

2378

ACCESS AND GRADING EASEMENT AGREEMENT

This EASEMENT AGREEMENT is made this 29th day of August, 1990 by and between 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 "AmSouth") and JDN Enterprises, Inc., a Georgia corporation (hereinafter referred to as "JDN").

W I T N E S S E T H:

WHEREAS, AmSouth owns fee simple title to a tract of land lying and being in Shelby County, Alabama, and more particularly described on Exhibit A, attached hereto and incorporated herein by reference (hereinafter referred to as the "Access Easement Area");

WHEREAS, JDN owns fee simple title to all that tract or parcel of land adjacent to and bounded on the west by the Access Easement Area and more particularly described on Exhibit B, attached hereto and incorporated herein by reference (hereinafter referred to as the "Wal-Mart Tract");

WHEREAS, AmSouth owns fee simple title to those tracts of land lying and being in Shelby County, Alabama and more particularly described on Exhibit C and Exhibit D, attached hereto and incorporated herein by reference (hereinafter referred to as the "Phase I Property" and the "Phase II Property", respectively);

WHEREAS, AmSouth desires to grant JDN an easement across the Access Easement Area for construction of a road to provide access from U.S. Highway No. 280 to the Wal-Mart Tract;

WHEREAS, AmSouth desires to grant JDN an easement across the Phase I Property and the Phase II Property for the purpose of performing grading work thereon;

NOW, THEREFORE, for and in consideration of ten dollars (\$10.00), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, AmSouth and JDN hereby agree as follows:

1.

ACCESS EASEMENT

1.01 Access Easement. (a) AmSouth hereby grants to JDN a non-exclusive perpetual easement, right and privilege, over, under, and across the Access Easement Area (the "Access

*Partial Title*

Easement") for the benefit of, appurtenant to and running with the title to the Wal-Mart Tract," for the purpose of constructing, repairing and maintaining an access road (the "Access Road"), and for the purpose of pedestrian and vehicular ingress and egress between U.S. Highway No. 280 and the Wal-Mart Tract.

(b) AmSouth reserves the right of unlimited access to and the right of access, ingress and egress over, under and across the Access Easement Area and the Access Road.

1.02 Design of Access Road. (a) The owner of the Wal-Mart Tract shall bear all costs and expenses associated with the design of the Access Road, including, without limitation, all design, engineering, legal and survey costs, fees and expenses.

(b) The owner of the Wal-Mart Tract and AmSouth shall agree to the proposed schematic plans for the Access Road, the configuration of the road and such other associated Access Road improvements, including, without limitation, landscaping, curbing, curb cuts, gutters, storm drainage and medians.

1.03 Construction of Access Road. After the design for the Access Road is agreed upon by AmSouth and the owner of the Wal-Mart Tract, the owner of the Wal-Mart Tract may cause the Access Road to be constructed within the Access Easement Area in accordance with such agreed upon plans at its sole cost and expense. If the owner of the Wal-Mart Tract has not completed the Access Road within three (3) years from the date hereof, or has elected by written notice delivered to AmSouth in accordance with the terms hereof not to construct the Access Road, then AmSouth, in its sole discretion, may construct the Access Road in accordance with the approved plans and the Conditions of Work contained in Section 3.01. If AmSouth constructs the Access Road, the owner of the Wal-Mart Tract shall reimburse AmSouth upon written demand, accompanied by copies of all invoices for all costs incurred by AmSouth in constructing the Access Road.

1.04 Maintenance of Access Road. (a) Upon completion of construction of the Access Road, the owner of the Wal-Mart Tract shall cause the Access Road to be maintained and repaired in good operating order and repair at its sole cost and expense.

(b) In the event AmSouth deems that repairs are required to the Access Road and the owner of the Wal-Mart Tract fails to commence and diligently pursue such repairs to completion within ten (10) days after notice from AmSouth stating the nature of such necessary repairs, AmSouth shall

have the right to complete said repairs and be reimbursed by the owner of the Wal-Mart Tract pursuant to Section 1.04(c) below. Provided, however, such ten (10) day notice requirement shall not apply in the event of an emergency in which personal injury or property damage or loss of business could be reasonably anticipated if maintenance and repair work were not commenced prior to such time.

(c) In the event that AmSouth performs maintenance or repair work pursuant to Section 1.04(b) above, then the owner of the Wal-Mart Tract hereby agrees to reimburse AmSouth for the costs incurred by AmSouth in connection with such maintenance of the Access Road, upon written demand, accompanied by copies of all invoices for all costs incurred by AmSouth in maintaining or repairing the Access Road.

