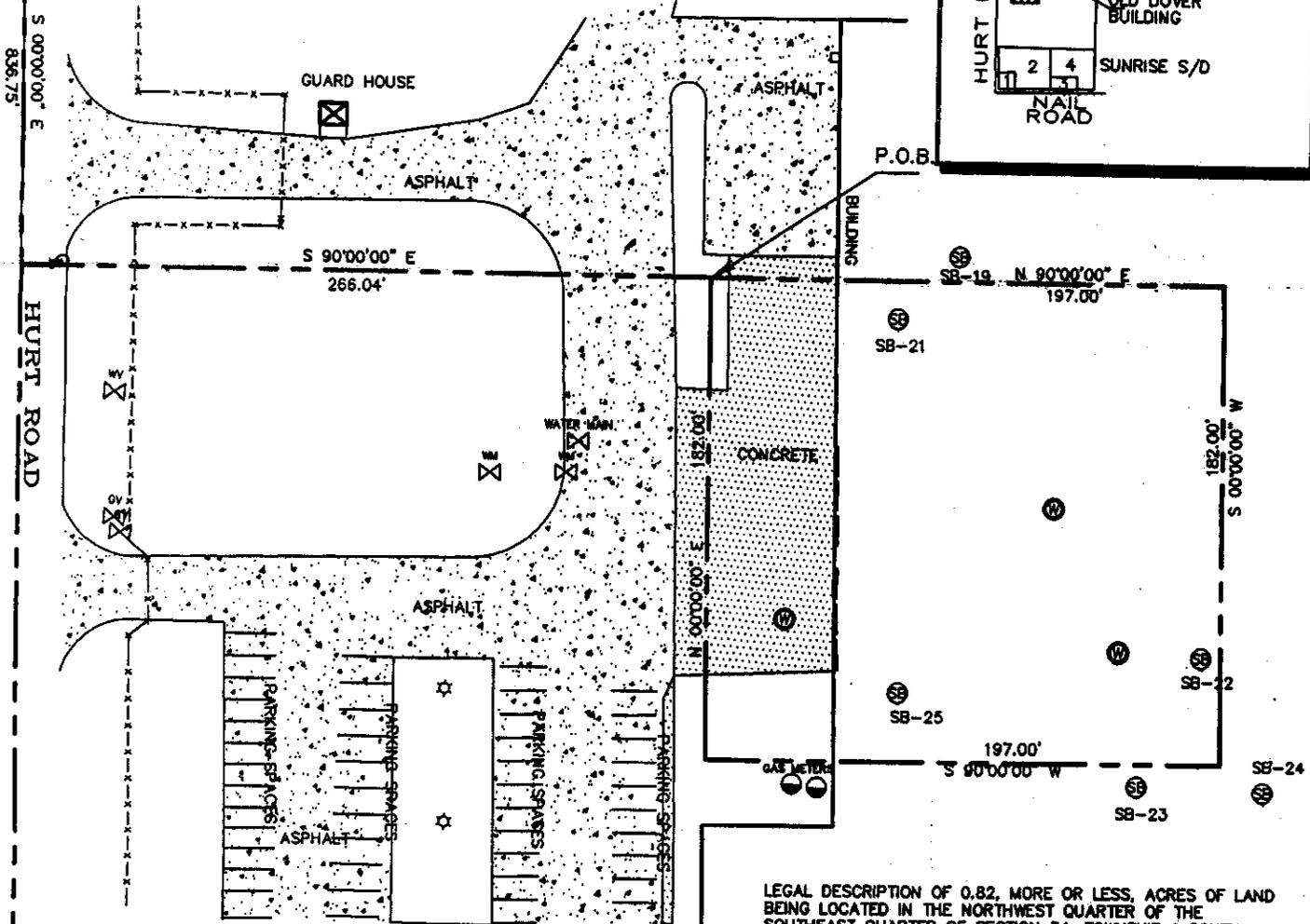
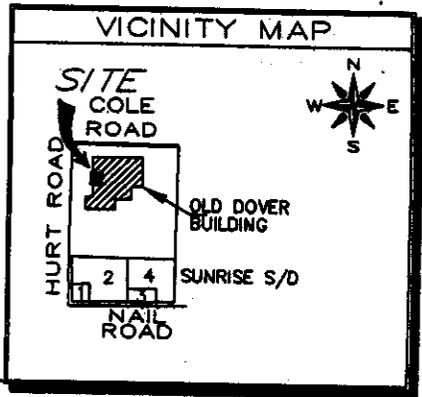
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[Signature]  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 10/5/2005

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SECTION 34,  
TOWNSHIP 1 SOUTH,  
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"AS BUILT" SURVEY

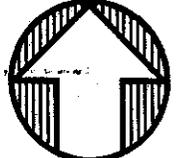
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NORTH REFERENCED TO



DEED BEARINGS

"AS BUILT"  
SURVEY

6266 HURT ROAD  
CITY OF HORN LAKE

DESOTO COUNTY, MISSISSIPPI  
SECTION 34, T-1-S, R-8-W  
DEED BOOK 146, PAGE 445  
CENSUS TRACT # 702  
CLASS "B" SURVEY

CKD BY: \_\_\_\_\_  
DATE: SEPTEMBER 22, 2005  
FILE: DOVER/MF  
W.O. NUMBER:  
SCALE: 1" = 50'

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