

CONTRACT DATED THE 12<sup>th</sup> DAY OF JANUARY, 1981, BETWEEN  
WAL-MART <sup>Stores</sup> ~~STORES~~, INC., a Delaware corporation, whose mailing  
address is P. O. Box 116, Bentonville, Arkansas 72712,  
(hereinafter called "WAL-MART"), and SHERMAN HOLLAND, JR., joined  
in by his wife, Carolyn M. Holland, whose mailing address is  
"Under the Flag", Alabaster, Alabama 35007 (hereinafter called  
"HOLLAND").



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Shelby Cnty Judge of Probate, AL  
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#### A. RECITALS

1. Parcel I Ownership. WAL-MART is the owner of Parcel I as shown on the Plan attached hereto as Exhibit "A" hereof, and which is more particularly described as Parcel I on Exhibit "B" hereof.
2. Parcel II Ownership: HOLLAND is the owner of Parcel II as shown on the Plan attached hereto as Exhibit "A" hereof, and which is more particularly described as Parcel II on Exhibit "C" hereof.
3. Purpose: WAL-MART and HOLLAND desire that Parcels I and II be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial shopping center (sometimes hereinafter referred to as the "Shopping Center") and desire Parcels I and II be subject to the easements and the covenants, conditions and restrictions hereinafter set forth.

#### B. AGREEMENT

In consideration that the following encumbrances shall be binding upon the parties hereto and shall attach to and run with Parcels I and II, and shall be for the benefit of and shall be limitations upon all future owners of Parcels I and II and that all easements herein set forth shall be appurtenant to the dominant estate, and in consideration of the premises, covenants, conditions, restrictions, easements and encumbrances contained herein, WAL-MART and HOLLAND do hereby agree as follows:

#### C. TERMS

##### 1. Building/Common Areas: Definition.

a. "Building Areas", as used herein, shall mean that portion of Parcel I devoted from time to time to building improvements and that portion of Parcel II shown on Exhibit "A" as "Holland Building Area" (and "Future Building Area"). Canopies may encroach from the Building Areas over the Common Areas, provided the canopies do not interfere with the use of the Common Areas.

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See First Amendment & Dec. Bk. 49 pg. 39 (3/9/83)



b. "Common Areas" shall be all of Parcels I and II except the Building Areas.

c. Conversion to Common Areas: Those portions of the Building Areas on each parcel which are not from time to time used or cannot under the terms of this agreement (including by virtue of 4(a)(1)) be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided in this agreement.

2. Building.

BOOK 39 PAGE 574  
a. Use: The buildings shall be for commercial purposes of the type usually found in a retail shopping center. The tenants occupying the buildings shall be primarily retail and service tenants of the type normally associated with a retail shopping center. HOLLAND covenants and agrees that he will not use, or permit to be used, Parcel II, or any part thereof, for the operation of a department or discount department store, such as K-Mart, Wal-Mart, TG&Y, or a similar type store, so long as WAL-MART shall operate a discount department store utilizing at least 52,000 square feet of building on Parcel I. WAL-MART covenants and agrees that it will not use, or permit to be used, Parcel I, or any part thereof, for the operation of a grocery supermarket, for a period of five (5) years from the date hereof, and thereafter shall not permit such use, so long as a grocery supermarket is operating on Parcel II. For the purposes of this agreement, a discount department store or a grocery supermarket shall be deemed to be operating during any period in which the same may be closed because of fire, or other similar casualty, and during the six (6) months immediately following any closing of normal operations.

b. Separation of uses: HOLLAND and WAL-MART recognize their customers' need for adequate parking facilities in close proximity to the building areas, and the importance of protecting such parking facilities against unreasonable or undue encroachment which is likely to result from long-term parking by patrons or employees. HOLLAND and WAL-MART further recognize their mutual interest in not having tenants occupying space in close proximity to the building areas which create or cause excessive noise, litter or odor.



c. Location: No building shall be constructed on Parcels I or II, except within the Building Areas as shown on Exhibit "A".

d. Design and construction: The buildings shall be designed so that the exterior elevation of each will be architecturally and aesthetically compatible and so that the buildings' wall footings shall not encroach from one parcel onto the other parcel. The design and construction shall be in conformity with sound architectural and engineering standards. No building shall exceed one story in height (35 feet) (plus mezzanines).

e. Easements: In the event building wall footings encroach from one parcel onto the other parcel, despite efforts to avoid that occurrence, the party onto whose parcel the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

f. Fire protection: Any buildings constructed on Parcel I and Parcel II, or either, shall be constructed and maintained in conformity with applicable fire codes.