1.05 Dedication of Access Road. AmSouth and the owner of the Wal-Mart Tract agree to cooperate and assist each other in the conveyance and dedication of the Access Road to the appropriate governmental authority, and each party agrees to execute and deliver such documentation as may be necessary to effectuate such conveyance and dedication.

## 2.

### GRADING EASEMENT

2.01 Grading Easement. AmSouth hereby grants to JDN a non-exclusive perpetual easement, right and privilege, over, under and across the Phase I Property and the Phase II Property for the benefit of, appurtenant to and running with the title to the Wal-Mart Tract for the purpose of entering upon and grading such portions of the Phase I Property and the Phase II Property as may be necessary in connection with the construction and development of the Access Road and the improvements on the Wal-Mart Tract, including the relocation of dirt from the Phase I Property and the Phase II Property to the Wal-Mart Tract (hereinafter referred to as the "Grading Easement").

2.02 Grading Plan. The owner of the Wal-Mart Tract and AmSouth shall mutually agree upon a Master Grading Plan for the grading of the Wal-Mart Tract, the Phase I Property, the Phase II Property and the Access Easement Area sufficient to allow the construction of a typical Wal-Mart Store on the Wal-Mart Tract (hereinafter referred to as the "Grading Plan"). Said Grading Plan shall be prepared at the sole cost and expense of the owner of the Wal-Mart Tract and shall comply with the requirements of (i) that Declaration of Protective Covenants by AmSouth, Eddelman & Associates and The Water Works and Sewer Board of the City of Birmingham, dated July 11, 1988 and

recorded in Deed Book 194, Page 54, Shelby County Records, (ii) that Restrictive Agreement attached as Exhibit C to that certain Statutory Warranty Deed from AmSouth to JDN recorded in the Shelby County, Alabama records contemporaneous with this Easement Agreement, and (iii) that certain Declaration of Covenants, Conditions and Restrictions for the Brook Highland Common Property recorded in the Shelby County, Alabama records contemporaneous with this Easement Agreement.

2.03 Construction. After the Grading Plan is agreed upon by AmSouth and the owner of the Wal-Mart Tract, the owner of the Wal-Mart Tract may perform such grading work as may be necessary in connection with the construction and development of the Access Road and improvements on the Wal-Mart Tract in accordance with the Master Grading Plan at its sole cost and expense.

2.04 Termination. The Grading Easement shall automatically terminate upon completion of the construction of the Access Road and the issuance of a Certificate of Occupancy or its equivalent for the improvements constructed on the Wal-Mart Tract.

### 3. WORK

3.01 Conditions of Work. In the event the owner of the Wal-Mart Tract or AmSouth performs work including repairs and maintenance, within the Easement Area on the Access Road, or on the Phase I Property or the Phase II Property pursuant to the terms of this Easement Agreement:

- (i) Each party shall perform such work in such a manner so as not to unreasonably interfere with the other party's use or operation of the Phase I Property or the Phase II Property;
- (ii) At all times during the performance of such work, as a condition to commencing any such work each party shall carry liability insurance in amounts that are reasonably satisfactory to the other party;
- (iii) Upon the completion of any such work, each party shall restore any property adjacent to the Access Easement Area and owned by the other party to the condition which existed prior to such work and shall leave any portions of the Phase I Property or the

Phase II Property upon which grading work is performed in a smooth and clear condition;

- (iv) Each party shall obtain all necessary licenses and permits required for such work and all work shall be done and all improvements constructed in a good and workmanlike manner and shall be free and clear of all liens of contractors, subcontractor, laborers and materialmen and all other liens;
- (v) All work shall be performed and all improvements constructed in accordance with all laws, ordinances, codes, rules and regulations of all governmental authorities having jurisdiction over such work, and in accordance with applicable governmental specifications necessary to permit a subsequent dedication of such Access Road to the appropriate governmental authority.

3.02 Indemnification. (a) The owner of the Wal-Mart Tract shall indemnify and hold AmSouth harmless from and against any and all liens, claims, liabilities, actions or suits that may arise as a result of the owner of the Wal-Mart Tract's activities or the activities of its agents, representatives or designees on any portion of the Access Easement Area, the Phase I Property or the Phase II Property and against any and all claims for death or injury to persons or properties arising out of or connected with the owner of the Wal-Mart Tracts, or its agents, representatives or designees going upon any portion of the Access Easement Area, the Phase I Property or the Phase II Property pursuant to the provisions of this Agreement, and against all costs, expenses and liability occurring in or in connection with any such claim or proceeding brought thereon, including, without limitation, court costs and attorneys fees incurred.

