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INSTRUMENT PREPARED BY:
K. Mark Parnell
GORHAM, WALDREP, STEWART,
KENDRICK & BRYANT, P.C.
2101 6th Avenue North
Suite 700
Birmingham, AL 35203

TEMPORARY CONSTRUCTION EASEMENT

STATE OF ALABAMA)
SHELBY COUNTY)

In consideration of the sum of Ten Dollars ($10.00) and other valuable consideration in hand paid to AmSouth Bank N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio (hereinafter referred to as the "Grantor"), the receipt of which the Grantor hereby acknowledges, the Grantor does hereby grant, bargain, sell and convey unto The Water Works and Sewer Board of The City of Birmingham, a public corporation organized under and by virtue of the laws of the State of Alabama (hereinafter called the "Board"), a right-of-way granting unto the Board the full and absolute privilege to enter upon, over, across, or under and through the hereinafter described real estate for the purposes of constructing, installing, sloping fill, removing and/or replacing a sanitary sewer lift station and appurtenances, appliances, fixtures and equipment, whether above or beneath the surface of the ground, deemed by the Board to be necessary or useful in connection with the collection, transportation and treatment of sewage (hereinafter collectively referred to as the "lift station"), together with all rights and privileges necessary or convenient for the full enjoyment or use of the rights herein granted, including, but not limited to, the free right of ingress and egress over the hereinafter described real estate, together with the rights, in connection with the enjoyment of the privileges herein conveyed to cut and keep clear all trees, brush, undergrowth and other obstructions, whether located upon or near the right-of-way, to the extent necessary to permit the full enjoyment of the rights and privileges herein granted, and the protection of the Lift Station.

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Furthermore, the right-of-way granted hereby shall be temporary, the duration of which shall be for the period of construction of said Lift Station and for thirty (30) days thereafter, and in no event to exceed a period of one and one-half years (1-1/2), said time period to begin with the commencement of said construction upon the parcel of land of the Board, same being situated in Shelby County, Alabama. The property which shall

constitute the said Temporary Construction Easement is described as follows:

Situated in the Northwest 1/4 of Southeast 1/4 of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama and being more particularly described as follows:

Commence at the Northwest corner of said 1/4-1/4 section, at a concrete monument, and run easterly 1284.96 feet along the northerly line of said 1/4-1/4 section to a concrete monument on the westerly right-of-way line of Shelby County Road No. 459; thence turn 88°49'29" right and run southerly 1035.64 feet along said right-of-way line to an iron pin; thence turn 89°38'43" right and run westerly 5.00 feet along said westerly right-of-way line to an iron pin; thence turn 90°00 left and run southerly 100.00 feet along said westerly right-of-way line to an iron pin; thence turn 90°00' right and run westerly 10.00 feet along said westerly right-of-way line to an iron pin; thence turn 90°00' left and run southerly 50.00 feet along said westerly right-of-way line to a concrete monument; thence turn 37°57'28" right and run southwesterly 98.80 feet along said westerly right-of-way line to a point, said point being the Point of Beginning of the Temporary Construction Easement herein described.

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Thence from said Point of Beginning continue 45.00 feet along last described course and along said westerly right-of-way line to a concrete monument, said monument being the point of intersection of said westerly right-of-way line and the northerly right-of-way line of U.S. Highway No. 280; thence turn 46°32'32" right and run westerly 113.00 feet along said northerly right-of-way to a point; thence turn 116°02'31" right and run northeasterly 63.57 feet to a point; thence turn 65°24'57" right and run easterly 66.00 feet to a point; thence turn 23°00' right and run southeasterly 55.00 feet to the Point of Beginning.

