

This Instrument was prepared by
P. Christopher Wrenn, Attorney-at-Law
whose address is P. O. Box B
Jacksonville, Florida 32203

Inst. # 1998-33231
08/26/1998-33231
08:47 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
008 CRH 27.00

(Reserved for Clerk)

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF EASEMENTS AND RESTRICTIVE COVENANTS (this "Declaration") is made April 17, 1998, by BIRMINGHAM REALTY COMPANY, a Alabama corporation (together with its successors and assigns and any entity, person, or firm owned or controlled by, owning or controlling, or under common ownership or control therewith, and their respective successors and assigns, "Owner").

RECITALS

1. Owner is the owner of that certain real property located in the County of Shelby, State of Alabama as described on Exhibit "B" attached hereto (the "Shopping Center") and shown on the Site Plan attached hereto as Exhibit "A" (the "Site Plan"), is or may become the owner of certain other real property located within one thousand (1,000) feet of any boundary of the Shopping Center ("Owner's Remaining Land").
2. Owner is the landlord under that certain lease dated April 17, 1998 between Owner and WINN-DIXIE MONTGOMERY, INC., a Kentucky corporation (together with its successors and assigns, "Tenant") pursuant to which Tenant leases a portion of the Shopping Center (the "Store").
3. Owner intends by this Declaration to grant certain easement and other rights and impose certain use restrictions upon the Shopping Center and Owner's Remaining Land for the benefit of Owner, its future tenants, licensees, invitees, and other occupants and for the benefit of Tenant.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner hereby declares that the Shopping Center and Owner's Remaining Land shall be sold, transferred, leased, conveyed, owned, and occupied subject to the following:

Cabala Little

I.

RESTRICTIONS

1.1 **Restrictions on Use.**

(a) **Permitted Use.** The Store may be used for a retail food store, commonly referred to as a supermarket, dealing primarily in, but not limited to foods and food products, or for the conduct of any other mercantile, retail, or service business not prohibited by Article 7(c) of this Lease (including discount businesses) (the "Permitted Use").

(b) **Exclusives.** Tenant shall have the exclusive right to:

- (1) operate a supermarket, grocery, bakery, and delicatessen,
- (2) sell meat, seafood, and vegetables/fruits/produce, dairy products, and frozen foods, except (1) by a business or businesses for which the sale of such items does not exceed the lesser of 500 square feet of sales area (increasing to 1200 square feet for a drug store) or ten percent (10%) of the square foot area of any storeroom within the Shopping Center, and is incidental only to the conduct of another business, or (2) by a restaurant, as prepared, ready-to-eat food items, for consumption either on or off site;
- (3) sell beer and wine for off-premises consumption, except by a package store or drug store;
- (4) operate a photo lab or film development business, except by drug store (each an "Exclusive Use").

Landlord will not directly or indirectly permit any party other than Tenant to use for any Exclusive Use any property located within the Shopping Center (or any property located within one thousand (1,000) feet of any exterior boundary of the Shopping Center and currently or hereafter owned or controlled directly or indirectly by Landlord or any entity controlled by, controlling, or under common control with Landlord).

(c) **Prohibitions.** Without the prior written consent of Landlord and Tenant, which may be withheld or conditioned in Landlord's or Tenant's sole discretion, only retail and/or service stores shall be allowed to operate in the Shopping Center, or any enlargement thereof, and Landlord shall permit none of the following:

- (1) spa, health, sports, or exercise club;
- (2) lounge, bar, "teen lounge" or social encounter club;
- (3) bowling alley;

- (4) pawn shop;
- (5) skating rink;
- (6) bingo or electronic or other game parlor;
- (7) theater (either motion or legitimate);
- (8) area or space for the sale or display of pornographic or "adult" material;
- (9) business or professional offices except those of a type typically found in retail shopping centers, such as, but not limited to, travel agencies, real estate sales and rental (but not schools), tax preparation and similar office service centers and businesses, with no single office use in excess of 2,400 square feet located within 80' of the Store;
- (10) medical offices or abortion or HIV clinic;
- (11) automobile dealership;
- (12) church;
- (13) manufacturing or storage business;
- (14) public auditorium or other public entertainment facility;
- (15) tag office or other government service office;
- (16) exterior "pay" telephones located within 80' of any exterior wall of the Store;
- (17) restaurants located within 80' of any exterior wall of the Store or having seating for more than 48 individuals;
- (18) dry cleaning operation other than one which does not process dry cleaning or utilize dry cleaning chemicals on-site.

