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Shelby Cnty Judge of Probate, AL
12/30/1977 12:00:00 AM FILED/CERT

Deed prepared by

✓ Jerome K. Lanning

1212 Bank for Savings Building
BIRMINGHAM, ALABAMA 35203

STATE OF ALABAMA)
) DECLARATION OF RESTRICTIONS AND EASEMENTS
COUNTY OF SHELBY)

5440

WHEREAS, Alpha Partnership, Ltd., an Alabama limited partnership (hereinafter called "Declarant") is the owner of certain real property situated in part of the SW 1/4 of the NE 1/4, and part of the SE 1/4 of the NW 1/4 of Section 12, Township 20 South, Range 3 West, in Shelby County, Alabama (hereinafter called the "Property") being described as follows to-wit:

From the northwest corner of said SW 1/4 of NE 1/4, run east along the north line thereof for 881.83 feet, more or less, to a point on the west line of the right-of-way of U. S. Highway #31; thence turn an angle to the right of 115° 53' and run southwesterly along said west right-of-way for a distance of 288.99 feet to a point of beginning; thence continue southwesterly along said west right-of-way line for a distance of 655.94 feet; thence turn an angle to the right of 65° 01' and run westerly for a distance of 484.66 feet to the center of the Old Montgomery Highway; thence turn an angle to the right of 111° 06' and run northeasterly along the center of the old highway for a distance of 403.48 feet; thence turn an angle to the right of 12° 09' and run northeasterly along the center of the old highway for a distance of 251.86 feet; thence turn an angle to the right of 55° 51' and run easterly for a distance of 478.42 feet to the point of beginning, containing 294,122.30 square feet, more or less;

said land consisting of Parcels I-IV, described as follows:

Parcel I

Part of the SW 1/4 of NE 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama, said part being more particularly described as follows: From the northwest corner of said SW 1/4 of NE 1/4, run east along the north line thereof for 881.83 feet, more or less to a point on the west right-of-way of U.S. Highway 31; thence turn an angle to the right of 115° 53' and run southwesterly along said west right-of-way line for a distance of 428.99 feet to the point of beginning; thence continue southwesterly along said right-of-way for a line distance of 423.85 feet; thence turn at an angle to the right of 90° and run westerly for a distance of 459.46 feet to

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a center line of the old Montgomery Highway; thence turn at an angle of 86° 7' and run northerly along the center line of the old Montgomery Highway for a distance of 106 feet; thence turn an angle to the right of 12° 9' and run northerly along center line of old highway, 251.86 feet; thence turn at an angle to the right of 55° 51' and run easterly for a distance of 339.48 feet; thence turn at an angle to the right of 115° 53' and run southerly for a distance of 79.35 feet; thence turn at an angle to the left of 90° 0' and run easterly for a distance of 125 feet to the point of beginning, said land containing 192,001.35 square feet, more or less.

Parcel II

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Part of the SW 1/4 of NE 1/4 and part of the SE 1/4 of NW 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama, said parts being more particularly described as follows: From the northwest corner of said SW 1/4 of NE 1/4, run east along the north line thereof for 881.83 feet; more or less, to a point on the west line of the right-of-way of U.S. Highway 31; thence turn at an angle to the right of 115° 53' and run southwesterly along said west right-of-way line for a distance of 944.93 feet to a point; thence turn at an angle to the right of 65° 01' and run westerly for a distance of 137.90 feet to the point of beginning; thence continue along the same course for 346.76 feet to center of the Old Montgomery Highway; thence turn at an angle to the right of 111° 06' and run northeasterly along the center of the old highway for a distance of 297.48 feet; thence turn at an angle to the right of 90° 00' and run southwesterly for a distance of 150.33 feet to the point of beginning; said land containing 73,259.27 square feet, more or less.

