

**DECLARATION OF EASEMENTS FOR JOINT ACCESS,
DRAINAGE PIPE, SEWER PIPE, AND
CONSTRUCTION/MAINTENANCE/REPAIR
OF RETAINING WALL**

1. Introduction. This is an instrument by which two adjacent property owners are establishing easements over their respective properties for the benefit of each other. The "Declarants" are as follows:

A. J. Wilson Dinsmore as to the property legally described on the attached Exhibit A.

B. R.K.M. 'Bama, Inc. as to the property legally described on the attached Exhibit B.

The easements established by this instrument are perpetual, non-exclusive, and shall be deemed to be covenants running with the referenced properties, benefiting and binding the Declarants and all subsequent owners of the Exhibit A and Exhibit B properties. When a specific reference is made to either property, then such a reference is deemed to include the current owner and all subsequent owners of the referenced property. All rights to ingress and egress established by this instrument shall also extend to anyone with the legal right to be on the referenced property, including licensees, business invitees, tenants, employees, agents, service providers, or customers.

2. Easements. The Declarants establish the following perpetual, non-exclusive easements, subject only to control of usage by governmental authorities:

A. Joint Access. The respective owners of each property grant easements for the benefit of each other for vehicular ingress to and egress from each property by way of the other's property. This easement shall apply only to paved areas and any curb cuts or access points between the properties shall only be at areas identified on the attached Exhibit C or as may otherwise be mutually acceptable to the owners of both properties and Walgreen Co. This easement shall also include use of all curb cuts and access lanes on and adjacent to the properties. This easement shall not be construed to create a public right of way, nor shall it be construed to grant any parking rights on either property.

B. Drainage Pipe. The respective owners of each property grant easements for the benefit of each other for underground installation, maintenance and repair of a drainage pipe in the area as is identified on the sketch attached as Exhibit D. This easement is subject to the following:

(1) The installation of the drainage pipe is to be underground, and is to be completed by on or before October 15, 1997, with the expense as it relates to work to be done in the area noted on Exhibit D to be shared equally by the Declarants (which expense is estimated to be \$15,500). The capacity of the drainage pipe shall only be as is necessary to carry stormwater from the Exhibit A and Exhibit B properties based on an overall drainage plan approved in advance by the owner of the Exhibit B property.

(2) The owner of the Exhibit A property and the owner of the Exhibit B property shall each be 50% responsible for the reasonable repair and maintenance of the drainage pipe (and the drainage pipe shall be maintained in good condition). All

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reasonable repairs and maintenance shall be done promptly at the direction of the owner of the Exhibit B property. Furthermore, any repairs or maintenance shall be done in such a manner so as to not unreasonably disturb the business operations of Walgreen Co. or any subsequent business user of the Exhibit B property.

C. Sewer Pipe. The owner of the Exhibit B property grants to the owner of the Exhibit A property an easement for underground installation, maintenance and repair of a sewer pipe in the area of the Exhibit B property, as is identified on the sketch attached as Exhibit D. This easement is subject to the following:

(1) The installation of the sewer pipe is to be underground and is to be completed by on or before October 15, 1997, with the expense as it relates to work to be done in the area noted on Exhibit D to be shared equally by the Declarants (which expense is estimated to be \$6,500). The capacity of the sewer pipe shall only be as is necessary to provide adequate sewer service from the Exhibit A and the Exhibit B property based on an overall sewer plan approved in advance by the owner of the Exhibit B property.

(2) The owner of the Exhibit A property and the owner of the Exhibit B property shall each be 50% responsible for the reasonable repair and maintenance of the sewer pipe (and the sewer pipe shall be maintained in good condition). All reasonable repairs and maintenance shall be done promptly at the direction of the owner of the Exhibit B property. Furthermore, any repairs or maintenance shall be done in such a manner so as to not unreasonably disturb the business operations of Walgreen Co. or any subsequent business user of the Exhibit B property.