1.2 Restrictions on Building Height and Size. Construction of buildings and other improvements in the Shopping Center other than the Store and on Owner's Remaining Land shall be restricted to a maximum building area of twenty-five percent (25%) of the ground area of thereof, with the remainder thereof to be comprised of Common Areas consisting of parking and landscaped areas. No structure, other than the Store, erected in the Shopping Center shall exceed a maximum vertical building height of twenty-two (22%) feet measured from ground level.

The foregoing restrictions shall terminate upon the first to occur of the following (i) seventy-five (75) years after the date hereof, or (ii) the date that Tenant permanently ceases to operate a mercantile, retail, or service business in the Store.

II.

ATTORNEYS' FEES/ENFORCEMENT

Owner and Tenant shall be entitled to bring a legal or equitable action to enforce this Declaration

without the joinder of all other owners.

If Owner or Tenant commences a legal proceeding to enforce any of the terms of this Declaration, the prevailing party in such action shall have the right to recover reasonable attorneys' fees and costs (whether incurred in preparation for or at trial, on appeal, or in bankruptcy) from the other party.

III. MODIFICATION

This Declaration may be modified or amended by owners owning one hundred percent (100%) of the real property comprising the Shopping Center and Owner's Remaining Land, which modification or amendment shall become effective upon (i) the written consent of Tenant, which may be granted or withheld in its sole discretion, and (ii) filing same in the real property records of Shelby County, Alabama.

IV. EASEMENTS

4.1 Ingress and Egress.

(a) Owner hereby grants to each tenant of the Shopping Center (but only so long as such tenant remains a tenant of the Shopping Center), to Tenant, and their respective employees, contractors, deliverymen, agents, customers, invitees, licensees, and assigns, a nonexclusive, irrevocable easement for the purpose of ingress and egress by vehicular and pedestrian traffic upon, over, across, and through the Common Areas as shown on the Site Plan.

(b) Owner shall have the right to temporarily close any part of the Common Areas to the extent necessary to conduct routine maintenance, repairs, and alterations thereof; provided, however, that Owner shall use its reasonable efforts to perform such maintenance, repairs, or alterations, at times and in a manner so as to minimize any adverse impact on the operation of any business within the Shopping Center.

(c) Owner shall have the right to temporarily close any part of the Common Areas as necessary to prevent the public from obtaining prescriptive rights therein, provided that (i) such closure does not exceed the minimum time period required pursuant to applicable law to prevent such prescriptive rights, and (ii) Owner uses its reasonable efforts to minimize any adverse impact on the operation of any business within the Shopping Center.

V. GENERAL PROVISIONS

5.1 Covenants Run With the Land. The provisions of this Declaration shall operate as covenants running with the land comprising the Shopping Center, the Store, and Owner's Remaining Land and shall inure to the benefit of Tenant.

5.2 Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

5.3 Pronouns. When required by context, the singular shall include the plural, and the neuter

gender shall include a person, corporation, firm, association, or other business arrangement.

5.4 Captions. The captions in this Declaration are for convenience only and do not constitute a part of the provisions hereof.

5.5 Governing Law. This Declaration shall be construed and enforced in accordance with, and governed by, the law of the State of Alabama.