Said Temporary Construction Easement contains 6,209.94 square feet or 0.1426 acres, more or less and more particularly shown by the map attached hereto as Exhibit "A". (hereinafter referred to as "Real Estate" and "Temporary Construction Easement")

The rights and privileges herein granted are given, granted and accepted upon the following conditions and subject to the following stipulations:

1. The Grantor hereby covenants with the Board that the Grantor is lawfully seized in fee simple of the above described Real Estate, subject to all such valid and enforceable easements,

restrictions, and rights-of-way of record and the lien of current real estate ad valorem taxes which are not yet delinquent (the "Permitted Encumbrances"), and that the Grantor has a good right to grant the Temporary Construction Easement granted hereby as aforesaid and that the Grantor will warrant against the claims of all persons, subject to the Permitted Encumbrances.

2. No delay of the Board in the use of the Temporary Construction Easement and the right hereby granted or the constructing of the Lift Station shall result in the loss, limitation or abandonment of any right, title, interest, right-of-way, easement or estate granted hereby.

3. By the acceptance of this instrument, the Board agrees to repair, at its sole cost, any damage caused to the easement areas by it or its contractors and subcontractors, including damage to any pavement, gutters, curbing, landscaping and other improvements within the Temporary Construction Easement area. If the Board damages the Temporary Construction Easement area, it agrees to restore same to substantially the same condition existing at the time of the damage as soon as reasonably practical under the circumstances.

4. The Grantor reserves the absolute right to use the real estate subject to the Temporary Construction Easement for any purposes not inconsistent or in conflict with the rights and privileges herein granted to the Board.

5. This agreement states the entire agreement between the Grantor and the Board and merges in this instrument all statements, representations and covenants heretofore made and any agreements not included in this instrument are void and are of no force and effect. This instrument may be modified only by written instrument signed by the Grantor and the Board.

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6. This instrument shall inure to the benefit of, and be binding, upon, the Grantor and the Board and their respective successors and assigns.

7. Notwithstanding anything contained herein to the contrary, the parties hereby acknowledge and agree that AmSouth Bank, N.A. hereby executes this Temporary Construction Easement solely in its capacity as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio, and except with respect of the execution of this Temporary Construction Easement, AmSouth Bank, N.A. shall have no obligations or responsibilities hereunder and makes no warranties or representations hereunder. Parties hereto further acknowledge and agree that in consideration of the service of AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio, herein assumes all

obligations and responsibilities of AmSouth Bank, N.A. hereunder and all other parties having rights and remedies set forth in this Temporary Construction Easement (the "Parties") agree to look solely to NCNB National Bank of North Carolina, as Trustee for the Employees Retirement System of Ohio, for the performance of all obligations and responsibilities of AmSouth Bank, N.A. hereunder. The Parties agree that this Temporary Construction Easement is executed by NCNB National Bank of North Carolina not personally or individually, but solely in its capacity as Trustee of the Public Employees Retirement System of Ohio, and it is understood and agreed that all representations, covenants, understandings and agreements herein made on the part of NCNB National Bank of North Carolina are made and intended not as personal representations, covenants, understandings or agreements, but are made and intended for the purpose of binding only the assets of the Trust over which NCNB National Bank of North Carolina is Trustee in favor of the Public Employees Retirement System of Ohio. This Temporary Construction Easement is executed and delivered by NCNB National Bank of North Carolina not in its own right, but solely in the exercise of powers conferred upon by the applicable Trust Agreement, and the Parties expressly waive any and all personal liability against NCNB National Bank of North Carolina.

TO HAVE AND TO HOLD unto the Board, its successors and assigns based upon the terms, conditions, and for the use and purposes heretofore said.

IN WITNESS WHEREOF, the Grantor has executed this instrument on the 17th day of July, 1990.

AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio

By: [signature]
Its: Vice President & Trust Officer

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STATE OF Alabama)
COUNTY OF Shelby)

I, the undersigned, a Notary Public in and for said State and in said County, certify that John A. Bostwick, V.P. & Trust Officer of AmSouth Bank, N.A., as Ancillary Trustee for NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day, that being informed of the contents of the conveyance, the same was executed voluntarily on the same date.

GIVEN under my hand and official seal on this the 17th day of July, 1990.