D. Retaining Wall. The owner of the Exhibit B property grants to the owner of the Exhibit A property an easement for the construction, maintenance, and repair of a retaining wall to be built on the Exhibit A property along a portion of the northeasterly boundary of the Exhibit A property and the southwesterly boundary of the Exhibit B property. This easement is subject to the following:

(1) No portion of the retaining wall shall be located on the Exhibit B property.

(2) The retaining wall is to be constructed in accordance with plans and materials approved by the owner of the Exhibit B property and Walgreen Co.; provided, however, such approval shall only apply to structural elements (not aesthetic elements), shall not be unreasonably withheld, and shall be based on an engineer's expert report as prepared by and at the expense of the owner of the Exhibit A property.

(3) The retaining wall must be completed by April 1, 1998. All expenses of the retaining wall are the responsibility of the owner of the Exhibit A property.

(4) All construction, maintenance and repair must be done in such a manner and at such times so as to not hamper the circulation of traffic on the Exhibit A property or otherwise disturb the business operations of Walgreen Co. or any subsequent business user of the Exhibit B property.

(5) The owner of the Exhibit A property shall be responsible for the repair and maintenance of the retaining wall at his sole expense (and the retaining wall shall be maintained in good condition). All repairs and maintenance shall be done promptly; if an emergency occurs where damage to the Exhibit B property may occur because of damage or disrepair of the retaining wall, then the owner of the Exhibit B property or Walgreen Co. may make repairs and shall be promptly reimbursed for such costs by the owner of the Exhibit A property. Furthermore, any repairs or maintenance shall be done in such a manner so as to not disturb the business operations of Walgreen Co. or any other business user of the Exhibit B property.

3. **Indemnity.** The owner of the Exhibit A property shall indemnify and hold harmless both the owner of the Exhibit B property and Walgreen Co. as to any liability, cost, or damage arising from the use of the easements described above by the owner of the Exhibit A property. The owner of the Exhibit B property shall indemnify and hold harmless the owner of the Exhibit A property as to any liability, cost, or damage arising from the use of the easements described above by the owner of the Exhibit B property.

4. **Effect of Eminent Domain.** In the event, at any time, any or all of either the Exhibit A property or the Exhibit B property are condemned or taken by eminent domain, then the easements and all other rights established by this instrument shall terminate as to the portion of property so taken. Only the owner of the property taken shall have any claim on any condemnation awards. Neither party shall have any liability to the other for any loss, damage, or cost incurred as a consequence of such a taking.

5. **Limitations.** The easements established by this instrument shall not restrict the right of either property owner, or anyone with a right to use the properties, from their continued and future use of their respective properties. No one exercising rights granted by this instrument shall unreasonably interfere with any other use of the properties. No one shall allow liens to be placed on either property as a result of use or exercise of easement rights or performance of any construction, maintenance, or repairs and each party shall indemnify and hold the other harmless as to such matters.

6. **Enforcement.** Rights under this instrument shall be enforceable by all remedies permitted by law, including, without limitation, specific performance and injunctive relief. However, no breach of any covenants shall entitle any owner to cancel, rescind, or terminate any of the easements. Once an owner of a property transfers his interest, then that owner shall be released from any liabilities arising subsequent to such transfer so long as the subsequent owner assumes such liabilities. Furthermore, the owner of the Exhibit A property as of the date of execution of this instrument is planning to subdivide the Exhibit A property and, in that event, if there is some parcel adjacent to the Exhibit B property that is so subdivided and which is solely served by the above easements (*i.e.*, no other portion of the subdivided Exhibit A property is served by or in any way uses the above easements), then by a written recorded document the liability under this instrument of the owner of the Exhibit A property may be limited to just such a subdivided portion of the Exhibit A property which meets the above criteria and so long as that subsequent owner assumes such liability. If litigation arises under this instrument, then the prevailing party shall recover their reasonable attorney fees and costs, including appellate, bankruptcy, condemnation or eminent domain proceedings. Walgreen Co. (as a tenant of the Exhibit B property) shall have no liability under this instrument and yet Walgreen Co., so long as it is a tenant of the Exhibit B property, can exercise on behalf of the owner of the Exhibit B property any of his rights arising out of this instrument.