3. Common Area Use:

a. Grant of easements: Each party, as grantor, hereby grants to the other party for the benefit of said other party, its customers, invitees, and employees, a non-exclusive easement for roadways, walkways, ingress and egress, the parking of motor vehicles and use of facilities installed for the comfort and convenience of customers, invitees, and employees on the common areas of the grantor's parcel.

b. Use: Subject to existing easements of record, the Common Areas shall be used for roadways, walkways, ingress and egress, parking of motor vehicles, loading and unloading of commercial and other vehicles, for driveway purposes, and for the comfort and convenience of customers, invitees, and employees of all businesses and occupants of the buildings constructed on the Building Areas defined above.

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c. Limitations on use:

(1) Customers: Customers and invitees shall not be permitted to park on the Common Areas, except while shopping or transacting business on Parcels I or II.

(2) Employees: Employees shall not be permitted to park on the Common Areas, except in areas designated as "employee parking areas". The parties hereto may from time to time mutually designate and approve "employee parking areas", however, if they do not, each party may designate "employee parking areas" on its own parcel.

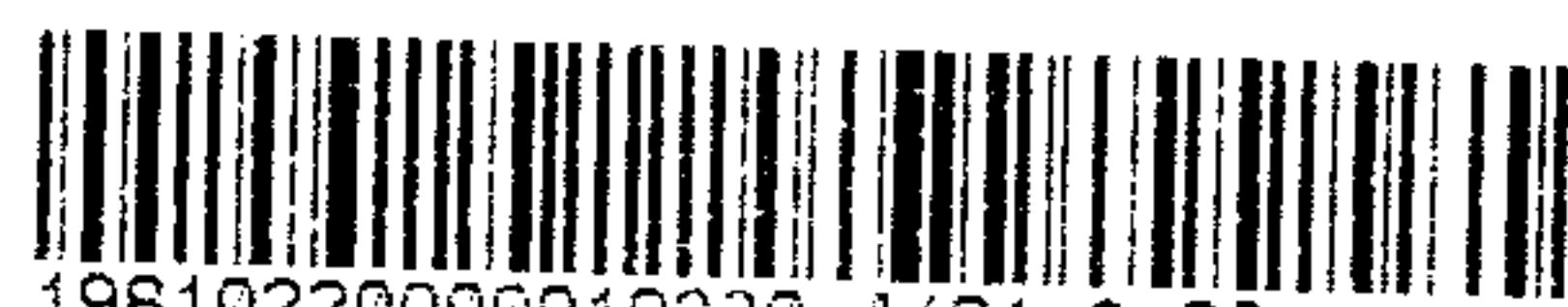
39 PAGE 576  
BOOK  
(3) General: All of the uses permitted within the Common Areas shall be used with reason and judgment so as not to interfere with the primary purpose of the Common Areas which is to provide for parking for the customers, invitees, and employees of those businesses conducted within the Building Areas and for the servicing and supplying of such businesses. Persons using the Common Areas in accordance with this agreement shall not be charged any fee for such use.

d. Utility and service easements: The parties shall cooperate in the granting of appropriate and proper easements for the installation, repair and replacement of storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of the Common Areas and buildings to be erected upon the Building Areas. Both parties will use their best effort to cause the installation of such utility and service lines prior to paving of the Common Areas.

4. Common Areas: Development, Maintenance and Taxes.

a. Development:

(1) "Common Area" to "Building Area" ratio: Both parties agree that at all times there shall be independently maintained on each parcel or further subdivisions thereof, not less than three (3) square feet of developed "Common Area" for each one (1) square foot of total building floor area, including all basements and mezzanines.



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(2) Development timing:

(a) By owner of parcel. When any building is constructed within the Building Areas on a parcel, the Common Areas on that parcel shall be developed in accordance with Exhibit "A", at the expense of the owner of said parcel.

(b) By WAL-MART. If WAL-MART constructs improvements on Parcel I prior to the development of Parcel II, WAL-MART may grade, pave and use any portion of the Common Areas of HOLLAND's parcel necessary for access to U. S. Highway 31. WAL-MART shall cause all of said work to be separately bid on a competitive basis, and the costs and proposed work shall be approved in advance by HOLLAND in writing, provided that such approval shall not be unreasonably withheld, and HOLLAND agrees to reimburse WAL-MART for such costs when any portion of Parcel II is developed or upon the sale of any portion of Parcel II, whichever first occurs. WAL-MART assumes the liability and obligation on any property so paved until the developers of Parcel II build and construct on same and furnish liability insurance on same.

b. Maintenance:

(1) Standards. Following completion of the improvement of the Common Areas, the parties hereto shall maintain the Common Areas in good condition and repair. The maintenance is to include, without limiting the generality of the foregoing, the following:

- (a) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability.
- (b) Removing all papers, debris, filth and refuse and thoroughly sweeping the areas to the extent reasonably necessary to keep the area in a clean and orderly condition.
- (c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines.
- (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required.