Margarete Ruth Peters
Notary Public 12/30/91

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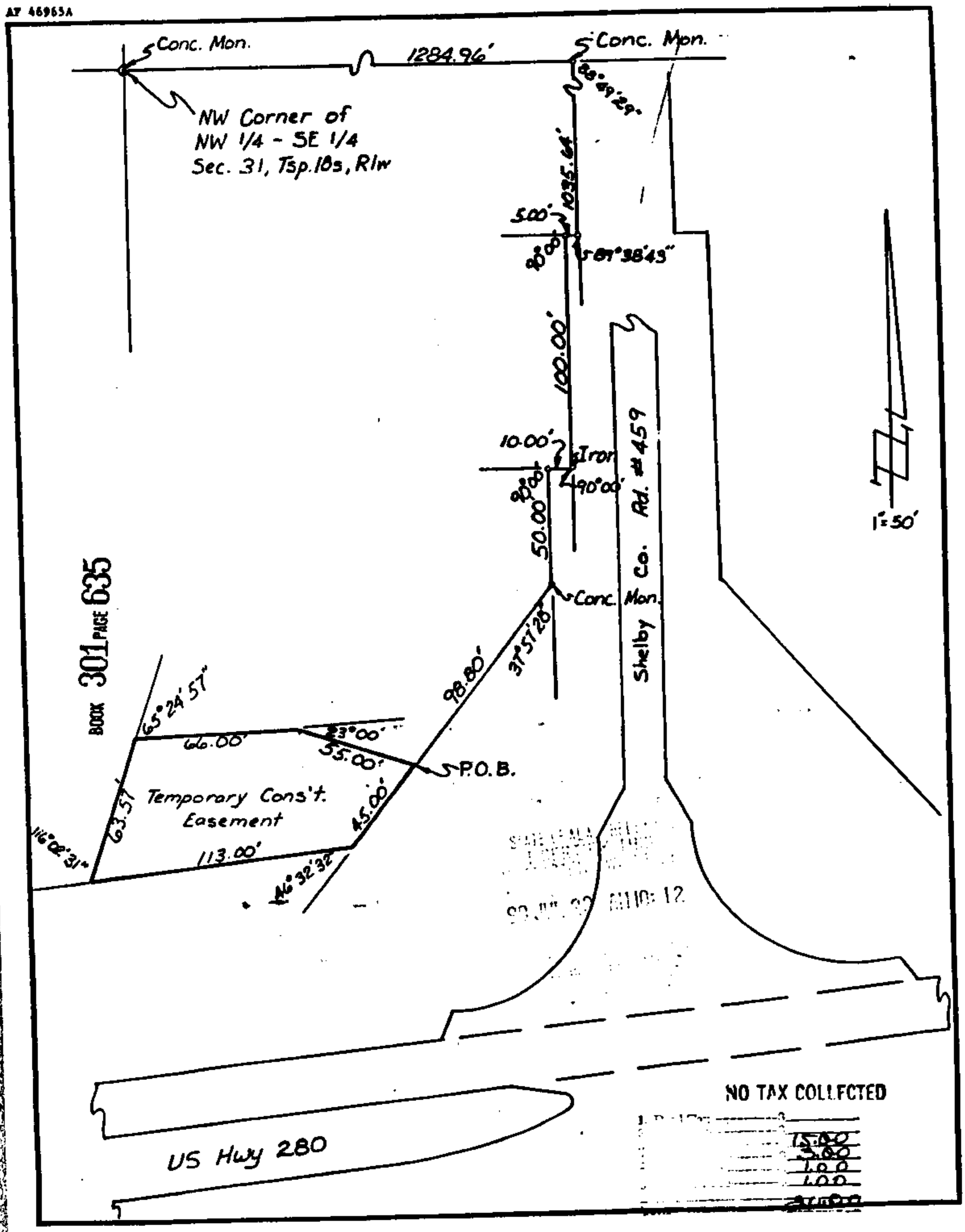
EXHIBIT A

AT 46963A



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NO TAX COLLECTED

15.00
3.00
1.00
1.00
20.00