(b) AmSouth shall indemnify, defend and hold the owner of the Wal-Mart Tract harmless from and against any and all claims, losses, damages and liabilities of whatever nature arising out of or in any way relating to the use of the Access Easement, and the construction, use, or maintenance of the Access Road by AmSouth, its agents, employees, contractors, invitees and all other parties using the Access Easement or the improvements thereon at the behest of AmSouth (except as set forth in 3.02(a) above).

4.  
MISCELLANEOUS

4.01 Status of AmSouth Bank N.A. and NCNB. Notwithstanding anything contained herein to the contrary, the parties hereby acknowledge and agree that AmSouth Bank N.A. hereby executes this Agreement solely in its capacity as Ancillary Trustee on behalf of NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio. AmSouth Bank N.A. shall have no obligations or responsibilities hereunder and makes no warranties or representations hereunder. The parties hereto further acknowledge and agree that in consideration of the service of AmSouth Bank N.A., as Ancillary Trustee on behalf of 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 JDN and all other parties having rights and remedies set forth in this Agreement (the "Parties") agree to look solely to NCNB National Bank of North Carolina, as Trustee for the Public Employees Retirement System of Ohio, for the performance of all obligations and responsibilities of AmSouth Bank N.A. hereunder. The Parties agree that NCNB National Bank of North Carolina is not acting 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 behalf 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. The Parties recognize that NCNB National Bank of North Carolina is not acting in its own right, but solely in the exercise of powers conferred upon it by the applicable trust agreement, and the Parties expressly waive any and all personal liability against NCNB National Bank of North Carolina.

4.02 Miscellaneous. The easements, benefits and obligations created hereunder shall create mutual benefits and servitudes running with the title to the land. Each party hereto shall use and enjoy all easements created hereunder and benefitting said party in such a manner so as to not unreasonably interfere with the granting party's use, enjoyment and development of its respective property. This Agreement shall bind and inure to the benefit of the parties hereto and their respective legal representatives, successors, heirs, grantees and assigns. The headings herein 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 Agreement, nor in any way affect the terms and provisions hereof. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. The parties hereto shall not be entitled to rely upon any statement, promise or representation not herein expressed, and this Agreement shall not be modified or altered in any respect except by a writing executed by all parties hereto. This Agreement shall be governed by and construed and interpreted under the laws of the State of Alabama.

IN WITNESS WHEREOF, authorized representatives of AmSouth and JDN have executed this Agreement under seal the day and year written above.

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

Attest: *Linda S. Lebe*

Its: TRUST OFFICER

[SEAL]

[SIGNATURES CONTINUED ON NEXT PAGE]

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[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

STATE OF al

COUNTY OF Jeff

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John A. Bostwick whose name as Vice President and Trust Officer of AmSouth Bank N.A., acting as Ancillary Trustee, 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, he, as such officer and with full authority, executed the same voluntarily for and as the act of said association acting in its capacity as Ancillary Trustee as aforesaid.

Given under my hand and official seal on this 24<sup>th</sup> day of August, 1990.

Debra M. Montgomery  
Notary Public

My Commission expires:

Feb. 1992

[NOTARIAL SEAL]

JDN Enterprises, Inc.

By: [Signature]

Its: Vice President

Attest: Challen P. Hughes

Its: Asst. Secretary

[SEAL]

[SIGNATURES CONTINUED ON NEXT PAGE]



[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

STATE OF Georgia  
COUNTY OF Fulton

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that John L. Harkins, whose name as Vice President of JDN Enterprises, Inc., 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, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal on this 23<sup>rd</sup> day of August, 1990.

Stacey L. Hagan  
Notary Public

My Commission Expires: NOVEMBER 17, 1991

[NOTARIAL SEAL]



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EXHIBIT "A"

ACCESS EASEMENT TO BENEFIT TRACT 1(a)

ALL THAT TRACT or parcel of land lying and being in the West half of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and shown as the "Access Easement to Benefit Tract 1(a)" on that certain survey of Brook Highland Plaza prepared for Wal-Mart Stores, Inc., JDN Enterprises, Inc. and First American Title Insurance Company by Robert J. Black, Jr. (Alabama Registered Land Surveyor No. 17268) of Sain-South Engineering, dated February 14, 1990, and most recently revised August 16, 1990, and more particularly described as follows:

Commence at the Northwest Quarter of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, proceed North  $89^{\circ}31'51''$  East along the north line of said Southeast Quarter for a distance of 848.96 feet; thence, leaving said north line, South  $01^{\circ}38'40''$  East for a distance of 200.00 feet; thence North  $89^{\circ}31'51''$  East for a distance of 415.82 feet to the westerly right-of-way line of Shelby County Highway No. 495 (right-of-way width varies); thence South  $01^{\circ}59'57''$  East along said westerly right-of-way line for a distance of 986.16 feet; thence South  $35^{\circ}57'31''$  West along said westerly right-of-way line for a distance of 143.80 feet to an intersection with the northerly right-of-way line of U.S. Highway No. 280 (right-of-way width varies); thence South  $82^{\circ}30'03''$  West along said northerly right-of-way line for a distance of 794.00 feet to an intersection with the northeasterly right-of-way line of a proposed public street, said point being the TRUE POINT OF BEGINNING; thence continue South  $82^{\circ}30'03''$  West for a distance of 94.00 feet to an intersection with the southwesterly right-of-way line of said proposed public street; thence North  $07^{\circ}29'57''$  West along said southwesterly right-of-way line for a distance of 189.95 feet; thence North  $06^{\circ}52'54''$  East for a distance of 116.76 feet to the point of curvature of a non-tangent curve to the left having a central angle of  $43^{\circ}20'16''$ , a radius of 500.67 feet, and a chord which bears North  $29^{\circ}10'05''$  West for a distance of 369.73 feet thence along the arc of said curve for a distance of 378.70 feet; thence, leaving said curve and said southwesterly line of a proposed public street, proceed North  $39^{\circ}09'47''$  East for a distance of 65.00 feet to a point on the northeasterly right-of-way line of said proposed public street, said northeasterly line being in a curve to the right, concaved southwesterly, having a central angle of  $43^{\circ}20'16''$ , a radius of 565.67 feet, and a chord which bears South  $29^{\circ}10'05''$  East for a distance of 417.74 feet thence along the arc of said curve for a distance of 427.86 feet to the point of tangency; thence South  $07^{\circ}29'57''$  East for a distance of 303.05 feet to the TRUE POINT OF BEGINNING.

# EXHIBIT B

## WAL-MART - TRACT 1(a)

ALL THAT TRACT or parcel of land lying and being in the Northwest quarter of the Southeast Quarter and the Southwest Quarter of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and shown as "Tract 1(a)", containing 14.701 acres, more or less, on that certain survey of Brook Highland Plaza prepared for Wal-Mart Stores, Inc., JDN Enterprises, Inc. and First American Title Insurance Company by Robert J. Black, Jr. (Alabama Registered Land Surveyor No. 17268) of Sain-South Engineering, dated February 14, 1990, and most recently revised August 16, 1990, and more particularly described as follows:

Commence at the Northwest Corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, proceed North  $89^{\circ}31'51''$  East along the north line of said Southeast Quarter for a distance of 848.96 feet; thence, leaving said north line, South  $01^{\circ}38'40''$  East for a distance of 200.00 feet; thence North  $89^{\circ}31'51''$  East for a distance of 415.82 feet to the westerly right-of-way line of Shelby County Highway No. 495 (right-of-way width varies); thence South  $01^{\circ}59'57''$  East along said westerly right-of-way line for a distance of 396.71 feet to the TRUE POINT OF BEGINNING; thence continue South  $01^{\circ}59'57''$  East along said westerly right-of-way line for a distance of 503.60 feet; thence, leaving said westerly right-of-way line, proceed South  $88^{\circ}21'20''$  West for a distance of 307.56 feet; thence South  $01^{\circ}38'40''$  East for a distance of 222.37 feet to the northerly right-of-way line of U.S. Highway No. 280 (right-of-way width varies); thence South  $82^{\circ}30'03''$  West along said northerly right-of-way line for a distance of 572.50 feet to the northeasterly right-of-way line of a proposed public street (proposed right-of-way width varies); thence, leaving said northerly right-of-way line, proceed North  $07^{\circ}29'57''$  West a distance of 303.05 feet to the point of curvature of a curve to the left having a central angle of  $43^{\circ}20'16''$ , a radius of 565.67 feet, and a chord which bears North  $29^{\circ}10'05''$  West for a distance of 417.74 feet; thence along the arc of said curve for a distance of 427.86 feet to the point of tangency; thence leaving said northeasterly right-of-way line, North  $39^{\circ}09'47''$  East for a distance of 49.72 feet to the point of curvature of a curve to the right having a central angle of  $49^{\circ}11'33''$ , a radius of 200.00 feet, and a chord which bears North  $63^{\circ}45'34''$  East for a distance of 166.49 feet; thence along the arc of said curve for a distance of 171.71 feet to the point of tangency; thence North  $88^{\circ}21'20''$  East for a distance of 461.29 feet; thence North  $01^{\circ}38'40''$  West for a distance of 5.50 feet; thence North  $88^{\circ}21'20''$  East for a distance of 452.74 feet to the TRUE POINT OF BEGINNING.