Parcel III

Part of the SW 1/4 of NE 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama, said parts being more particularly described as follows: From the northwest corner of said SW 1/4 of NE 1/4, run east along the north line thereof for 881.83 feet, more or less to a point on the west line of the right-of-way of U.S. Highway 31; thence turn an angle to the right of 115° 53' and run southwesterly along said west right-of-way line for a distance of 288.99 feet to a point of beginning; thence continue southwesterly along said west right-of-way line for a distance of 140 feet; thence turn at an angle to the right of 90° 0' and run westerly for a distance of 125 feet; thence turn at an angle to the right of 90° 0' and run northerly for a distance of 79.35 feet; thence turn at an angle to the right 64° 7' and run

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easterly for a distance of 138.94 feet to the point of beginning, said land containing 13,709.64 square feet, more or less.



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Parcel IV

Part of the SW 1/4 and NE 1/4 and part of the SE 1/4 of NW 1/4 of Section 12, Township 20 South, Range 3 West, Shelby County, Alabama, said parts being more particularly described as follows:
From the northwest corner of said SW 1/4 of NE 1/4 run east along the north line thereof for 881.83 feet, more or less, to a point on the west line of the right-of-way of U.S. Highway 31; thence turn at an angle to the right of 115° 53' and run southwesterly along said west right-of-way line for a distance of 852.84 feet to a point of beginning; thence continue southwesterly along said west right-of-way line for a distance of 92.09 feet; thence turn at an angle to the right of 65° 01' and run westerly for a distance of 137.90 feet; thence turn at an angle to the right of 114° 59' and run northeasterly for a distance of 150.33 feet; thence turn at an angle to the right of 90° 00' and run easterly 125.0 feet to the point of beginning; said land containing 15,152.08 square feet, more or less.

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WHEREAS, "Declarant" has heretofore constructed or intends to construct and/or permit to be constructed on said Property commercial stores, buildings and improvements, those portions thereof on which building are to be constructed or have been constructed being hereinafter referred to as "Building Areas," and in conjunction therewith to provide certain facilities (hereinafter referred to as "Common Facilities") upon portions of the Property, exclusive of "Building Areas", including but not limited to vehicular parking areas, roadways, service areas, drive and entranceways and sidewalks, malls and other pedestrian ways and landscaped or planting areas as the same may be constructed from time to time upon said property; and

WHEREAS, "Declarant" desires to declare, establish, grant and provide for the benefit of (1) Declarant and any subsequent owners now or hereafter of all or any portion

of the Property, and the respective heirs, legal representatives, successors and assigns of all of them, and any successors in title to all or any portions of the Property (hereinafter collectively called "Owners", and also for the benefit of (2) Winn-Dixie Montgomery, Inc., Eckerd's-Alabama, Inc., and the holder or holders of any Mortgages now or hereafter constituting a lien against all or any portion of the Property, and (3) the occupants and tenants from time to time of any of the commercial buildings constructed within the Building Areas, (those identified within (2) and (3) being hereinafter collectively called "Beneficiaries"), certain restrictions, rights, obligations, easements and licenses to run with the title to said Property, to the end that a mutually beneficial building plan, automobile parking plan, and a compatible plan for the arrangement and design of improvements and the permitted use thereof will be established covering the Property; and

WHEREAS, Declarant has entered into a lease with Winn-Dixie Montgomery, Inc. (hereinafter "Winn-Dixie") dated July 21, 1977, as amended, under which there is demised to it a certain store building to be constructed upon a portion of Parcel I of the Property, for an initial term of twenty (20) years commencing upon a date dependent upon the completion of Winn-Dixie's building, and other structures and improvements on the Property, subject to four (4) successive option extensions of the term thereof, each for a period of five (5) years, a short form of which lease has been recorded in the Office of the Judge of Probate of Shelby County, Alabama, at Real Volume 308, Page 454 et seq. in said Probate Office; and



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WHEREAS, Declarant has entered into a lease with Eckerds-Alabama, Inc. (hereinafter "Eckerds") dated August 10, 1977, as amended, under which there is demised to it a certain store building to be constructed upon a portion of Parcel I of the Property, for an initial term of twenty (20) years commencing upon a date dependant upon the completion of Eckerds' building, and other structures and improvements on the Property, subject to four (4) successive option extensions of the term thereof, each for a period of five (5) years, a short form of which lease is to be recorded in the Office of the Judge of Probate of Shelby County, Alabama.