(e) Maintaining all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

(2) Expenses. The respective owners shall pay the maintenance expense of their parcels, except that HOLLAND shall not be responsible for any maintenance expense until the development of Parcel II, and then only to the extent the common areas are developed in accordance with Paragraph 4a.(1).

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BOOK (3) By agent. Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

c. Taxes. Each of the parties hereto agree to pay, or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against the part of the Common Areas owned by it.

5. Signs. No sign shall be located on the Common Areas on Parcels I and II, except signs advertising businesses conducted thereon with no more than two (2) signs on the Common Areas on Parcel I, and two (2) signs on the Common Areas on Parcel II. No signs shall obstruct the ingress and egress shown on Exhibit "A".

6. Insurance. Each party shall provide comprehensive general liability insurance affording protection to itself and the other party as an "Additional insured" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than \$500,000 each occurrence.



7. Eminent Domain.

a. Owner's right to award. Nothing herein shall be construed to give either party any interest in any award or payment made to the other party in connection with any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on Parcel I or II, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner in fee thereof and no claim thereon shall be made by the owners of any other portion of the Common Areas.

b. Collateral claims. All other owners of the Common Areas may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.

c. Tenant's claim. Nothing in this Paragraph 7 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.

d. Restoration of common areas. The owner of the fee of each portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned as near as practicable to the condition of same immediately prior to such condemnation or transfer to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

8. Agreement:

a. Modification - Cancellation. This agreement (including Exhibit "A") may be modified or cancelled only by written consent of all record owners of Parcel I and all the record owners of Parcel II, which consents shall not be unreasonably withheld.

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(1) Delegation of authority. It is agreed that at least as long as either WAL-MART or HOLLAND is the initial user and/or operator of one or both parcels, whether as owner or lessee, that the authority for modifying this agreement shall rest with them alone as to the parcels they own, use or operate.

Any purchaser, lender, lessee, assignee, grantee, sublessee or other party having any interest in the portions of Parcel I and/or Parcel II that WAL-MART or HOLLAND have an interest in, shall be deemed to have appointed WAL-MART and HOLLAND as their attorneys-in-fact for their respective parcels for the purpose of negotiating and entering into any modifications of this agreement, except for extending the duration hereof.

b. Breach. In the event of breach or threatened breach of this agreement, only all record owners of Parcel I as a group, or all the record owners of Parcel II as a group, or WAL-MART, so long as it has an interest as owner or tenant in Parcel I, or HOLLAND, so long as it has an interest in any part of Parcel II, shall be entitled to institute proceedings for full and adequate relief from the consequence of said breach. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

c. Non-Merger. So long as WAL-MART is tenant of either parcel, this agreement shall not be subject to the doctrine of merger, even though the underlying fee ownership to the parcels described herein, or any parts thereof, is vested in one party or entity.

d. Duration. Unless otherwise cancelled and terminated, this agreement and all the easements, rights and obligations hereof shall automatically terminate and be of no further force or



effect after fifty-seven (57) years from the date hereof, except that any access and/or utility easements hereafter executed pursuant hereto, if any, shall continue in full force and effect until terminated in writing by the parties entitled to modify this agreement in accordance with the provisions of Paragraph 8 a. hereof.

39 PAGE 581 BOOK  
9. Rights and obligations of lenders. The charges and burdens of this agreement are, and shall at all times be, subject to and inferior to the lien or charge of any mortgage or deed of trust made in good faith and for value affecting Parcel I or II or any part thereof, or any improvements now or hereafter placed thereon. A breach of any of the easements, covenants, or restrictions hereof shall not defeat or render invalid the lien or charge of any mortgage or deed of trust. The inferiority of this agreement shall be LIMITED to the extent that title to any property acquired through sale under foreclosure of any mortgage or deed of trust effected by powers of sale, judicial proceedings, or otherwise, shall be superior to all the charges and burdens affecting Parcel I and Parcel II by virtue of this agreement. In the event of any such foreclosure, or deed in lieu thereof, the purchaser or grantee shall have the right to assume the obligations of the party against whom such foreclosure was made and in such event, the obligations hereunder shall continue. In the event the rights and obligations hereunder are not so assumed, then except or as to access and/or utility easements hereafter executed, this agreement and all of the easements, rights and obligations hereof, shall automatically terminate and be of no further force and effect.