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# EXHIBIT C

## TRACT I(b)

ALL THAT TRACT and parcel of land lying and being in the West Half of the Southeast Quarter and in the Northeast Quarter of the Southwest Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being shown as "Tract I(b)", containing 14.382 acres, more or less, on that certain survey of Brook Highland Plaza prepared for Wal-Mart Stores, Inc., JDN Enterprises, Inc. and First American Title Insurance Company by Robert J. Black, Jr. (Alabama Registered Land Surveyor No. 17268) of Sain-South Engineering, dated February 14, 1990, and most recently revised August 16, 1990, and more particularly described as follows:

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Beginning at the Northwest Corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, said point being the TRUE POINT OF BEGINNING, thence proceed North 89°31'51" East along the north line of said Southeast Quarter for a distance of 848.96 feet; thence, leaving said north line, South 01°38'40" East for a distance of 200.00 feet; thence North 89°31'51" East for a distance of 415.82 feet to the westerly right-of-way line of Shelby County Highway No. 495 (right-of-way width varies); thence South 01°59'57" East along said westerly right-of-way line for a distance of 166.21 feet; thence, leaving said westerly right-of-way line, South 88°21'20" West for a distance of 173.81 feet; thence South 01°38'40" East for a distance of 150.00 feet to the point of curvature of a curve to the left having a central angle of 90°00'00", a radius of 50.00 feet, and a chord which bears South 46°38'40" East for a distance of 70.71 feet; thence along the arc of said curve for a distance of 78.54 feet to the point of tangency; thence North 88°21'20" East for a distance of 125.05 feet to the aforementioned westerly right-of-way line of Shelby County Highway No. 495; thence South 01°59'57" East along said westerly right-of-way line for a distance of 30.50 feet; thence, leaving said westerly right-of-way line, South 88°21'20" West for a distance of 452.74 feet, thence South 01°38'40" East for a distance of 5.50 feet; thence South 88°21'20" West for a distance of 461.29 feet to the point of curvature of a curve to the left having a central angle of 49°11'33", a radius of 200.00 feet, and a chord which bears South 63°45'34" West for a distance of 166.49 feet; thence along the arc of said curve for a distance of 171.71 feet to the point of tangency; thence South 39°09'47" West for a distance of 49.72 feet to a point on the northeasterly right-of-way line of a proposed public street (proposed right-of-way width varies), said point also being on a curve to the left having a central angle of 03°23'43", a radius of 565.67 feet, and a chord which bears North 52°32'04" West for a distance of 33.51 feet; thence along the arc of said curve for a

distance of 33.52 feet; thence, leaving said proposed northeasterly right-of-way line, North  $39^{\circ}09'47''$  East for a distance of 50.71 feet to the point of curvature of a curve to the right having a central angle of  $17^{\circ}44'40''$ , a radius of 233.50 feet, and a chord which bears North  $48^{\circ}02'07''$  East for a distance of 72.03 feet; thence along the arc of said curve for a distance of 72.13 feet; thence, leaving said curve, North  $01^{\circ}38'40''$  West for a distance of 193.54 feet to the point of curvature of a curve to the left having a central angle of  $90^{\circ}00'00''$ , a radius of 30.00 feet, and a chord which bears North  $46^{\circ}38'40''$  West for a distance of 42.43 feet; thence along the arc of said curve for a distance of 47.12 feet to the point of tangency; thence South  $88^{\circ}21'20''$  West for a distance of 271.03 feet; thence North  $08^{\circ}08'26''$  East for a distance of 411.39 feet to the TRUE POINT OF BEGINNING.

