

433

451 430 v. General

Parties

THIS MEMORANDUM OF LEASE dated this 29<sup>th</sup> day of June, 1989, between 2154 TRADING CORPORATION, a New York corporation having its principal office at ONE MADISON AVENUE, NEW YORK, NEW YORK 10010 (herein referred to as "Landlord"), and K MART CORPORATION, a Michigan corporation having its principal office at 3100 West Big Beaver Road, Troy, Michigan 48084 (herein referred to as "Tenant"),

WITNESSETH: That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations and the further consideration of the rents reserved and the covenants and conditions more particularly set forth in a certain lease between Landlord and Tenant and bearing even date herewith, Landlord and Tenant do hereby covenant, promise and agree as follows:

Demised Premises

1. Landlord does demise unto Tenant and Tenant does take from Landlord for the term hereinafter provided, and any extension thereof, the following property: Tenant's completed building (designated K mart), together with site improvements to be constructed as specified in said lease by Landlord at its expense on the land described in Exhibit "A" and depicted on Exhibit "B" attached hereto and made a part hereof, and situated in the County of Shelby, State of Alabama; said building or buildings to be in the locations and of the dimensions depicted on said Exhibit "B".

Landlord hereby gives and grants unto Tenant, in common with others entitled thereto, including Tenant's agents, employees, customers, licensees and invitees the following licenses, rights, privileges and easements: the use of parking areas, common areas (including rest rooms and other facilities, if any), roadways, sidewalks and accessways to public streets and highways indicated on said Exhibit "B", together with the use of any delivery or servicing areas adjoining Tenant's said buildings or designated as such on Exhibit "B", which areas shall be adequate for the passage, unloading and, if necessary, turning around of trailer trucks and other commercial vehicles.

Said land, completed buildings and site improvements, together with the licenses, rights, privileges and easements herein set forth, shall be hereinafter collectively referred to as the "demised premises".

Term

2. The lease term shall commence upon the date of occupancy by Tenant of said buildings, and shall terminate upon such date as shall be twenty five (25) years from the last day of the month in which said date of occupancy by Tenant shall occur; provided, however, Tenant shall have the option to extend the lease term for ten (10) successive periods of five (5) additional years each.

Building Areas

3. Landlord covenants, during the period commencing with the date of execution of the aforesaid lease and ending upon the last day of the lease term and any extension or renewal thereof, that it will not erect or construct any buildings or other structures upon land described in Exhibit "A", except as shown on Exhibit "B"; provided, however, in the event that the date of occupancy by Tenant of the demised premises shall not occur prior to such date as shall be seven (7) years from the date of the aforesaid lease, then the restriction imposed by this Article shall cease and terminate and shall be of no further force or effect.

Signs

4. The demised premises shall be referred to by only such designation as Tenant may indicate. Landlord expressly recognizes that the service mark and trademark "K mart" is the valid and exclusive property of Tenant, and Landlord agrees that it shall not either during the term of this lease or thereafter directly or indirectly contest the validity of said mark "K mart", or any of Tenant's registrations pertaining thereto in the United States or elsewhere, nor adopt or use said mark or any term, word, mark or designation which is in any aspect similar to the mark of Tenant. Landlord further agrees

Joy Carswell

TAYLOR & MATHIS

P.O. BOX 86185

ATLANTA, GEORGIA 30338

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that it will not at any time do or cause to be done any act or thing directly or indirectly, contesting or in any way impairing or tending to impair any part of the Tenant's right, title and interest in the aforesaid mark, and Landlord shall not in any manner represent that it has ownership interest in the aforesaid mark or registrations therefor, and specifically acknowledges that any use thereof pursuant to this lease shall not create in Landlord any right, title or interest in the aforesaid mark.

Subject to Landlord's approval of design and location, such approval not to be unreasonably withheld, Tenant shall have the option to erect at its sole cost and expense upon the demised premises signs bearing such legend or inscription as Tenant shall request.

Landlord shall not permit any signs (other than entrance monuments), billboards or posters to be displayed on any portion of the demised premises.