10. Release from liability. Any person owning or acquiring fee or leasehold title to Parcel I or Parcel II, or any portion thereof, shall be bound by this agreement only as to the parcel or portion of the parcel acquired by such person. Such person shall be bound by this agreement only as to the parcel acquired by such person. Such person shall be bound by this agreement only during



the period such person is the fee or leasehold owner of such parcel or portion of the parcel, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this Paragraph 10, the easements, covenants and restrictions in this agreement shall continue to be benefits and servitudes upon Parcel I and Parcel II running with the land.

11. Rights of Successors. The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes upon Parcel I and Parcel II running with the land. This agreement shall bind and inure to the benefit of the parties hereto, the respective heirs, personal representatives, tenants, successors and/or assigns. The singular number includes the plural and any gender includes all other genders.

12. Marginal notes. The marginal notes herein contained are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.

13. Document execution and change. It is understood and agreed that until this document is fully executed and delivered by both HOLLAND and the authorized corporate officers of WAL-MART, there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. It is further agreed that once this document is fully executed and delivered that it contains the entire agreement between the parties hereto and that, in executing it, the parties do not rely upon any statement, promise or representation not herein expressed and this document once executed and delivered shall not be modified, changed or altered in any respect except by a writing executed and delivered in the same manner as required for this document.

14. Assignment. This agreement may assigned by either party hereto. This agreement shall bind the parties, their heirs, successors and assigns.



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15. Limitation of liability. Anything else in this agreement to the contrary notwithstanding, the obligee of any covenant or promise in this agreement shall look solely to the obligor's interest in the obligor's parcel and in obligor's personal property used in connection therewith, for the full satisfaction of any judgment or decree requiring the payment of money by obligor, based upon any default under the terms hereof, and no other property or asset of obligor shall be subject to levy, execution or other enforcement procedure for the satisfaction of such judgment or decree.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

Witness:

Betty L. Harwood  
Curtis F. Buckner

WAL-MART STORES, INC.

By: Kenneth L. Zepher  
Its Vice President

Sherman Holland, Jr.  
SHERMAN HOLLAND, JR.

Carol M. Holland (L.S.)  
CAROLYN M. HOLLAND, His  
Wife



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EXHIBIT "B"

TO

CONTRACT DATED JANUARY \_\_\_\_, 1981

BETWEEN

WAL-MART STORES, INC.

AND

SHERMAN HOLLAND, JR., ET AL.

PARCEL I

LEGAL DESCRIPTION

A parcel of land in the NW 1/4 of the SW 1/4 and the SW 1/4 of the NW 1/4 of Section 25, Township 20 South, Range 3 West, Huntsville Meridian, Shelby County, Alabama, being more particularly described as follows:

Begin at the NE corner of the NW 1/4 of the SW 1/4, Section 25, thence westerly along the north line of said 1/4 - 1/4 Section 460.22 feet to the westerly R.O.W. margin of U.S. Highway 31; thence with a deflection angle of 76° 18' 31" left, southerly along said westerly R.O.W. margin 2.00 feet to the point of beginning; thence continue southerly along last stated course and along said R.O.W. margin 348.00 feet to a point; thence with a left interior angle of 104° 29' 00"; westerly leaving said R.O.W. 99.26 feet to the centerline of Old Birmingham to Montgomery highway (abandoned); thence with a left interior angle of 262° 55' 00", southerly along the centerline of said abandoned highway 111.05 feet to a point; thence with a left interior angle of 183° 24' 00", southerly along the centerline of said abandoned highway 14.30 feet to a point; thence with a left interior angle of 86° 00' 30", westerly leaving said abandoned highway 470.28 feet to the easterly R.O.W. margin of Louisville and Nashville Railroad; thence with a left interior angle of 90° 00' 00", northerly along said R.O.W. margin 356.87 feet to the beginning of a curve to the left having a central angle of 04° 05' 35", a radius of 2,900.00 feet and an arc length of 207.18 feet; thence with a left interior angle of 182° 02' 48", northerly along the chord of said curve 207.14 feet to a point on said R.O.W. margin; thence with a left interior angle of 87° 57' 12" (measured to chord) easterly, leaving said R.O.W., 458.24 feet to the westerly R.O.W. margin of the Old Birmingham to Montgomery Highway (abandoned); thence with a left interior angle of 90° 48' 53", southerly along said abandoned westerly R.O.W. margin 80.87 feet to a point; thence with a left interior angle of 269° 35' 32", easterly, leaving said westerly abandoned R.O.W. margin 155.77 feet to the westerly R.O.W. margin of U. S. Highway 31 also being the point of beginning, forming a closing interior angle of 82° 47' 06", containing 304,920 square feet or 7.000 acres.