## EXHIBIT C

### 1.35-ACRE OUTPARCEL

ALL THAT TRACT or parcel of land lying and being in the Northwest Quarter of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being shown as an outparcel containing 1.35 acres, more or less, on that certain survey of Brook Highland Plaza prepared for Wal-Mart Stores, Inc., JDN Enterprises, Inc. and First American Title Insurance Company by Robert J. Black, Jr. (Alabama Registered Land Surveyor No. 17268) of Sain-South Engineering, dated February 14, 1990, and most recently revised August 16, 1990, and more particularly described as follows:

Commence at the Northwest Corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, proceed North 89°31'51" East along the north line of said Southeast Quarter for a distance of 848.96 feet; thence, leaving said north line, South 01°38'40" East for a distance of 200.00 feet; thence North 89°31'51" East for a distance of 415.82 feet to the westerly right-of-way line of Shelby County Highway No. 495 (right-of-way width varies), thence South 01°59'57" East along said westerly right-of-way line for a distance of 900.31 feet to the TRUE POINT OF BEGINNING; thence continue South 01°59'57" East along said easterly right-of-way line for a distance of 85.85 feet; thence South 35°57'31" West along said westerly right-of-way line for a distance of 143.80 feet to an intersection with the northerly right-of-way line of U. S. Highway No. 280 (right-of-way width varies); thence South 82°30'03" West along said northerly right-of-way line for a distance of 221.50 feet; thence, leaving said northerly right-of-way line, North 01°38'40" West for a distance of 222.37 feet; thence North 88°21'20" East for a distance of 307.56 feet to the TRUE POINT OF BEGINNING.

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# EXHIBIT D

## TRACT II

ALL THAT TRACT or parcel of land lying and being in the Northeast Quarter of the Southwest Quarter and the Southeast Quarter of the Northwest Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama and being shown as Tract II, containing 13.161 acres, more or less, on that certain survey of Brook Highland Plaza prepared for Wal-Mart Stores, Inc., JDN Enterprises, Inc. and First American Title Insurance Company by Robert J. Black, Jr. (Alabama Registered Land Surveyor No. 17268) of Sain-South Engineering, dated February 14, 1990 and most recently revised August 16, 1990, and more particularly described as follows:

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Beginning at the Northwest corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, said point being the TRUE POINT OF BEGINNING; thence proceed South 08°08'26" West a distance of 614.74 feet to a point located on the northerly right-of-way line of a proposed public street (variable right-of-way width); thence continue along the aforesaid northerly right-of-way line and follow a 565.67 foot radius curve to the left, an arc length of 191.81 feet to a point (said curve being subtended by a chord bearing South 88°25'35" West and having a chord distance of 190.89 feet); thence continue along the aforesaid northerly right-of-way line South 78°42'44" West a distance of 299.03 feet to a point; thence continue along the aforesaid northerly right-of-way line and follow a 590.50 foot radius curve to the right, an arc length of 286.21 feet to a point (said curve being subtended by a chord bearing North 87°24'08" West and having a chord distance of 283.42 feet); thence continue along the aforesaid northerly right-of-way line North 67°31'21" West a distance of 100.55 feet to a point; thence continue along the aforesaid northerly right-of-way line North 73°31'00" West a distance of 43.95 feet to a point; thence continue along the aforesaid northerly right-of-way line North 47°25'40" West a distance of 62.41 feet to a point located on the easterly right-of-way line of Brook Highland Parkway (variable right-of-way width); thence continue along the aforesaid easterly right-of-way line North 16°29'00" East a distance of 103.37 feet to a point; thence continue along the aforesaid easterly right-of-way line North 73°31'00" West a distance of 12.00 feet to a point; thence continue along the aforesaid easterly right-of-way line and follow a 310.47 foot radius curve to the right, an arc length of 254.68 feet to a point (said curve being subtended by a chord bearing North 39°59'00" East and having a chord distance of 247.60 feet); thence continue along the aforesaid easterly right-of-way line North 26°31'00" West a distance of 12.00 feet to a point; thence continue along the aforesaid easterly right-of-way line North 63°29'00" East a distance of 518.37 feet to a point; thence continue along the aforesaid easterly right-of-way line North

26°31'00" West a distance of 20.00 feet to a point; thence continue along the aforesaid easterly right-of-way line and follow a 635.12 foot radius curve to the left, an arc length of 501.28 feet to a point (said curve being subtended by a chord bearing North 40°52'21" East and having a chord distance of 488.37 feet); thence leaving the aforesaid easterly right-of-way line, proceed South 89°50'48" East a distance of 85.21 feet to a point; thence proceed South 00°38'38" East a distance of 355.06 feet to a point, said point being the TRUE POINT OF BEGINNING.