NOW THEREFORE, in consideration of the premises and the mutual benefits to the Declarant and to the Beneficiaries hereunder, the Declarant, for itself, its successors, grantees and assigns, does hereby declare and provide as follows:

1. Attached hereto as Exhibit "A" and by this reference made a part hereof is a Site Plan dated December 15, 1977, showing substantially the general layout, orientation and plan of the existing and proposed developments upon the Property. It is declared that substantially the plan of developments shown upon Exhibit "A" should henceforth be abided by and conformed to, except for the possibility in Parcels I and II of extending to the south, but not to the east or west, the building lines indicated reserving for use as Common Facilities all of the Property shown on Exhibit "A" except the portions thereof designated for Building Areas or buildings on Exhibit "A" and the possible extensions to the south described above; and, in all further construction, all buildings will be set back from the streets adjacent to exterior boundaries of the Property or from the exterior

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property lines thereof a distance at least equal to the distance depicted on the development plan attached as Exhibit "A". No buildings or structures of any kind shall be constructed within the areas reserved for development as Common Facilities which may be only used as vehicular parking areas, roadways, services areas, drives, entranceways and exits and sidewalks, malls and other pedestrian ways, and as landscaped or planting areas, with the exception of those necessary appurtenances for such use, including, without limitation, paving, light standards, curbing, directional signs, drainage facilities and underground facilities, and advertisement signs.

2. Declarant does hereby establish and create for Declarant, Owners and Beneficiaries hereunder and does hereby give, grant and convey to each and every of said Declarant, Owners and Beneficiaries, and to their respective employees, servants, agents, suppliers, customers and invitees, a mutual, reciprocal and non-exclusive easement, right, license and privilege of passage and use, both pedestrian and automotive, over, across and upon any and all portions of the said Common Facilities for the purpose of ingress and/or egress and/or parking, and all said Common Facilities from time to time existing upon the Property are hereby expressly reserved and set apart for such purpose or purposes, respectively. Nothing herein is intended to nor shall be construed to create any rights whatsoever for the benefit of the general public in the said property or the improvements constructed thereon. Without limiting the generality of the foregoing, Declarant hereby covenants that a paved driveway will be maintained at the rear of the store units to be leased to Winn-Dixie Montgomery, Inc., and



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Eckerds-Alabama, Inc., in order to provide convenient ingress to and egress from the delivery or service entrances of said store units from and to adjacent public streets and highways for the purpose of receiving and delivering merchandise and otherwise servicing said store units. Said driveway shall be of sufficient width so as to permit the passage, loading and unloading of trailer trucks and other commercial vehicles. Declarant further covenants that there will be provided and maintained for the benefit of the Beneficiaries during the term hereof, and any extensions hereof, ingress and egress facilities to public highways in the number and substantially the locations depicted on Exhibit "A," subject to unavoidable temporary closings or relocations necessitated by public authority or other circumstances beyond Owners' control.

3. Declarant does hereby establish and create for the benefit of the Building Areas and for the benefit of Declarant, Owners and Beneficiaries hereunder, and does hereby give, grant and convey to each and every of Declarant, Owners and Beneficiaries a mutual, reciprocal and non-exclusive right and easement in, under, over, across, upon and through any and all portions of the Common Facilities for the installation, use, maintenance, repair and replacement of all utility lines, wires, pipes, conduits, sewers, drainage lines and other utilities necessary to serve the Building Areas; provided, however, that no pipes, conduits, sewers, drainage lines or other utility apparatus shall be placed above the surface of the Common Facilities without the prior consent of Declarant, Owners and Beneficiaries, which said consent shall not be unreasonably withheld; and provided further, that any and all damage to the Common Facilities or Building

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Areas occasioned by such work shall be promptly repaired and restored at the sole cost and expense of the party causing such work to be performed.

4. In conjunction with the construction of any buildings or Common Facilities on or within the Property, there shall be maintained at all times a ratio of at least 5 automobile parking spaces for each 1000 square feet of gross building area (including additional floor levels), said parking spaces to each be not less than 9 1/2 feet wide and 18 feet long and specifically no fewer than 268 automobile parking spaces for Parcel I of the Property.