Without limiting the foregoing, Tenant may, subject to applicable governmental laws, statutes, and ordinances and subject to Landlord's approval of design and location, such approval not to be unreasonably withheld, install one (1) pylon sign at the location designated as "Tenant Pylon" on Exhibit "B". In such event said pylon shall contain room to include signs of two (2) other major Tenants of the Shopping Center as designated by Landlord provided those Tenants pay for their own signs. Landlord warrants that, except for Tenant's pylon, or a pylon to be erected at Bruno's or Landlord's option with such pylon containing room for K mart sign at K mart's expense no additional pylon type signs shall be permitted on any portion of the shopping center premises located within the land described in Exhibit "A".

The sole purpose of this instrument is to give notice of said lease and all its terms, covenants and conditions to the same extent as if said lease were fully set forth herein.

The conditions, covenants and agreements contained in this instrument shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, successors and assigns. All covenants and agreements of this instrument and said lease shall run with the land.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate as of the day and year first above written.

WITNESSES:

Bernard D. Ciolek

By:

Victor W. Turner  
Vice President

207

Gabriel Van Zest

Attest:

Christine D. Markuse  
Assistant Secretary

K MART CORPORATION

Mary E. Harter

By:

M. I. Hill  
Vice President

Cynthia J. Kaminsky

Attest:

C. S. [Signature]  
Assistant Secretary

ACKNOWLEDGMENTS

STATE OF Georgia )  
COUNTY OF DeKalb ) ss:

I do hereby certify that on this 29<sup>th</sup> day of June, 1989, before me, Sandra R. Nauman, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared Victor W. Turner and Christine N. Markussen, known to me to be the Assistant Vice President and Secretary of 2154 Trading Corporation who, being by me duly sworn, did depose and say that they reside in Atlanta, Georgia respectively; that they are the Vice President and Assistant Secretary respectively of 2154 Trading Corporation the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

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

Sandra R. Nauman  
Notary Public

Notary Public, Georgia State at Large  
My Commission Expires Feb. 10, 1990

STATE OF MICHIGAN )  
COUNTY OF OAKLAND ) ss:

I do hereby certify that on this 17<sup>th</sup> day of July, 1989, before me, Patricia A. Hewelt, a Notary Public in and for the County and State aforesaid, and duly commissioned, personally appeared M. E. Skiles and E. E. Lotz, Jr., known to me to be the Vice President and Assistant Secretary of K mart Corporation, who, being by me duly sworn, did depose and say that they reside in Rochester and Birmingham, MI respectively; that they are the Vice President and Assistant Secretary respectively of K mart Corporation, the corporation described in and which executed the foregoing instrument; that they know the seal of said corporation; that the seal affixed to said instrument is the corporate seal of said corporation; that, on behalf of said corporation and by order of its board of directors, they signed, sealed and delivered said instrument for the uses and purposes therein set forth, as its and their free and voluntary act; and that they signed their names thereto by like order.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

My commission expires: \_\_\_\_\_  
Notary Public, Macomb County, Mich.  
My Commission Expires July, 26 1992

Patricia A. Hewelt  
Notary Public

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## EXHIBIT A

STATE OF ALABAMA  
SHELBY COUNTY

## PARCEL A

## K-MART DEMISED PREMISES

Being part of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  and the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West, and the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 1, Township 19 South, Range 2 West, all in Shelby County, Alabama, and being more particularly described as follows:

Commence at the Southeast corner of said Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 36 and looking West along the South line of same turn an angle left of  $6^{\circ}34'27''$  and run South  $83^{\circ}21'19''$  West 931.50 feet to a point on the proposed Southeasterly right-of-way of Valleydale Road (Shelby County Highway #17); thence right  $124^{\circ}37'25''$  and run North  $27^{\circ}58'44''$  East along said proposed right-of-way 369.24 feet to the point of curve of a curve to the right having a radius of 1577.04 feet and a central angle of  $5^{\circ}03'44''$ ; thence North  $30^{\circ}30'36''$  East along said right-of-way and chord of curve 139.29 feet to a point on the curve, also being the POINT OF BEGINNING of the herein described demised premises; thence continuing along said right-of-way and curve with radius of 1577.04 feet and a central angle of  $21^{\circ}56'16''$  run North  $44^{\circ}00'36''$  East along said right-of-way and chord of curve 600.14 feet to the point of tangent; thence continue North  $54^{\circ}58'44''$  East along said proposed right-of-way 73.70 feet to the point of curve of a curve to the left having a radius of 1492.42 feet and a central angle of  $6^{\circ}18'12''$ ; thence run North  $51^{\circ}49'38''$  East along said right-of-way and chord of curve 164.11 feet to a point on curve; thence right  $121^{\circ}31'41''$  from the chord of said curve and run South  $6^{\circ}38'41''$  East 590.41 feet to a point; thence right  $7^{\circ}03'08''$  and run South  $0^{\circ}24'27''$  West 48.87 feet to a point; thence left  $7^{\circ}03'08''$  and run South  $6^{\circ}38'41''$  East 187.83 feet to a point; thence left  $90^{\circ}00'00''$  and run North  $83^{\circ}21'19''$  East 55.0 feet to a point; thence right  $90^{\circ}00'00''$  and run South  $6^{\circ}38'41''$  East 76.15 feet to a point on a curve on the back of curb line of the rear drive of said premises, said curve having a radius of 149.50 feet and a central angle of  $13^{\circ}01'39''$ ; thence right  $83^{\circ}29'10''$  to the chord of said curve and run South  $76^{\circ}50'30''$  West along the chord of said curve 33.92 feet to the point of tangent; thence continue South  $83^{\circ}21'19''$  West along said back of curb line 608.09 feet to a point; thence right  $125^{\circ}00'00''$  and run North  $28^{\circ}21'19''$  East 183.94 feet; thence right  $55^{\circ}00'00''$  and run North  $83^{\circ}21'19''$  East 17.46 feet to a point; thence left  $90^{\circ}00'00''$  and run North  $6^{\circ}38'41''$  West 132.13 feet to a point of intersection with the Southerly back of curb line of entrance drive; thence left  $80^{\circ}38'10''$  and run North  $87^{\circ}16'51''$  West along said back of curb line 72.97 feet to a point; thence right  $31^{\circ}43'15''$  and continue North  $55^{\circ}33'36''$  West along said back of curb line 168.51 feet to the point of beginning. Contains 9.38042 acres.