# EXHIBIT D

## TRACT III

ALL THAT TRACT or parcel of land lying and being in the West Half of the Southeast Quarter and in the East Half of the Southwest Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being shown as "Tract III", containing 23.968 acres, more or less, on that certain survey of Brook Highland Plaza prepared for Wal-Mart Stores, Inc., JDN Enterprises, Inc. and First American Title Insurance Company by Robert J. Black, Jr. (Alabama Registered Land Surveyor No. 17268) of Sain-South Engineering, dated February 14, 1990, and most recently revised August 16, 1990, and more particularly described as follows:

Commence at the Northwest Corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and proceed North  $89^{\circ}31'51''$  East along the north line of said Southeast Quarter for a distance of 848.96 feet; thence, leaving said north line, South  $01^{\circ}38'40''$  East for a distance of 200.00 feet; thence North  $89^{\circ}31'51''$  East for a distance of 415.82 feet to the westerly right-of-way line of Shelby County Highway No. 495 (right-of-way width varies); thence South  $01^{\circ}59'57''$  East along said westerly right-of-way line for a distance of 986.16 feet; thence South  $35^{\circ}57'31''$  West along said westerly right-of-way line for a distance of 143.80 feet to an intersection with the northerly right-of-way line of U.S. Highway No. 280 (right-of-way width varies); thence South  $82^{\circ}30'03''$  West along said northerly right-of-way line for a distance of 888.00 feet to an intersection with the southwesterly right-of-way line of a proposed public street, said point being the TRUE POINT OF BEGINNING; thence continue South  $82^{\circ}30'03''$  West along said northerly right-of-way line of U.S. Highway No. 280 for a distance of 211.68 feet; thence North  $84^{\circ}16'22''$  West for a distance of 104.40 feet; thence South  $82^{\circ}34'10''$  West for a distance of 917.78 feet to the point of curvature of a curve to the right having a central angle of  $06^{\circ}52'47''$ , a radius of 3182.44 feet, and a chord which bears South  $86^{\circ}00'34''$  West for a distance of 381.90 feet thence along the arc of said curve for a distance of 382.13 feet to an intersection of said northerly right-of-way line with the southeasterly right-of-way line of Brook Highland Parkway (right-of-way width varies); thence, leaving said northerly right-of-way line of U. S. Highway No. 280, proceed northeasterly along said southeasterly right-of-way line of Brook Highland Parkway and along a curve to the right for an arc distance of 18.87 feet (central angle:  $06^{\circ}14'13''$ ; radius: 173.32 feet; chord: North  $37^{\circ}49'42''$  East, 18.86 feet) to the point of tangency; thence North  $40^{\circ}00'00''$  East for a distance of 179.19 feet; thence South  $50^{\circ}00'00''$  East for a distance of 10.00 feet; thence North  $40^{\circ}00'00''$  East for a distance of 23.65 feet to the point of curvature of a curve to the left

having a central angle of  $61^{\circ}15'02''$ , a radius of 449.33 feet, and a chord which bears North  $09^{\circ}22'29''$  East for a distance of 457.80 feet; thence along the arc of said curve for a distance of 480.34 feet to the point of tangency; thence North  $21^{\circ}15'02''$  West for a distance of 37.01 feet to the point of curvature of a curve to the right having a central angle of  $37^{\circ}44'02''$ , a radius of 393.72 feet, and a chord which bears North  $02^{\circ}23'01''$  West for a distance of 254.64 feet thence along the arc of said curve for a distance of 259.30 feet to an intersection of said southeasterly right-of-way line of Brook Highland Parkway with the proposed southwesterly right-of-way line of a public street (right-of-way width varies); thence, leaving said southeasterly right-of-way line of Brook Highland Parkway, proceed North  $80^{\circ}23'40''$  East along said proposed southwesterly right-of-way line for a distance of 58.87 feet; thence South  $73^{\circ}31'00''$  East for a distance of 43.95 feet; thence South  $87^{\circ}16'59''$  East for a distance of 102.96 feet to the point of curvature of a non-tangent curve to the left having a central angle of  $27^{\circ}46'16''$ , a radius of 655.50 feet, and a chord which bears South  $87^{\circ}24'08''$  East for a distance of 314.62 feet thence along the arc of said curve for a distance of 317.72 feet to the point of tangency; thence North  $78^{\circ}42'44''$  East for a distance of 299.03 feet to the point of curvature of a curve to the right having a central angle of  $93^{\circ}47'19''$ , a radius of 500.67 feet, and a chord which bears South  $54^{\circ}23'36''$  East for a distance of 731.07 feet thence along the arc of said curve for a distance of 819.55 feet to the point of tangency; thence South  $06^{\circ}52'54''$  West for a distance of 116.76 feet; thence South  $07^{\circ}29'57''$  East for a distance of 189.95 feet to the TRUE POINT OF BEGINNING.