5. All of the Common Facilities (including parking areas) shall be adequately lighted by Owners at their expense during customary shopping hours, provided, however, that if any of the tenants hereunder shall remain open for business after 10:00 P.M., they shall pay their pro rata share of the additional cost to light the Common Facilities after 10:00 P.M.

6. For and during the term of the lease to Winn-Dixie Montgomery, Inc., and any extensions or renewals thereof, it shall have the exclusive right to operate a supermarket on the Property, and Owners shall not directly or indirectly lease or rent any portion of the Property, nor property within 1000 feet of any exterior boundary thereof, for occupancy as a supermarket, grocery store, meat, fish, or vegetable market, nor shall any tenant or occupant of any portion of said property be permitted to sublet in any manner, directly or indirectly, all or any part thereof to any person, firm or corporation engaged in such business without the prior written consent of Winn-Dixie; provided,



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however, that other tenants hereunder may sell for off-premises consumption occasional foods and food items customarily sold by similar types of businesses in the area, provided the gross aggregate floor area of the Building Areas devoted by all such other tenants together to such food sales shall not exceed a total of five thousand (5,000) square feet.

7. For and during the term of the lease to Eckerd's-Alabama, Inc., and any extensions or renewals thereof, it shall have the exclusive right to operate a drugstore on the Property, and Owners shall not directly or indirectly lease or rent any portion of the Property, or property within a one mile radius of any exterior boundary thereof, for occupancy as a prescription drug department or primarily as a "Health and Beauty Aids" type of store, nor shall any tenant or occupant of any portion of said property be permitted to sublet in any manner, directly or indirectly, all or any part thereof to any person, firm or corporation engaged in such business without the prior written consent of Eckerd's; provided, however, that the foregoing shall not restrict the sale of health and beauty aids by a supermarket or variety store.

8. Owners shall obtain and maintain fire insurance with extended coverage endorsements covering all of the buildings and improvements now or hereafter located within the respective Building Areas so owned by each, for the full insurable value thereof, under policies issued by solvent and responsible insurance companies authorized to do business in the State of Alabama. It is hereby understood, covenanted and agreed by all such Owners, and by the holders of all mortgage liens upon all or any part of the Buildings Areas,

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that in the event of any damage or destruction, so insured, to any part of the premises leased to Winn-Dixie and to Eckerd's under the terms or extended terms of the above described leases, then all proceeds payable under all such insurance shall be made available for restoration of the Building Areas so damaged or destroyed and the same shall be restored by the Owners as soon as reasonably possible following such damage or destruction to the extent and in the manner provided for in said leases.

9. Owners of the Building Areas shall carry and maintain comprehensive public liability insurance covering injuries to persons and property on, in or about the Common Facilities, in amounts to be agreed upon by all such Owners, but not less than \$300,000.00 for injuries to persons, and \$50,000.00 for damages to property, the premiums for which shall be paid pro rata as aforesaid by each of the said Owners and each such policy or policies of insurance shall name all of the Owners of such Building Areas as additional assureds thereunder.

10. The terms, covenants, conditions, and provisions of these Restrictions may be extended, abrogated, modified, rescinded or amended in whole or in part only with the consent of Declarant, Owners, Winn-Dixie Montgomery, Inc., Eckerd-Alabama, Inc., and the holder or holders of any mortgage now or hereafter constituting liens against any of the Property; but subject to such consent, Declarant, or its successor or successors in title, expressly reserve the right to extend, abrogate, modify, rescind or amend the covenants and restrictions herein by an instrument in writing duly executed by the appropriate parties in interest and duly recorded in the Office of the Judge of Probate of Shelby County, Alabama.

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11. These restrictions shall become effective on the date hereof and shall be binding upon all parties or persons claiming under them and shall run with the land for a period of twenty years from date, provided there shall be three (3) successive automatic renewals of said covenants, each renewal being for a period of ten (10) years, unless prior to the commencement date of any of the three (3) renewal periods, there is filed of record in the Office of the Judge of Probate of Shelby County, Alabama, an instrument removing this Declaration of Restrictions from the Property, executed by 75% or more of the then Owners and Beneficiaries of the Property. The easements, right, privileges, restrictions and benefits created or granted under these Restrictions and each provision hereof shall be enforceable by Declarant, Owners and Beneficiaries hereunder by injunction or by specific performance and shall be deemed covenants running with the title to the Property so long as these Restrictions (as the same may be amended from time to time) shall be in effect, as above provided. This instrument shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of Declarant, Owners and Beneficiaries as herein defined.