5.6 No Presumption. This Declaration shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any owner.

5.7 Exhibits. The following Exhibits attached hereto are hereby incorporated into this Declaration by reference:

Exhibit "A" - Site Plan
Exhibit "B" - Legal Description of the Shopping Center

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

Witnesses:

Owner:

Donna P. Cox
Print name: Donna P. Cox

Bobbi L. Sargent
Print name: Bobbi L. Sargent

BIRMINGHAM REALTY COMPANY

By: Charles M. Miller Jr.
Its: Vice President
Date: 4/17/98

STATE OF Alabama
COUNTY OF Jefferson

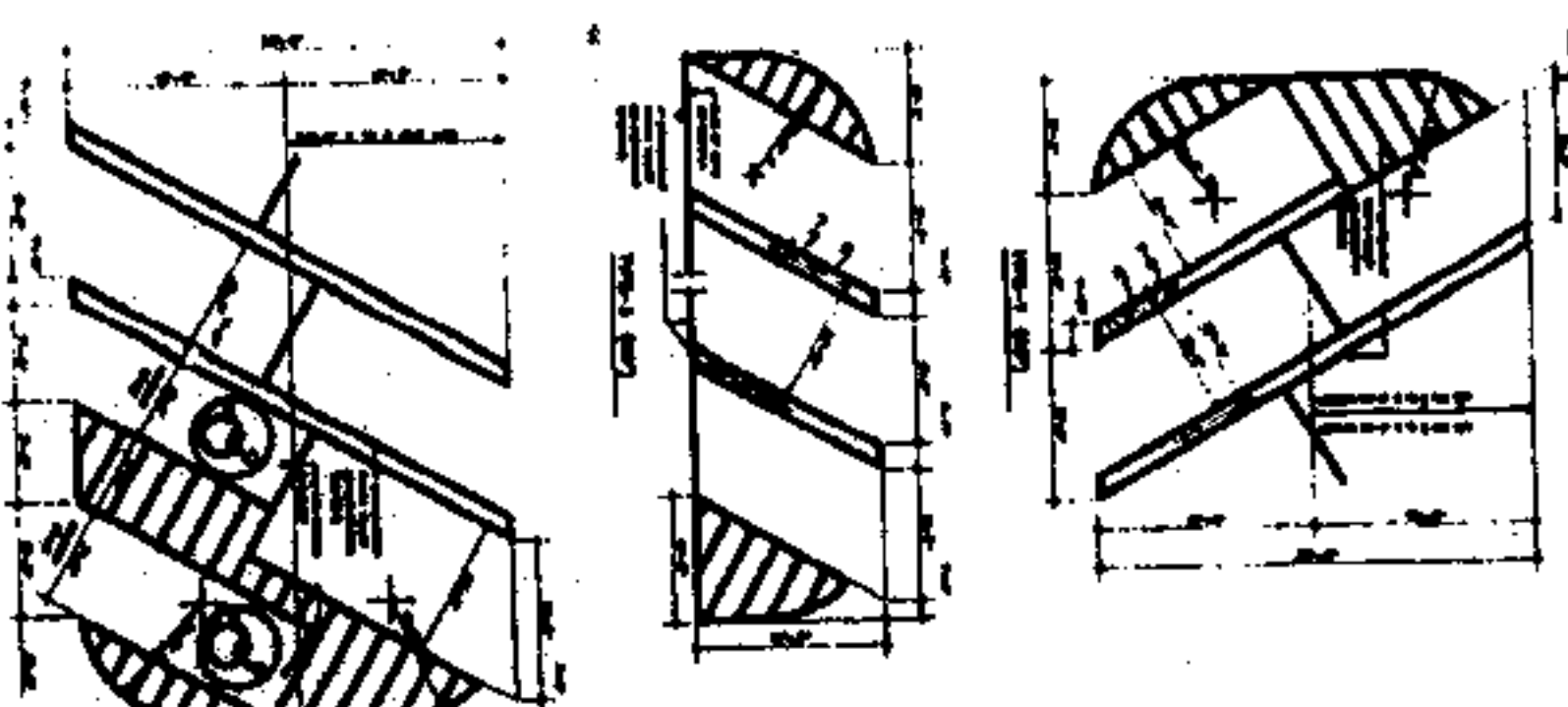
I, Manda Gail Stone, a Notary Public in and for said County, in said State, hereby certify that Charles M. Miller Jr., whose name as Vice President of **BIRMINGHAM REALTY COMPANY**, an Alabama corporation, is signed to the foregoing instrument, and who is known to me, acknowledge before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand this 17th day of April, 1998.