## EXHIBIT D

### PROPOSED PUBLIC STREET

ALL THAT TRACT or parcel of land lying and being in the East Half of the Southwest Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, and being shown as the "Proposed Public Street" containing 3.27 acres, more or less, on that certain survey of Brook Highland Plaza prepared for Wal-Mart Stores, Inc., JDN Enterprises, Inc. and First American Title Insurance Company by Robert J. Black, Jr. (Alabama Registered Land Surveyor No. 17268) of Sain-South Engineering, dated February 14, 1990, and most recently revised August 16, 1990, and more particularly described as follows:

Commencing at the Northwest Corner of the Southeast Quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, proceed North  $89^{\circ}31'51''$  East along the north line of said Southeast Quarter for a distance of 848.96 feet; thence, leaving said north line, South  $01^{\circ}38'40''$  East for a distance of 200.00 feet; thence North  $89^{\circ}31'51''$  East for a distance of 415.82 feet to the westerly right-of-way line of Shelby County Highway No. 495 (right-of-way width varies); thence South  $01^{\circ}59'57''$  East along said westerly right-of-way line for a distance of 986.16 feet; thence South  $35^{\circ}57'31''$  West along said westerly right-of-way line for a distance of 143.80 feet to an intersection with the northerly right-of-way line of U. S. Highway No. 280 (right-of-way width varies); thence South  $82^{\circ}30'03''$  West along said northerly right-of-way line for a distance of 794.00 feet to an intersection with the northeasterly right-of-way line of a proposed public street, said point being the TRUE POINT OF BEGINNING; thence continue South  $82^{\circ}30'03''$  West for a distance of 94.00 feet to an intersection with the southwesterly right-of-way line of said proposed public street; thence North  $07^{\circ}29'57''$  West along said southwesterly right-of-way line for a distance of 189.95 feet; thence North  $06^{\circ}52'54''$  East for a distance of 116.76 feet to the point of curvature of a non-tangent curve to the left having a central angle of  $93^{\circ}47'19''$ , a radius of 500.67 feet, and a chord which bears North  $54^{\circ}23'36''$  West for a distance of 731.07 feet; thence along the arc of said curve for a distance of 819.55 feet to the point of tangency; thence South  $78^{\circ}42'44''$  West for a distance of 299.03 feet to the point of curvature of a curve to the right having a central angle of  $27^{\circ}46'16''$ , a radius of 655.50 feet, and a chord which bears North  $87^{\circ}24'08''$  West for a distance of 314.62 feet; thence along the arc of said curve for a distance of 317.72 feet to the point of tangency; thence North  $87^{\circ}16'59''$  West for a distance of 102.96 feet; thence North  $73^{\circ}31'00''$  West for a distance of 43.95 feet; thence South  $80^{\circ}23'40''$  West for a distance of 58.87 feet to an intersection of said proposed southwesterly right-of-way line with the existing southeasterly right-of-way line of Brook Highland Parkway (right-of-way width varies), said point being on a curve to the right having a central angle of  $7^{\circ}17'27''$ , a radius of 393.73 feet, and a chord which

bears North 12°50'16" East for a distance of 50.07 feet; thence along the arc of said curve and along said southeasterly right-of-way line of Brook Highland Parkway for a distance of 50.10 feet to the point of tangency; thence North 16°29'00" East for a distance of 103.37 feet to an intersection with the aforementioned northeasterly right-of-way line of a proposed street; thence, leaving said existing southeasterly right-of-way line of Brook Highland Parkway, proceed South 47°25'40" East along said proposed northeasterly right-of-way line for a distance of 62.41 feet; thence South 73°31'00" East for a distance of 43.95 feet; thence South 67°31'21" East for a distance of 100.55 feet to the point of curvature of a curve to the left having a central angle of 27°46'16", a radius of 590.50 feet, and a chord which bears South 87°24'08" East for a distance of 283.42 feet; thence along the arc of said curve for a distance of 286.21 feet to the point of tangency; thence North 78°42'44" East for a distance of 299.03 feet to the point of curvature of a curve to the right having a central angle of 93°47'19", a radius of 565.67 feet, and a chord which bears South 54°23'36" East for a distance of 825.98 feet; thence along the arc of said curve for a distance of 925.95 feet to the point of tangency; thence South 07°29'57" East for a distance of 303.05 feet to the TRUE POINT OF BEGINNING.

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

90 AUG 31 PM 2: 17

*William A. Jennings, Jr.*  
JUDGE OF PROBATE

1. Deed Tax	\$ 15.00
2. Mort. Tax	0
3. 1/2% Ad Val. Tax	50.00
4. 1/2% Int. Tax	5.00
5. 1/2% Rec. Tax	0
6. 1/2% St. Tax	1.00
Total	\$ 121.00