Signatures appear on the next page.

6. **Signatures.** The parties have signed this Declaration of Easements as of August 29, 1997. This Declaration of Easements may be signed in several counterparts and, together, shall constitute one document.

Witnesses:

Print Name _____

Wilson Dinsmore

Print Name _____

R.K.M. 'BAMA, INC.

Print Name _____

Lise J. Peterson

Richard K. Maloof, president and secretary

Print Name _____

MARCEA L. SEAMONS

The State of Alabama)

Jefferson County)

I, Kay K. Bains, notary [name and style of officer], hereby certified that J. Wilson Dinsmore 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, he executed the same voluntarily on the day the same bears date. Given under my hand this 29th day of August, A.D. 1997.

The State of Florida)

Pinellas County)

I, Lise J. Peterson, Notary Public [name and style of officer], hereby certified that Richard K. Maloof, as president and secretary of R.K.M. 'Bama, Inc., an Alabama corporation, 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, he executed the same voluntarily on the day the same bears date. Given under my hand this 28 day of August, A.D. 1997.

This instrument was prepared by:

James V. Stewart, P.A.
Suite 203
200 First Avenue North
St. Petersburg, Florida 33701

(f:\cpt\rekf\rkmdins.eas) 8/27/97 lp



Lise J. Peterson
MY COMMISSION # CC63575 EXPIRES
May 2, 2000
BONDED THRU TROY FARM INSURANCE, INC.

EXHIBIT "A"

Commence at the Northeast corner of Section 36, Township 19 South, Range 3 west and run southerly along the east line of said Section 36 a distance of 549.85 feet; thence turn $76^{\circ}10'07''$ right and run southwesterly 135.38 feet to the Point of Beginning; thence continue along the last described course for 537.91 feet to a point on the northeast right of way line of Shelby County Road No. 275; thence turn $67^{\circ}22'28''$ right and run northwesterly along said road right of way line 208.79 feet; thence turn $94^{\circ}17'04''$ right and run northeasterly 123.00 feet; thence turn $94^{\circ}17'40''$ left and run northwesterly 100.00 feet; thence turn $85^{\circ}40'29''$ left and run 123.01 feet to a point on said northeast right of way line of Shelby County Road No. 275; thence turn $85^{\circ}17'21''$ right and run along said right of way line 99.92 feet; thence turn $40^{\circ}28'05''$ right and run 26.75 feet to a point on the southeast right of way line of State Highway No. 261; thence turn $64^{\circ}29'48''$ right and run northeasterly along said right of way line 129.28 feet; thence turn $1^{\circ}30'35''$ right and run along said right of way line 119.20 feet; thence turn $9^{\circ}05'39''$ left and run along said right of way 53.09 feet; thence turn $1^{\circ}15'28''$ left and run along said right of way 307.65 feet; thence turn $58^{\circ}27'29''$ right and run southeasterly 236.92 feet to a point on the west right of way line of U.S. Highway No. 31; thence turn $69^{\circ}06'06''$ right to the tangent at said point of a curve to the left, said curve having a radius of 1,752.68 feet and run along said curve and said Highway No. 31 right of way 86.88 feet to a point; thence turn $90^{\circ}00'00''$ left from the tangent to said curve at said point and run 15.00 feet to a point; thence turn $90^{\circ}00'00''$ right to the tangent at said point of a curve to the left, said curve having a radius of 1,737.68 feet, and run along said curve and said Highway No. 31 right of way 302.15 feet to the Point of Beginning.