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EXHIBIT "C"

TO  
CONTRACT DATED JANUARY \_\_\_\_\_, 1981  
BETWEEN  
WAL-MART STORES, INC.  
AND  
SHERMAN HOLLAND, JR., ET AL.

PARCEL II

LEGAL DESCRIPTION

A certain parcel of land in the Northwest Quarter of the Southwest Quarter of Section 25, Township 20 South, Range 3 West, more particularly shown as PARCEL II on EXHIBIT "A" attached to the same Contract to which this EXHIBIT "C" is attached, and being generally a parcel of land lying and abutting the South line of Parcel I, with frontage on U. S. Highway 31 of 553.84 feet, and running from said U. S. Highway 31 Westwardly to the existing right-of-way of the L & N Railroad.

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BOOK



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100' L&N RAILROAD R.O.W.

FUTURE DEVELOPMENT



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Parcel II

FUTURE PARKING

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BOOK

353.87'

4E

280'

WAL-MART STORE  
52,770 S.F.



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VESTALE

470.28'

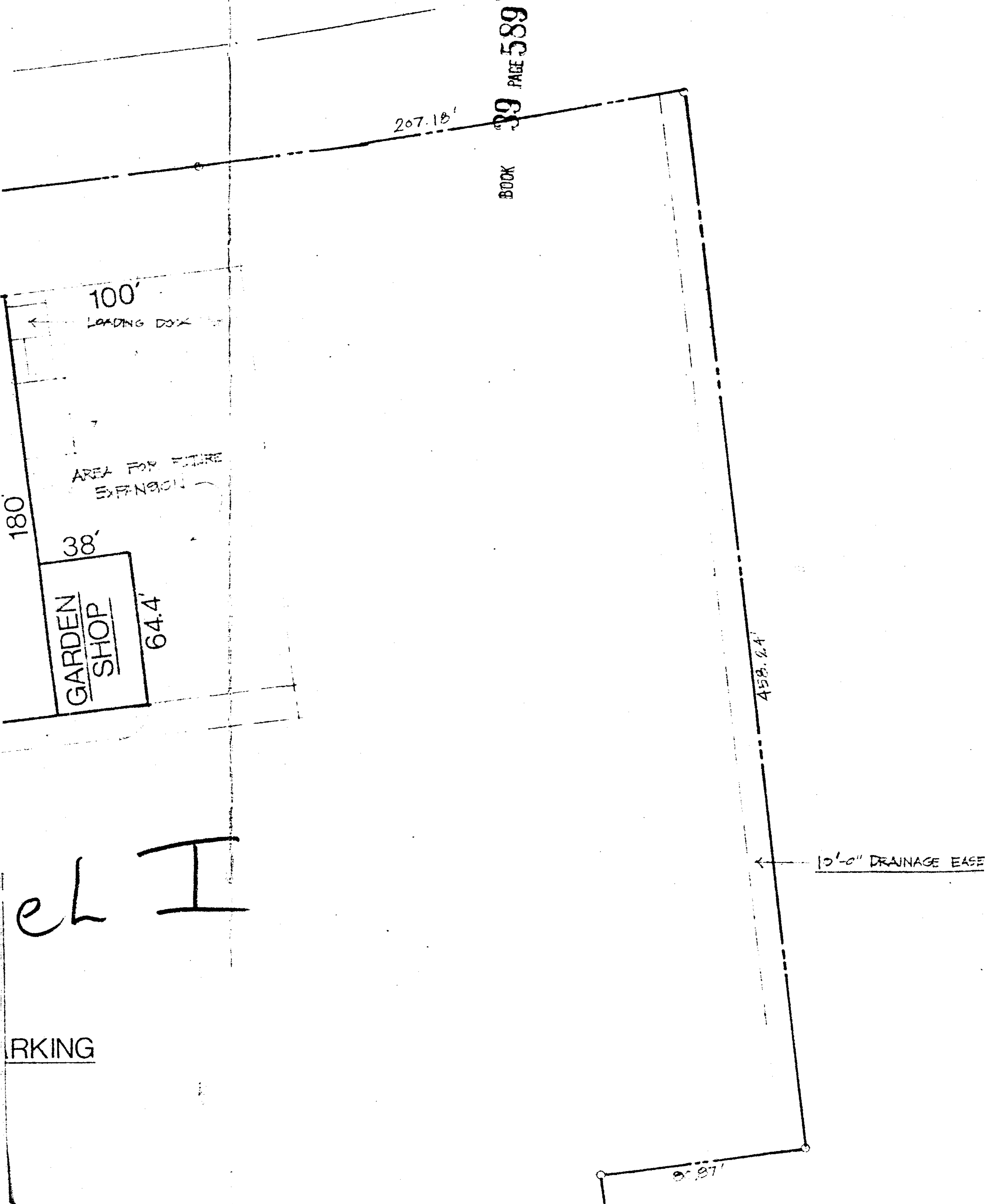
PARC

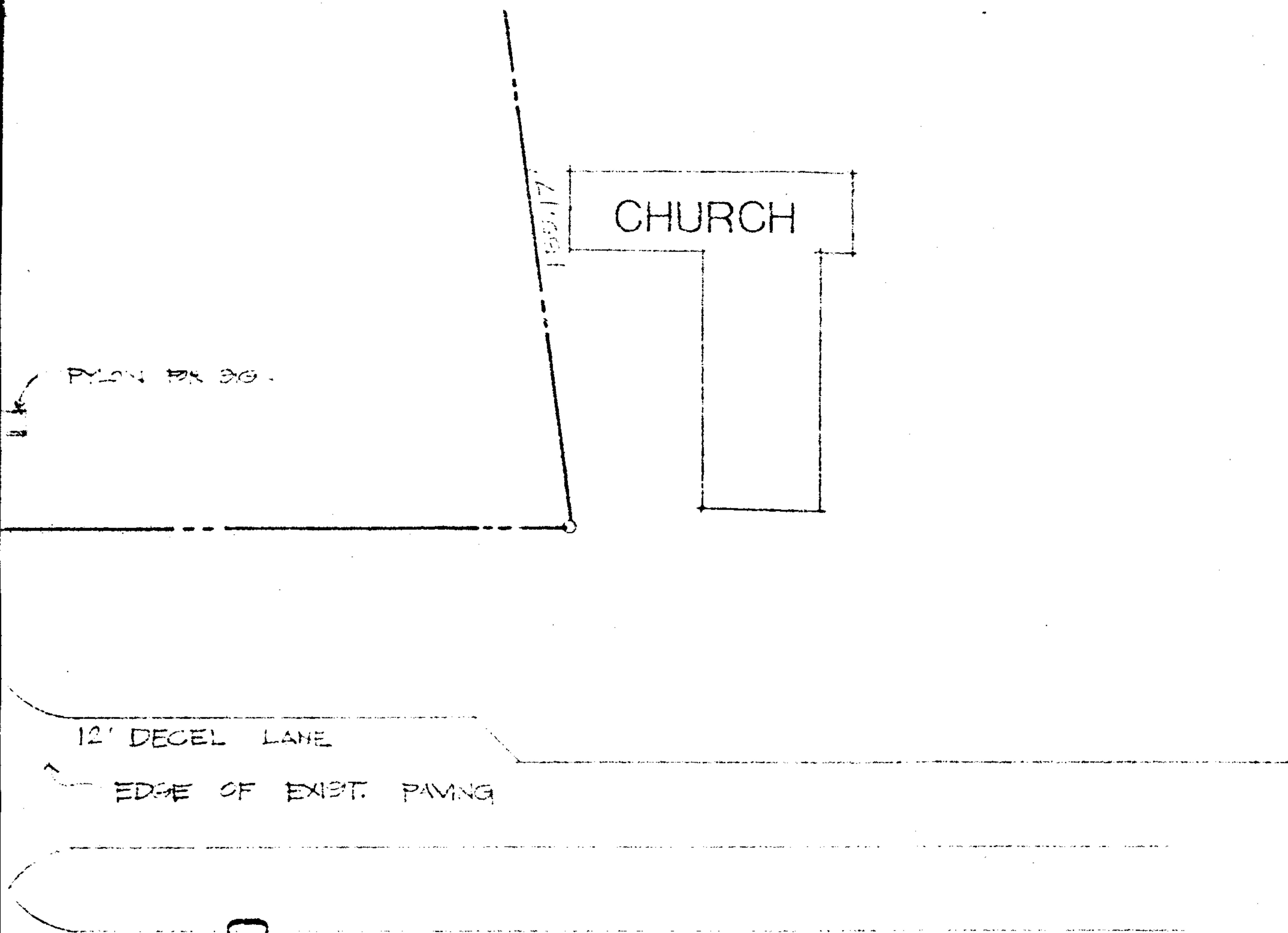
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EXHIBIT "A"

TO

CONTRACT DATED JANUARY \_\_\_, 1981

BETWEEN

WAL-MART STORES, INC.