Manda Gail Stone
Printed Name: MANDA GAIL STONE
Notary Public, State and County aforesaid
My Commission Expires: MY COMMISSION EXPIRES OCTOBER 11, 1998
Notary ID No.: _____
(NOTARIAL SEAL)

1. The purpose of this plan is to show the proposed development of the site shown on the attached map. The plan shows the proposed layout of the site, including the proposed buildings, parking areas, and other features. The plan is based on the information provided by the applicant and the information available to the City. The plan is subject to the approval of the City Council.

2. The plan shows the proposed layout of the site, including the proposed buildings, parking areas, and other features. The plan is based on the information provided by the applicant and the information available to the City. The plan is subject to the approval of the City Council.



DATE: 12/13/97

BY: [Signature]

FOR: [Signature]

PROJECT: CHASE CORNERS

NO. OF SHEETS: 1

NO. OF PAGES: 1

NO. OF PLANS: 1

NO. OF SPECIFICATIONS: 1

NO. OF NOTES: 1

NO. OF DIMENSIONS: 1

NO. OF MATERIALS: 1

NO. OF FINISHES: 1

NO. OF UTILITIES: 1

NO. OF LANDSCAPE: 1

NO. OF SIGNAGE: 1

NO. OF FURNITURE: 1

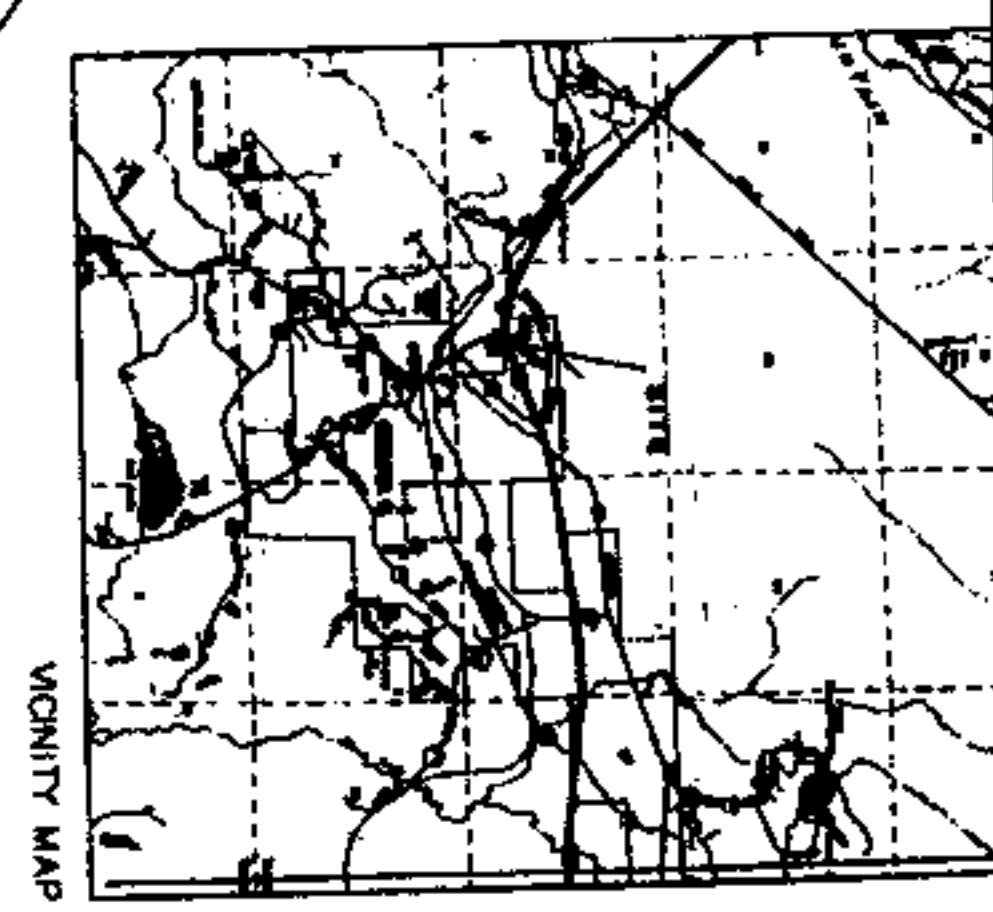
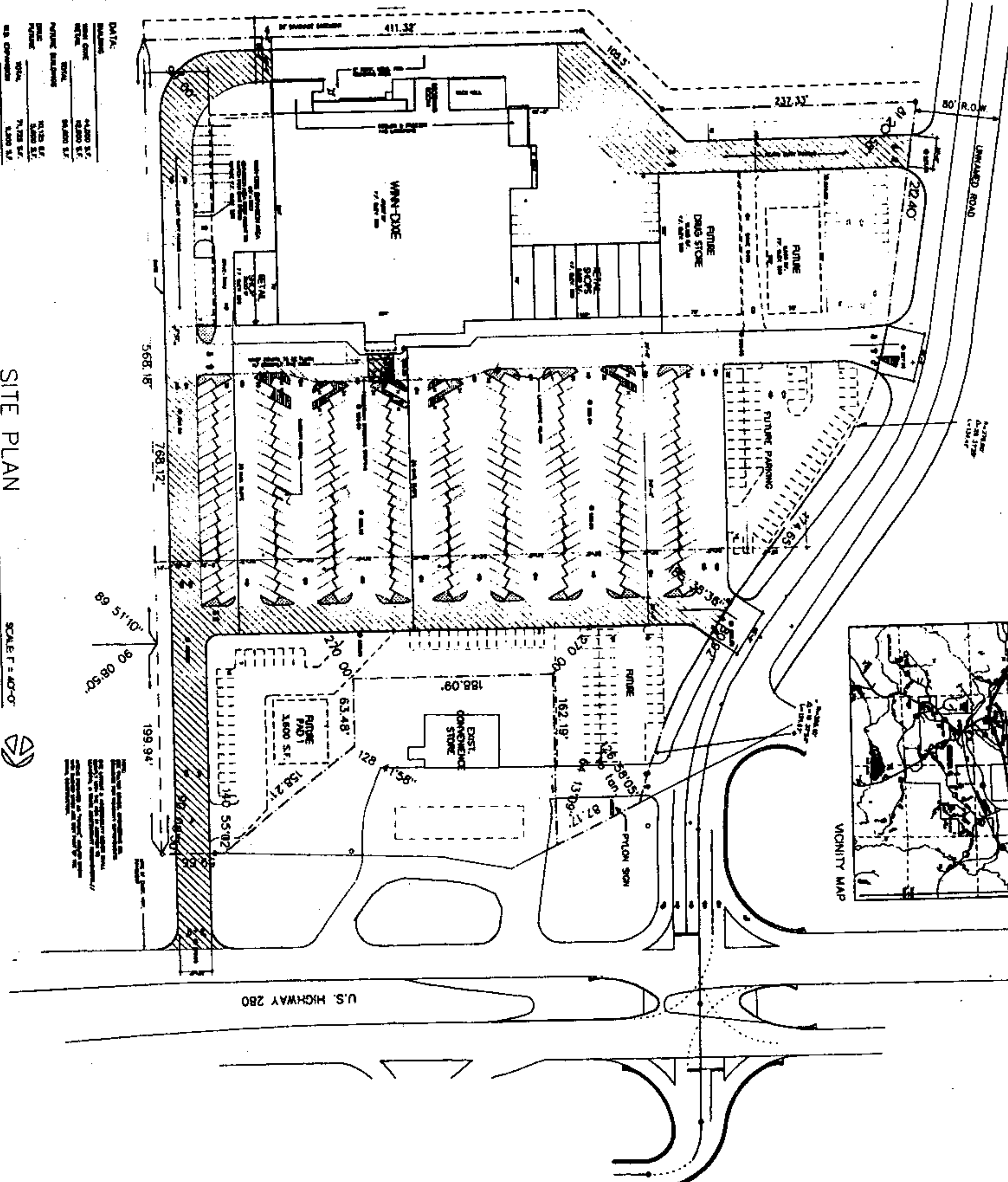
NO. OF LIGHTING: 1