EXHIBIT A

STATE OF ALABAMA  
SHELBY COUNTY

## EXHIBIT A

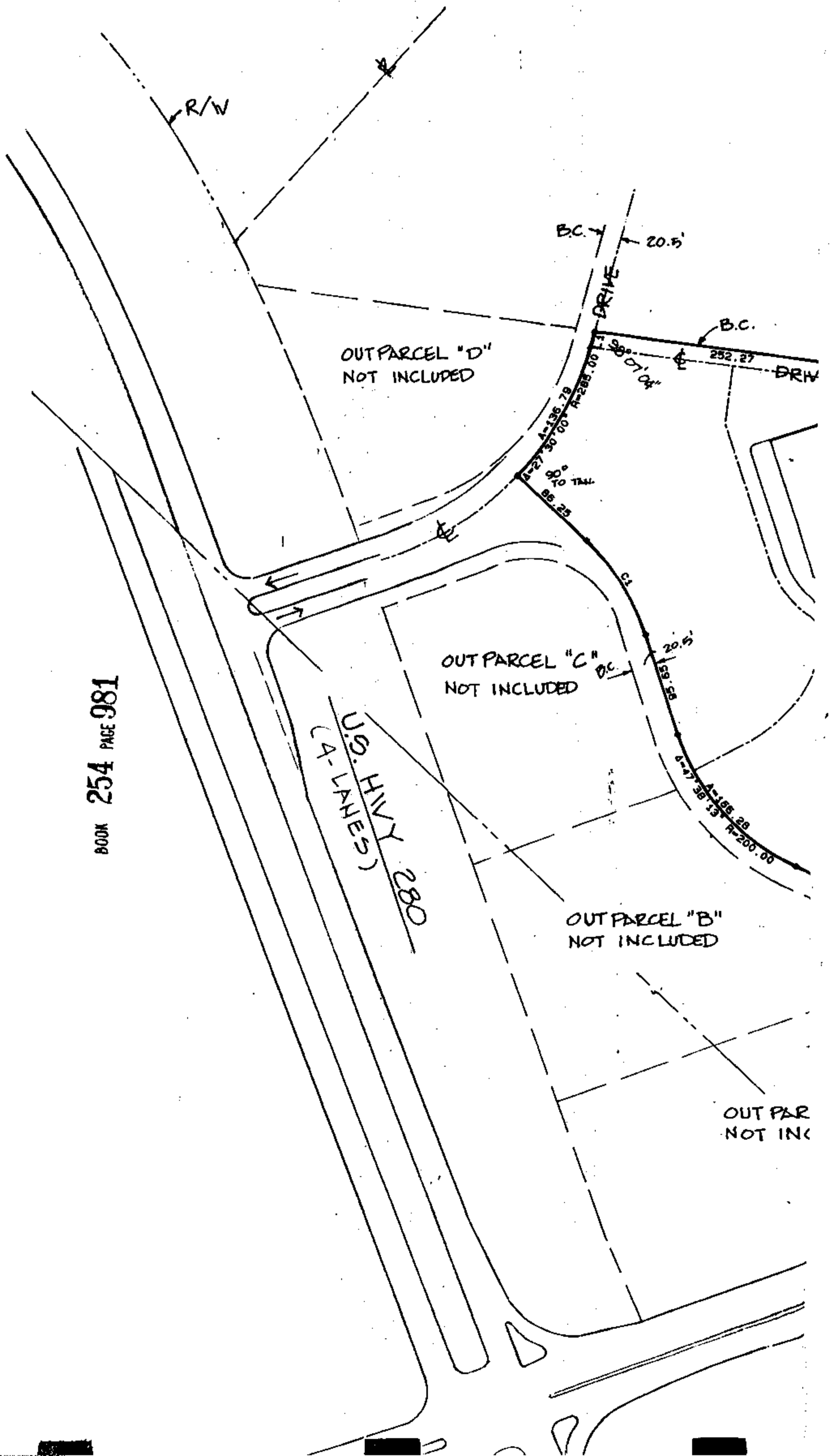
## ENTIRE PREMISES

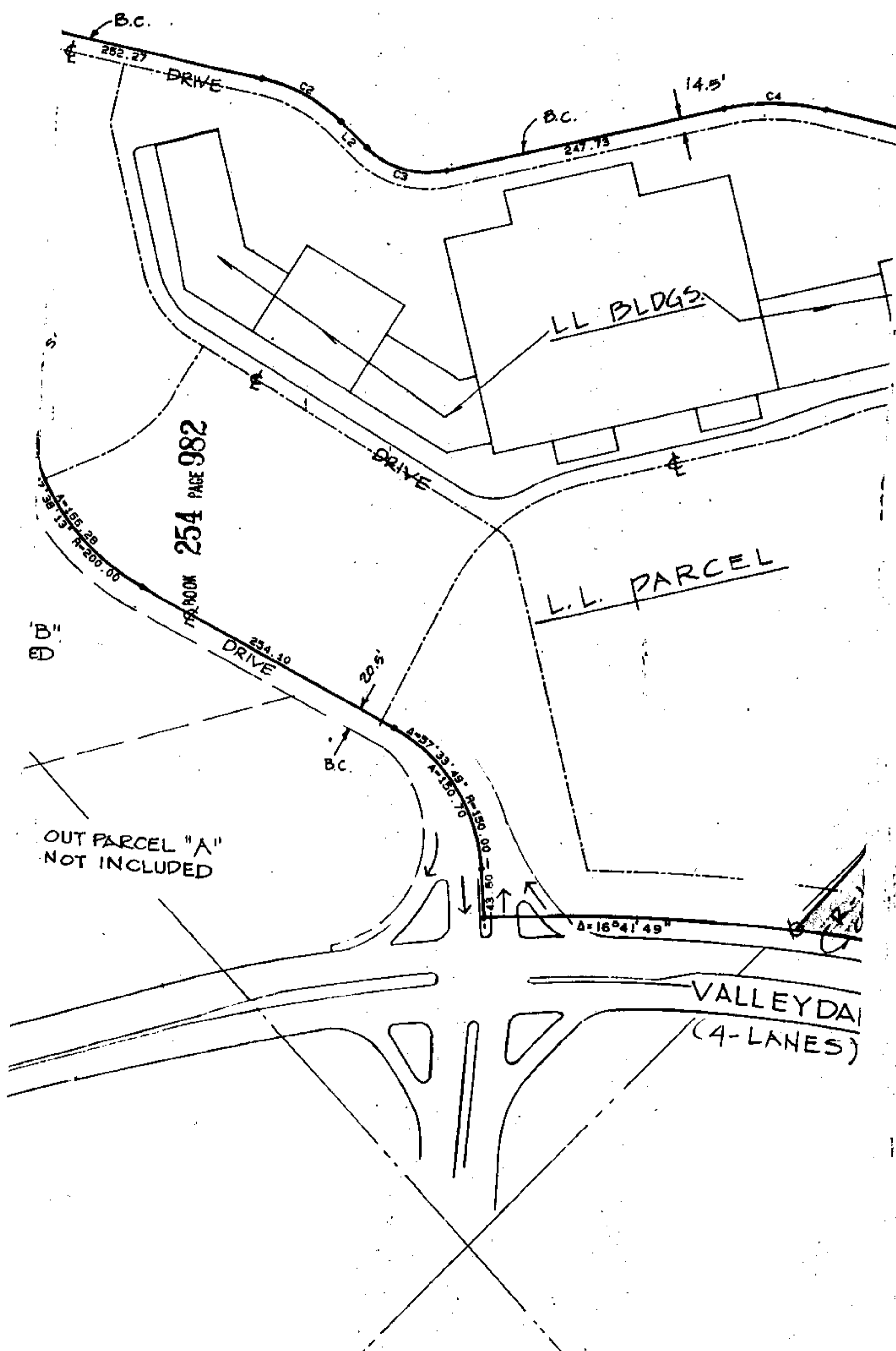
Being part of the Southeast  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  and the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 36, Township 18 South, Range 2 West, and the Northwest  $\frac{1}{4}$  of the Northeast  $\frac{1}{4}$  of Section 1, Township 19 South, Range 2 West, all in Shelby County, Alabama, and being more particularly described as follows:

Begin at the Southeast corner of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of said Section 36 and looking West along the South line of same turn an angle to the left  $6^{\circ}34'27''$  and run Southwesterly 931.50 feet to a point on the proposed Southeasterly right-of-way of Valleydale Road (Shelby County Highway #17); thence right  $124^{\circ}37'25''$  and run Northeasterly along said proposed right-of-way line 369.24 feet to the point of curve of a curve to the right having a radius of 1577.04 feet and a central angle of  $27^{\circ}00'00''$ ; thence run Northeasterly along said right-of-way and arc of curve 743.16 feet to the point of tangent; thence continue Northeasterly along said right-of-way 73.70 feet to the point of curve of a curve to the left having a radius of 1492.42 feet and a central angle of  $16^{\circ}41'49''$ ; thence continue Northeasterly along said right-of-way and arc of curve 434.92 feet to a point on the curve also being on the centerline of following described drive; thence right  $90^{\circ}$  from the tangent of said point on curve and run Southeasterly 43.60 feet to the point of curve of a curve to the left having a radius of 150 feet and a central angle of  $57^{\circ}33'49''$ ; thence run Southeasterly along said centerline of drive and arc of curve 150.70 feet to the point of tangent; thence continue Northeasterly along said centerline of drive 254.10 feet to the point of curve of a curve to the right having a radius of 200.0 feet and a central angle of  $47^{\circ}38'13''$ ; thence run Northeasterly along said centerline of drive and arc of curve 166.28 feet to the point of tangent; thence continue Southeasterly along said centerline of drive 95.65 feet to the point of curve of a curve to the left having a radius of 200.0 feet and a central angle of  $29^{\circ}10'47''$ ; thence run Southeasterly along said centerline of drive and arc of curve 101.86 feet to the point of tangent; thence continue Southeasterly along said centerline of drive 86.25 feet to a point of intersection with the centerline of another drive, said point of intersection being a point on a curve having a radius of 285.0 feet and a central angle of  $27^{\circ}30'00''$ ; thence right  $90^{\circ}$  to the tangent of said point on curve and run Southeasterly along said centerline of drive and arc of curve 136.79 feet to the point of tangent; thence continue Southeasterly along said centerline of drive 14.65 feet to a point of intersection with the back of curb line of the rear drive of said premises; thence the following courses along said curb line as follows: right  $81^{\circ}52'56''$  Southwesterly 252.27 feet to the point of curve of a curve to the right having a radius of 139.50 feet and a central angle of  $32^{\circ}47'50''$ ; thence Southwesterly along the arc of said curve 79.85 feet to the point of tangent; thence Southwesterly 31.88 feet to the point of curve of a curve to the left having a radius of 74.50 feet and a central angle of  $5^{\circ}00'00''$ ; thence Southwesterly along the arc of said curve 75.42 feet to the point of tangent; thence Southwesterly 247.73 feet to the point of curve of a curve to the right having a radius of 189.50 feet and a central angle of  $27^{\circ}00'00''$ ; thence Southwesterly along said arc of curve 89.30 feet to the point of tangent; thence continue Southwesterly 189.11 feet to the point of curve of a curve to the left having a radius of 160.50 feet and a central angle of  $27^{\circ}00'00''$ ; thence run Southwesterly along the arc of said curve 75.63 feet to the point of tangent; thence continue Southwesterly 287.18 feet to a point of intersection with the South line of said Southeast  $\frac{1}{4}$  of Southeast  $\frac{1}{4}$  of said Section 36; thence right  $61^{\circ}34'27''$  and run Westerly along said South line of  $\frac{1}{4}$  section 109.70 feet to the point of beginning. Contains 26.53524 acres.

EXHIBIT A

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PLAT  
PREPARED  
BY

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R-149.50' L-33.99  
CH.-S76°50'30"W  
33.92'

P.O.B. ENTIRE  
(26.53 AC)

SE. COR.  
SW. 1/4 - SE. 1/4  
SEC. 36, T. 10 S., R. 2 W.,  
SHELBY COUNTY, ALA.

K-MART  
#3328  
979

K-MART  
DEMISED  
PREMISES  
9.38042 AC.

IMPROVED PARKING  
540 CARS

R-149.50' L-33.99  
CH.-N51°49'38"E  
164.14'  
A=6°18'12"  
A=164.19

N54°58'44"E

A=21°58'16"