IN WITNESS WHEREOF, Declarant has executed these presents this 29th day of December, 1977.

ALPHA PARTNERSHIP, LTD.

By:

James H. White
Its General Partner

By:

Thomas M. Red
A General Partner

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STATE OF ALABAMA)

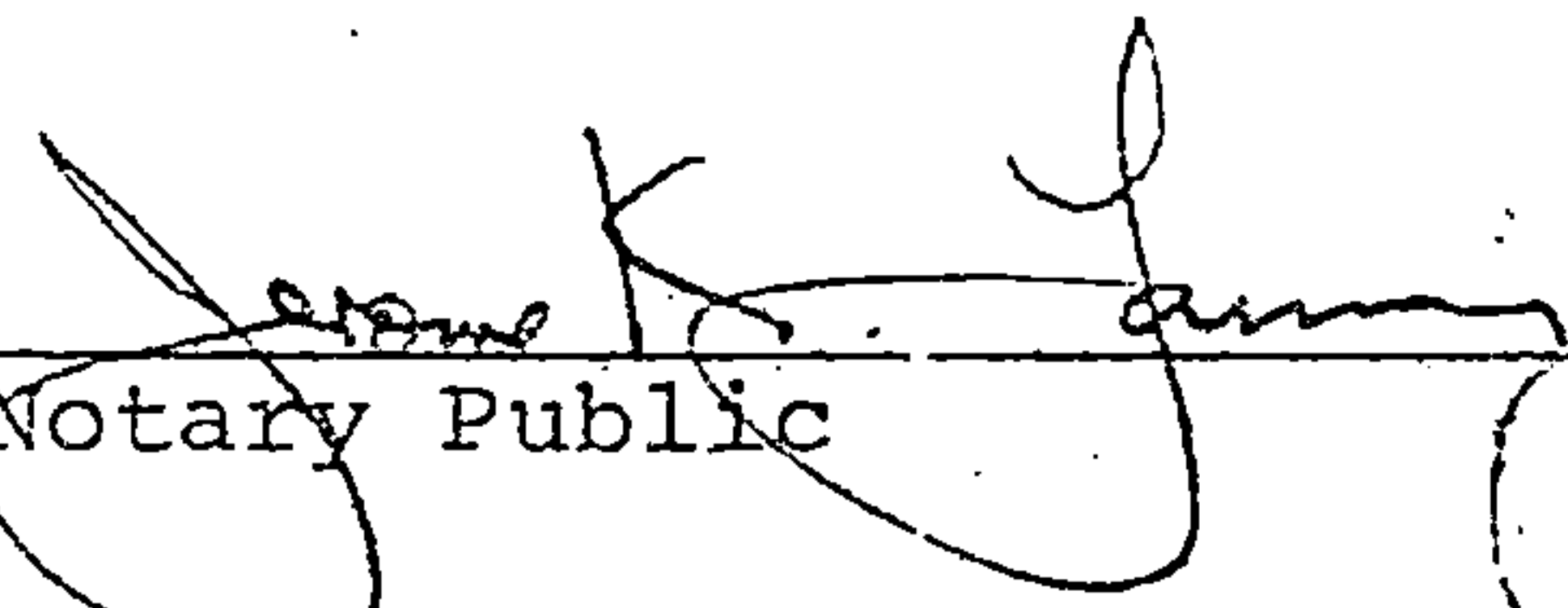
JEFF. COUNTY)



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I, the undersigned, a Notary Public in and for said county in said state, hereby certify that JAMES H. WHITE, III, whose name as General Partner of Alpha Partnership, Ltd., a limited partnership, is signed to the foregoing Declaration of Restrictions and Easement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Restrictions and Easement, he, as such partner and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal of office this 29th day of December, 1977.