LESS:

A parcel of land situated in the Northeast 1/4 of Section 36, Township 19 south, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of said Section 36; thence run south along the east line of said Section 36 a distance of 266.80 feet, thence turn $117^{\circ}40'00''$ right and run northwesterly 165.21 feet to a point on the westerly right of way line of U.S. Highway #31, said point being the point of beginning of the parcel of land herein described; thence continue along the last described course a distance of 236.92 feet to a point on the southerly right of way line of Valleydale Road; thence turn $58^{\circ}26'34''$ left and run southwesterly along said road right of way for 179.46 feet; thence turn $91^{\circ}07'31''$ left and run southeasterly for 187.95 feet; thence turn $44^{\circ}22'56''$ left and run southeasterly for 45.57 feet; thence turn $45^{\circ}37'04''$ left and run northeasterly for 257.43 feet to a point on the westerly right of way line of U.S. Highway #31; thence turn $51^{\circ}50'47''$ left to the tangent of a curve to the right, said curve having a radius of 1752.68 feet and run northerly along the arc of said curve and said road right of way for 16.26 feet to the point of beginning.

EXHIBIT "B"

PARCEL 1:

A parcel of land situated in the Southeast 1/4 of Section 25 and the Northeast 1/4 of Section 36, all in Township 19 South, Range 3 West, Shelby County, Alabama, more particularly described as follows:

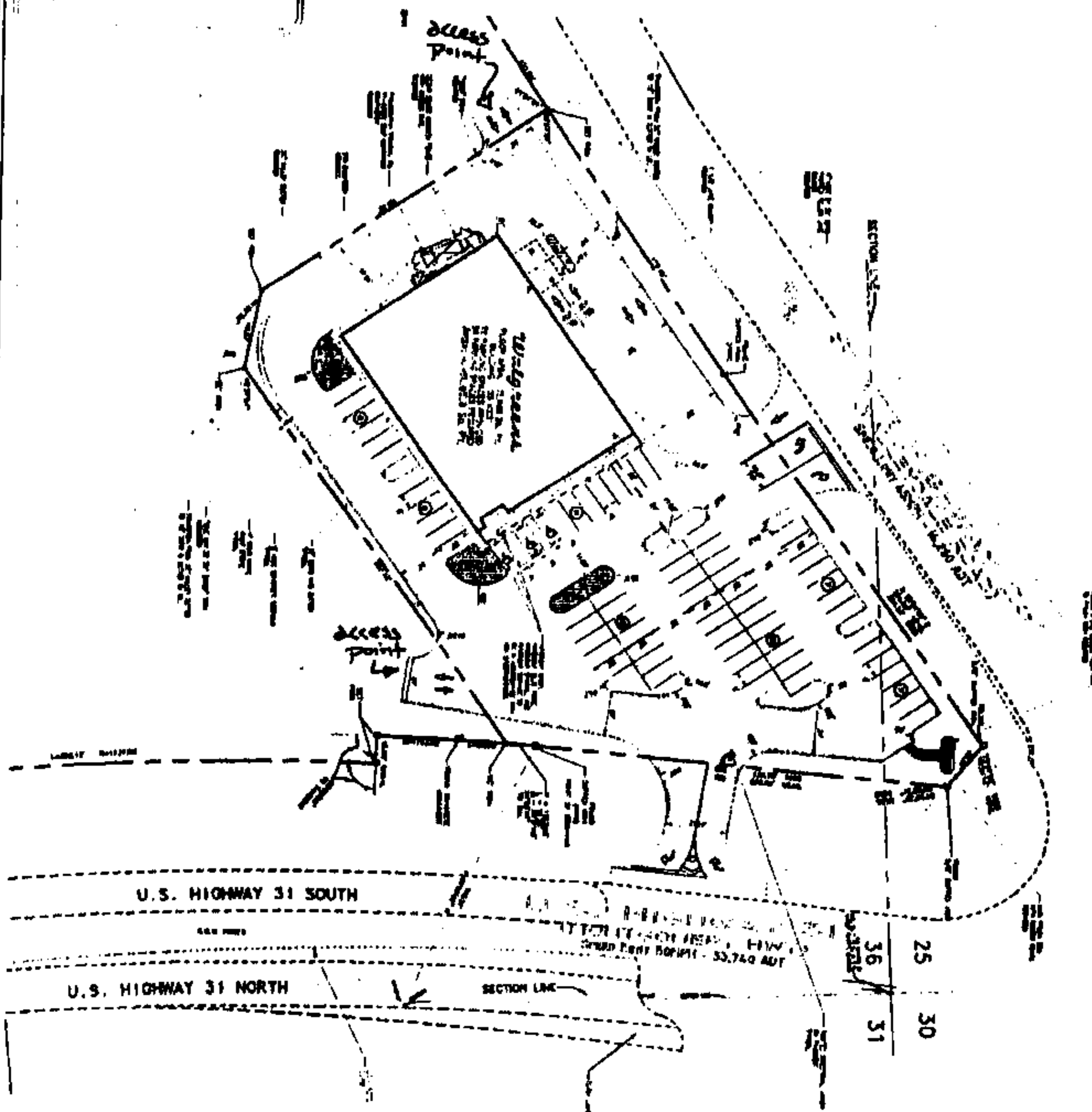
Commence at the Northeast corner of said Section 36, Township 19 South, Range 3 West; thence run South along the East line of Section 36 a distance of 266.80 feet to a point; thence $117^{\circ}40'00''$ right and run northwesterly a distance of 165.21 feet to a point on the westerly right of way line of U.S. Highway No. 31, and the point of beginning; thence continue on last described course North $62^{\circ}00'00''$ west a distance of 236.92 feet to a point on the southeasterly right of way line of Valleydale Road; thence $120^{\circ}24'$ right and run North $58^{\circ}24'00''$ east along southerly right of way line of Valleydale Road a distance of 254.53 feet to a point; thence $73^{\circ}57'50''$ right and run South $47^{\circ}38'11''$ east 29.41 feet to a point on the west right of way line of U.S. Highway 31; thence turn $55^{\circ}03'31''$ right and run South $7^{\circ}25'20''$ west along said right of way line a distance of 226.70 feet to the point of beginning.