AND

SHERMAN HOLLAND, JR., ET AL.



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02/20/1981 12:00:00 AM FILED/CERT

Arrett Architects Inc.

12 OFFICE PARK CIRCLE  
SUITE 211  
BIRMINGHAM, ALABAMA 35223  
(205) 871-8711

DRAWN

BWF

JOB NO

80-14

CHECKED

DATE

12/17/80

SHEET DESCRIPTION

SITE PLAN

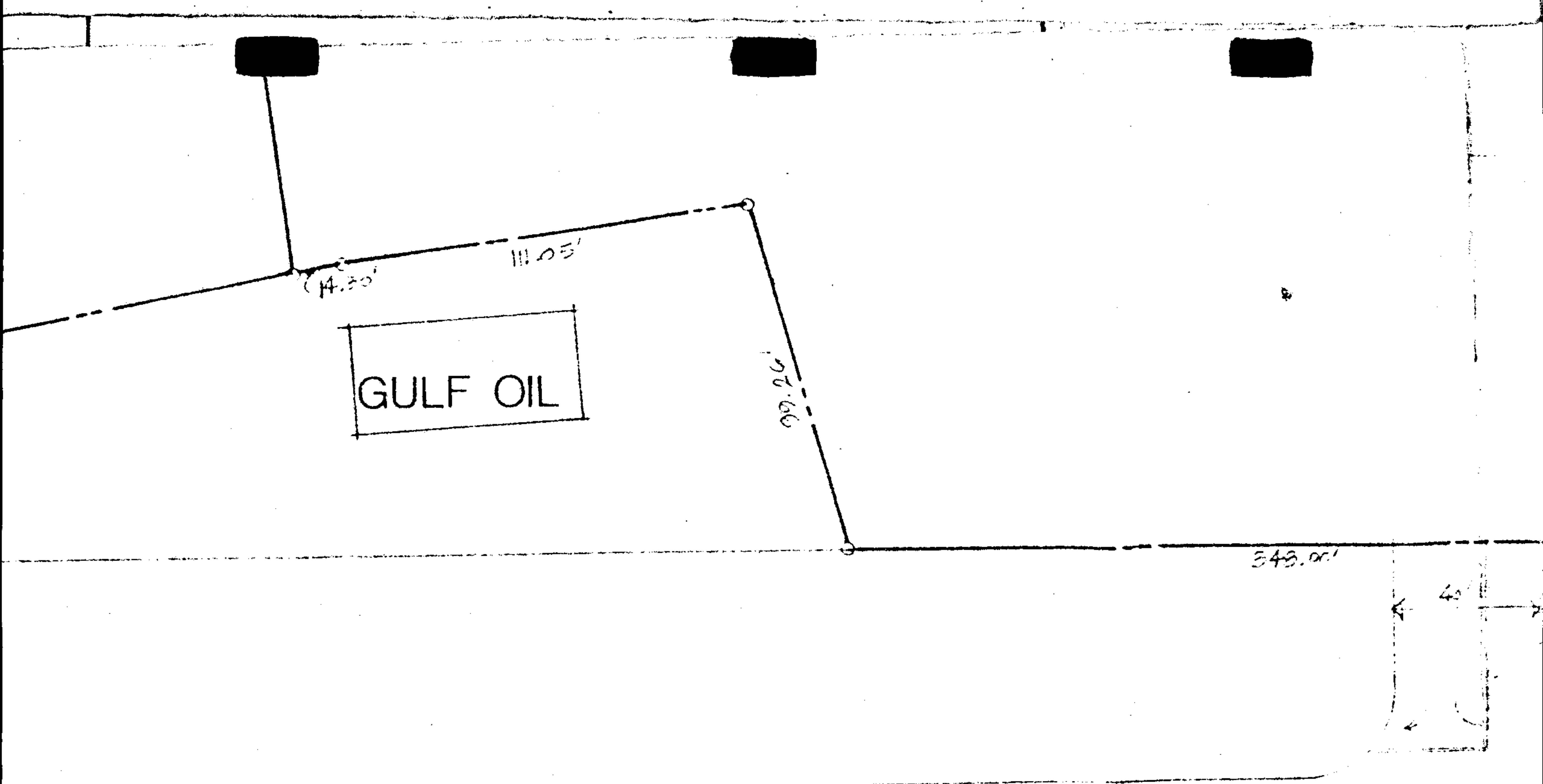
REVISIONS

SHEET NO

A-1

OF 1





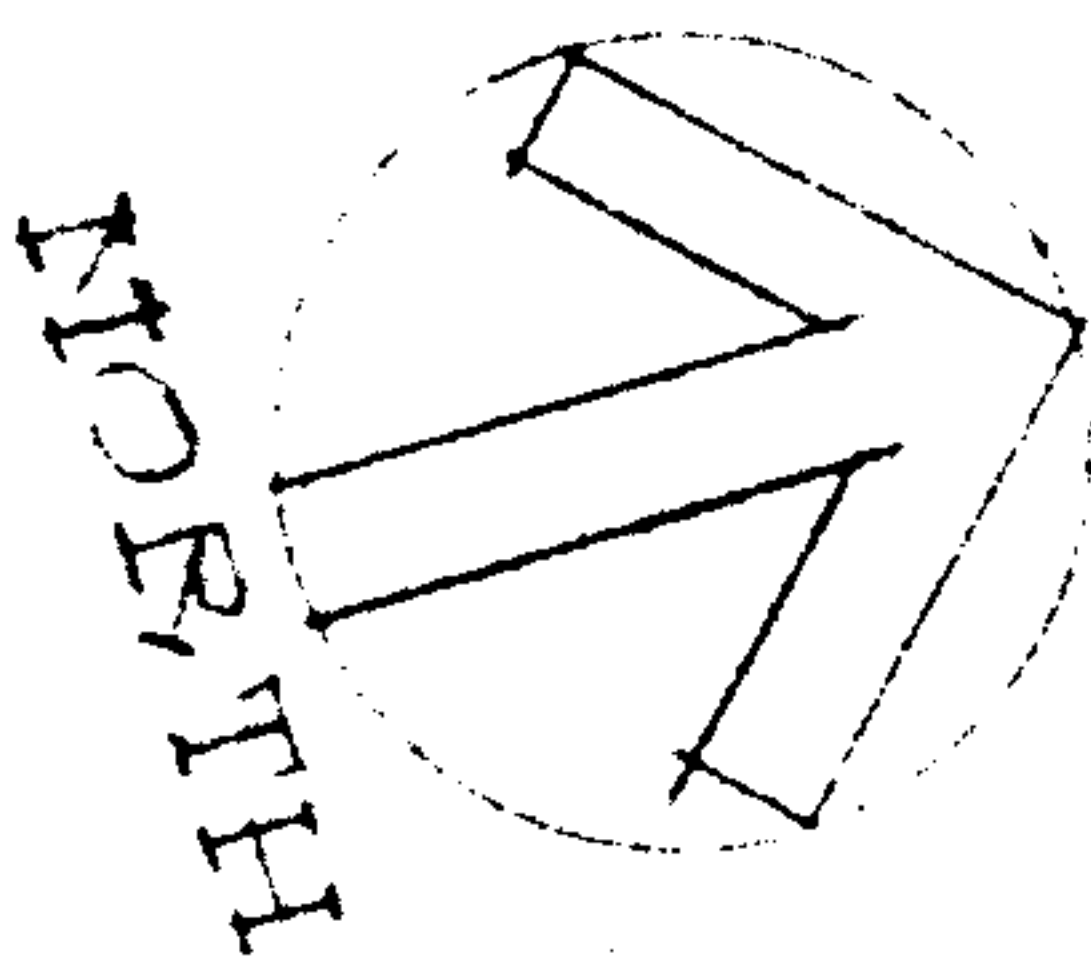
HIGHWAY 31 - SOUTHBOUND

31 - NORTHBOUND

PROPOSED TURN LANE

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**SITE PLAN**  
 SCALE : 1" = 50'-0"



**P. Lauren B**

PROJECT

PROPOSED:  
SHOPPING CENT  
 FOR  
 ALABASTER, ALABAMA



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553.34'

44.52'

100.33'

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BOOK

SHALBY COUNTY  
CLERK'S OFFICE  
SHELBY COUNTY, ALA.

8 20 PM 12: 30

Re. 3/50  
Sub. 100

J. P. Thompson, Jr.  
JUDGE OF PROBATE

3250

FUTURE ACCESS TO F-65

U.S.

U.S. HIGHWAY



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FUT  
DEV

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MART  
52,770

28

45'