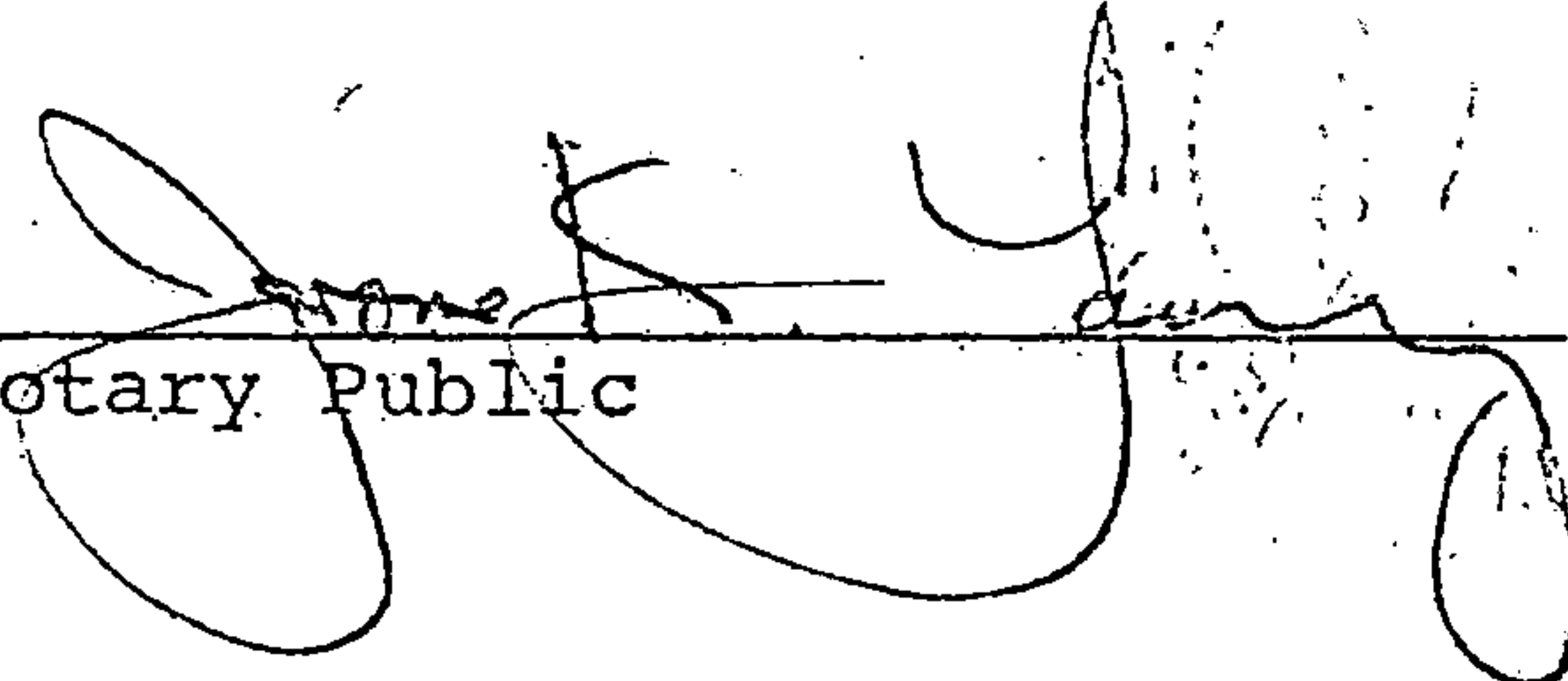
Notary Public
My Commission expires: 2/23/80

STATE OF ALABAMA)

JEFFERSON COUNTY)