PARCEL 2:

A parcel of land situated in the Northeast 1/4 of Section 36, Township 19 south, Range 3 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Northeast corner of said Section 36; thence run south along the east line of said Section 36 a distance of 266.80 feet, thence turn $117^{\circ}40'00''$ right and run northwesterly 165.21 feet to a point on the westerly right of way line of U.S. Highway #31, said point being the point of beginning of the parcel of land herein described; thence continue along the last described course a distance of 236.92 feet to a point on the southerly right of way line of Valleydale Road; thence turn $58^{\circ}26'34''$ left and run southwesterly along said road right of way for 179.46 feet; thence turn $91^{\circ}07'31''$ left and run southeasterly for 187.95 feet; thence turn $44^{\circ}22'56''$ left and run southeasterly for 45.57 feet; thence turn $45^{\circ}37'04''$ left and run northeasterly for 257.43 feet to a point on the westerly right of way line of U.S. Highway #31; thence turn $51^{\circ}50'47''$ left to the tangent of a curve to the right, said curve having a radius of 1752.68 feet and run northerly along the arc of said curve and said road right of way for 16.26 feet to the point of beginning.

EXHIBIT C



GONZALEZ-WOOD ENGINEERING INC.

SITE LAYOUT PLAN
Walgreens
 173 HIGHLAND AVENUE, SUITE 100, HOUSTON, TEXAS 77056
 R.M. DEVELOPMENT CORP.
 11111 HOLLAND AVENUE, SUITE 100, HOUSTON, TEXAS 77056
 DATE: 8/29/97 SCALE: 1" = 40'

NO.	DESCRIPTION	DATE
1	AS-BUILT	8/29/97
2	REVISIONS	

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EXHIBIT "D"

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LEGEND

15' Storm Drainage
EASEMENT

20' Storm Sewer
EASEMENT

STATE HIGHWAY 289
EFT

U.S. HIGHWAY 31 SOUTH

U.S. HIGHWAY 31
(MONTGOMERY HWY)

U.S. HIGHWAY 31 NORTH

SECTION LINE

SCALE: 1"=40'
GRAPHIC SCALE

GONZALEZ-WEDD ENGINEERING INC
200 S. 2100 WILSON AVE. SUITE 200
MEMPHIS, TN 38114-2000

Walgreens
U.S. HOME OF THE DAY
R.H.M. DEVELOPMENT CORP.