NO. OF SECURITY: 1

NO. OF OTHER: 1

SITE PLAN

SCALE: 1" = 40'-0"



Handwritten signature and date: 12/13/97

EXHIBIT "B"

CHELSEA PROPERTY

WINN-DIXIE PARCEL

A parcel of land situated in the East 1/2 of the S.W.1/4 and the West 1/2 of the S.E.1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest corner of the S.E.1/4 of the S.W.1/4 of Section 27, Township 19 South, Range 1 West, Shelby County, Alabama and run in a Northerly direction along the West line of said 1/4-1/4 section a distance of 1048.33 feet to a point; thence $66^{\circ}52'40''$ to the right in a Northeasterly direction a distance of 210.13 feet to a point; thence $16^{\circ}06'07''$ to the right in a Northeasterly direction a distance of 109.35 feet to a point; thence $18^{\circ}54'05''$ to the left in a Northeasterly direction a distance of 117.46 feet to a point; thence $67^{\circ}45'50''$ to the right in a Southeasterly direction a distance of 20.00 feet to a point; thence $90^{\circ}00'$ to the left in a Northeasterly direction a distance of 568.78 feet to a point on the Southerly right-of-way line of U.S. Highway #280; thence $90^{\circ}26'05''$ to the right in a Southeasterly direction a distance of 38.32 feet along said right-of-way line to a point; thence $90^{\circ}00'$ to the left in a Northeasterly direction a distance of 210.00 feet along said right-of-way line to a point; thence $24^{\circ}53'00''$ to the right in a Northeasterly direction a distance of 72.77 feet, along said right-of-way line to the POINT OF BEGINNING, said point being on the Southerly right-of-way line of U.S. Highway #280; thence continue along the last stated course and along said U.S. Highway #280 right-of-way a distance of 78.70 feet to a point; thence $103^{\circ}34'46''$ to the right in a Southeasterly direction (leaving said U.S. Highway #280 right-of-way) a distance of 153.75 feet to a point; thence $90^{\circ}00'$ to the left in a Northeasterly direction a distance of 188.09 feet to a point; thence $90^{\circ}00'$ to the left in a Northwesterly direction a distance of 63.48 feet to a point; thence $51^{\circ}18'02''$ to the right in a Northeasterly direction a distance of 158.21 feet to a point on the

Southerly right-of-way line of said U.S. Highway #280; thence $39^{\circ}04'58''$ to the right in a Northeasterly direction along said U.S. Highway #280 right-of-way line a distance of 59.66 feet to a point; thence $89^{\circ}51'10''$ to the right in a Southeasterly direction (leaving said U.S. Highway #280 right-of-way) a distance of 768.12 feet to a point; thence $90^{\circ}00'$ to the right in a Southwesterly direction a distance of 411.32 feet to a point; thence $44^{\circ}42'40''$ to the right in a Northwesterly direction a distance of 106.15 feet to a point; thence $44^{\circ}42'40''$ to the left in a Southwesterly direction a distance of 237.33 feet to a point; thence $98^{\circ}39'02''$ to the right in a Northerly direction a distance of 157.75 feet to the P.C. (point of curve) of a curve to the right having a radius of 485.00 feet and a central angle of $28^{\circ}31'25''$; thence Northerly and Northeasterly along the arc of said curve a distance of 241.45 feet to the P.T. (point of tangent) of said curve; thence in the tangent to said curve in a Northeasterly direction a distance of 120.00 feet to a point; thence $5^{\circ}38'36''$ to the left in a Northeasterly direction a distance of 75.19 feet to the P.C. (point of curve) of a curve to the left having a radius of 355.00 feet and a central angle of $22^{\circ}21'54''$; thence Northeasterly and Northerly along the arc of said curve a distance of 138.57 feet to the POINT OF BEGINNING.

December 17, 1997

desc592

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