A=603.83  
A=27°00'00" R=1577.04 A=743.16

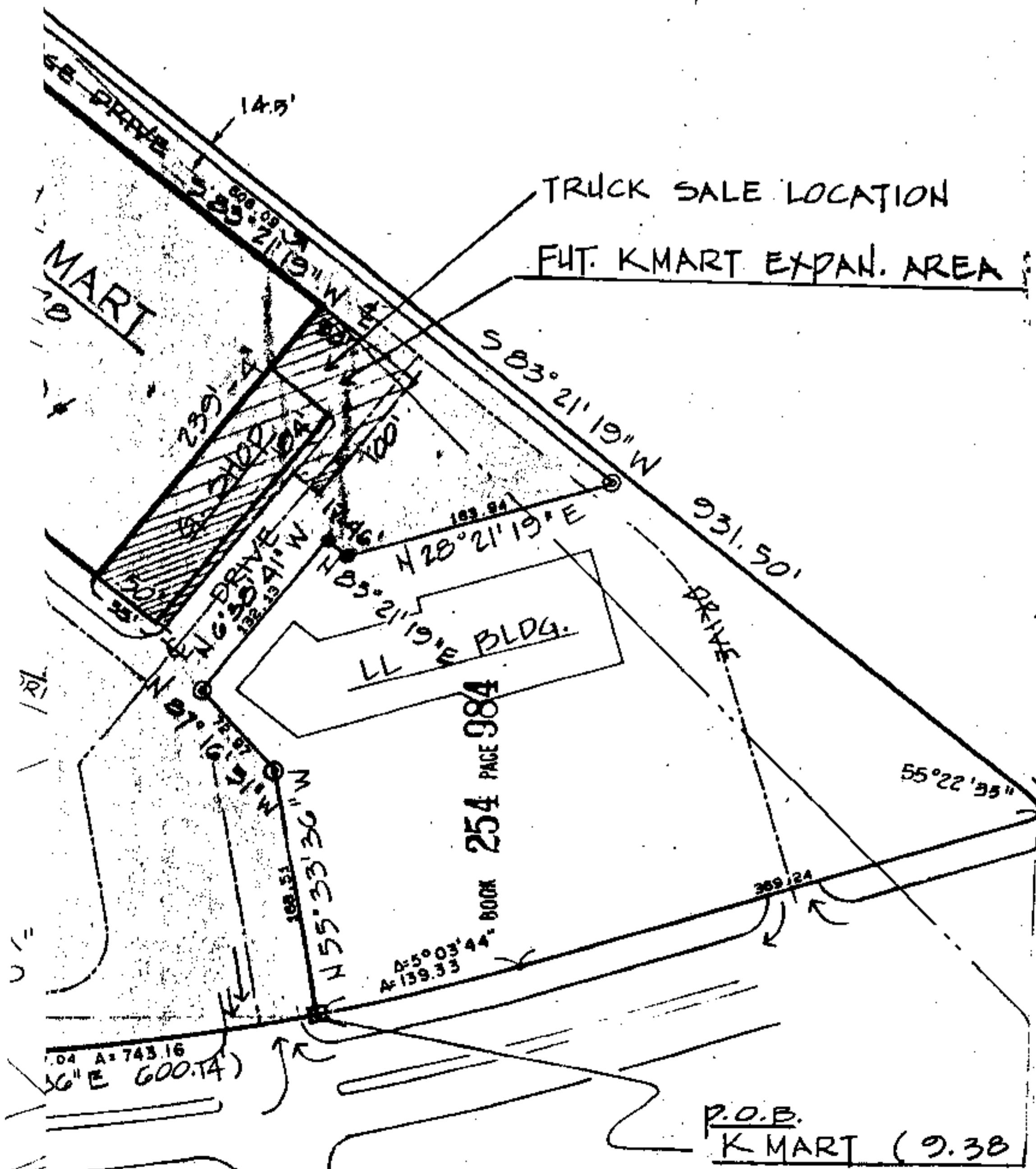
(CH.-N44°00'36"E 600.14)

DALE RD. (SHELBY CO. #17)

STORE No. 3  
 S.E. CORNER U.S. #  
 BIRMINGHAM

49.50' L-33.99  
 S 76° 50' 30" W  
 33.92'

P.O.B. ENTIRE PREMISES  
 (26.53 AC.)



No. 3528  
R U.S. #280 & VALLEYDALE RD.  
IGHAM, ALABAMA

EXHIBIT 'B'