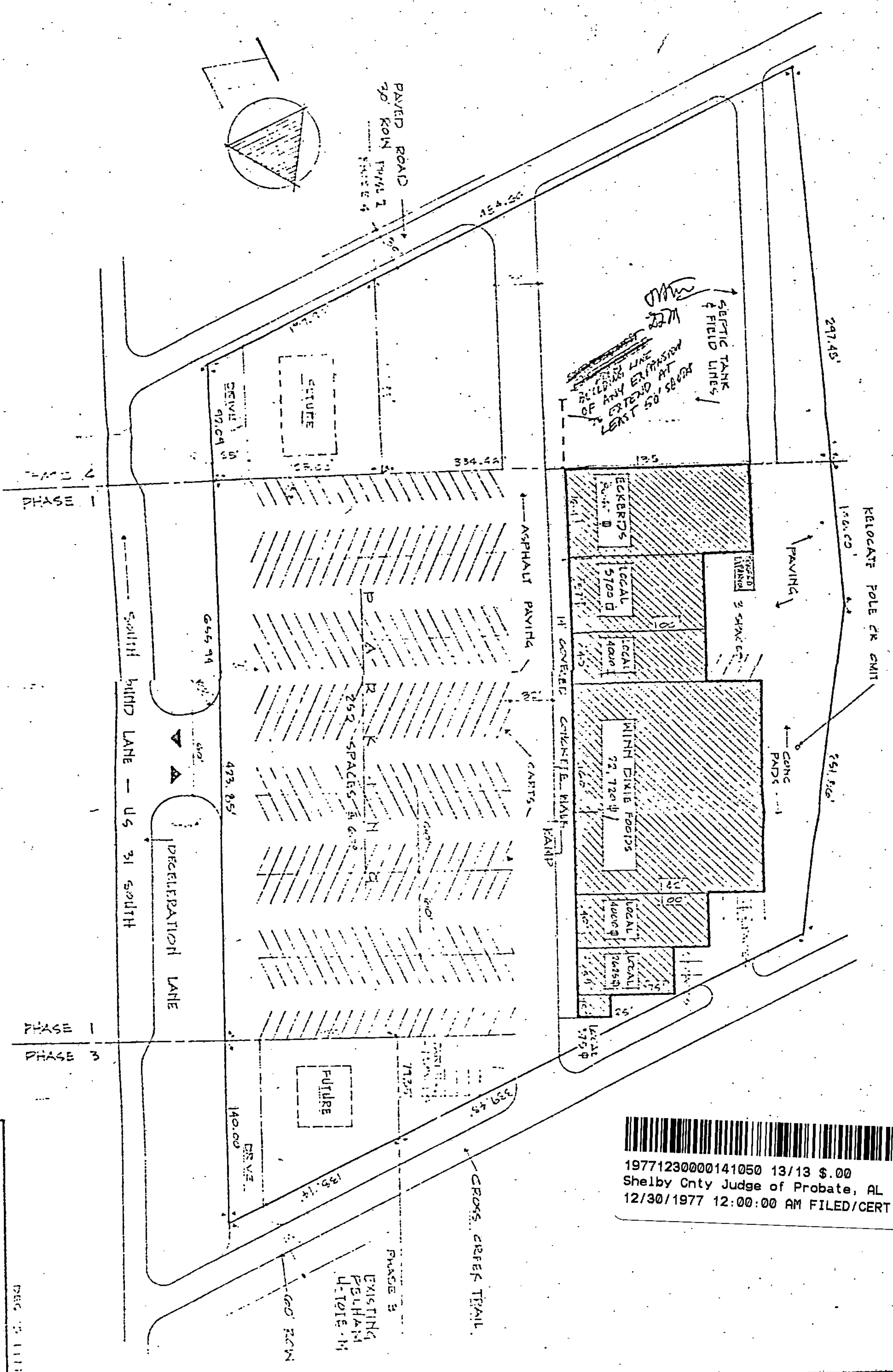
I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Thomas M. Rodgers, Jr., whose name as General Partner of Shelby Mart, Ltd., an Alabama limited partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such general partner, and with full authority, executed the same voluntarily for and as the act of said limited partnership.

Given under my hand and seal this 29th day of December, 1977.



Notary Public

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SITE PLAN

TOTAL AREA OF BUILDING - PHASE 1 - 48,000
TOTAL PAVING SPACES - 205

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PROPOSED SHELBY MART
U.S. HIGHWAY 31 SOUTH
PEULHAM ALABAMA
WHITE INVESTMENT COMPANY INC.
1214 FIRST NATIONAL SEVENTEEN JACOBSON BLDG
BIRMINGHAM ALABAMA

EXHIBIT "A"

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