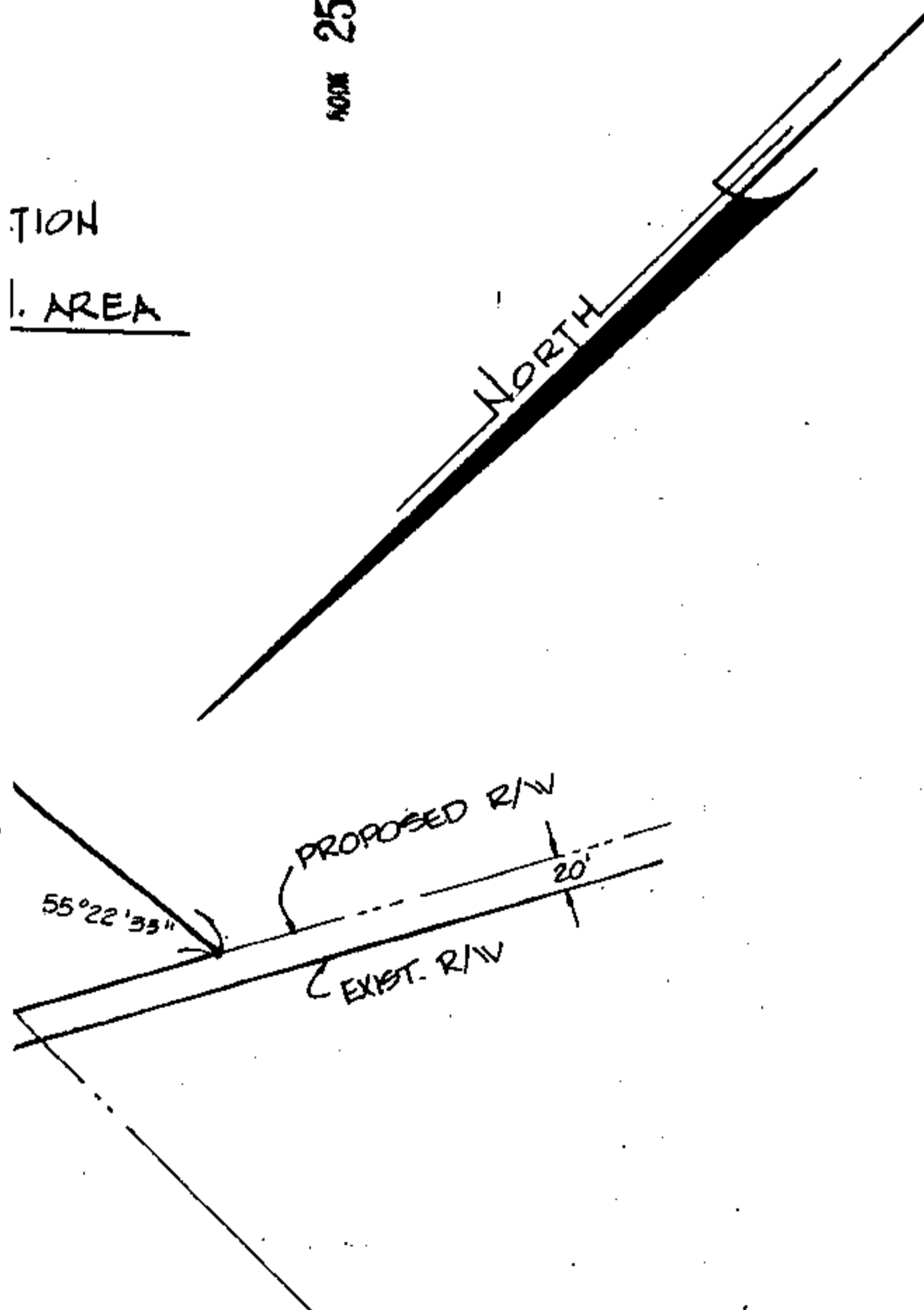
DATE:

FEB. 19, 1989

254 AC 985

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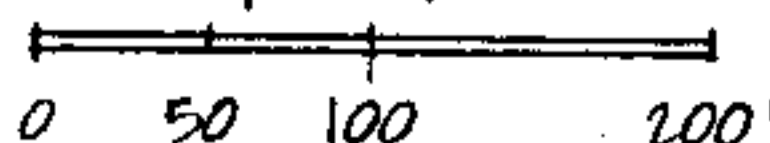
AREA



(9.38 AC.)

SCALE:

100 FT. TO 1 INCH



*Thomas A. Henderson*  
JUDGE OF PROBATE

89 SEP -7 AM 3:26

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

1. Deed Tax -----	\$ 6,344.00
2. Mtg. Tax -----	\$ 22.50
3. Recording Fee -----	\$ 22.50
Indexing Fee -----	\$ 22.50