

Inst # 2001-14728

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EASEMENTS WITH COVENANTS AND RESTRICTIONS AFFECTING LAND ("ECR")

THIS AGREEMENT is made as of the 16th day of April, 2001, between WAL-MART REAL ESTATE BUSINESS TRUST, a Delaware business trust, with offices at 702 S.W. Eighth Street, Bentonville, Arkansas 72716 and a mailing address of 2001 S.E. Tenth Street, Bentonville, Arkansas 72712, ("Wal-Mart"), and ELI'S, INC., an Alabama corporation, ELI T. STEVENS and PATRICIA M. STEVENS (hereinafter collectively referred to as "Stevens").

WITNESSETH:

WHEREAS, Wal-Mart is the owner of Tract 1 as shown on the plan attached hereto as Exhibit A hereof, said Tract being more particularly described in Exhibit B attached hereto;

WHEREAS, Stevens is the owner of Tract 2 shown on the plan attached hereto as Exhibit A hereof, the same being more particularly described in Exhibit C hereof; and

WHEREAS, Wal-Mart has simultaneously acquired a portion of Tract 1 from Stevens and plans to develop on Tract 1 a Wal-Mart Super Store (the "Wal-Mart Store"); and

WHEREAS, Wal-Mart and Stevens desire that Tracts 1 and 2 be developed in conjunction with each other pursuant to a general plan of improvement to form a commercial Shopping Center (sometimes hereinafter referred to as the "Shopping Center"), and further desire that said Tracts and the Outparcel(s) be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Wal-Mart and Stevens do hereby agree as follows:

1. Building/Common Areas.

- a. "Building Areas" as used herein shall mean that portion of Tract 1 and those portions of Tract 2 shown on Exhibit A as "Building Area" (and "Future Building Area" and "Future Expansion Area"). Canopies may encroach from the Building Areas over the Common Areas provided the canopies do not interfere with the use of the Common Areas. With respect to Tract 2, Wal-Mart understands that Stevens has no development plan in mind at the present time; accordingly, Stevens reserves the right to develop and redevelop one or more Buildings on Tract 2 within the Building Area shown on Exhibit A, provided that the parking ratios set forth in Section 6.a(2) shall be provided;
- b. "Common Areas" shall be all of Tracts 1 and 2 except the Building Areas.
- c. Conversion to Common Areas: Those portions of the Building Areas on each Tract which are not from time to time used or cannot, under the terms of this Agreement (including Paragraph

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6a[3]), be used for buildings shall become part of the Common Area for the uses permitted hereunder and shall be improved, kept and maintained as provided herein.

- d. "Tract" or "Tracts" shall mean either Tract 1 and/or Tract 2, as the context may require.

2. **Use.**

- a.** Buildings on Tracts 1 and 2 shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices, retail stores and restaurants (including without limitation, restaurants which sell and serve alcoholic beverages for on-premises consumption, so long as such sale of alcoholic beverages is incidental to the sale of food). Except as shown on Exhibit C, no theatre, bowling alley, billiard parlor or night club shall occupy space within the Shopping Center without the prior written consent of Wal-Mart.
- b.** Notwithstanding anything to the contrary contained herein it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Stevens on Tract 2. Stevens recognizes and agrees that Wal-Mart may, at Wal-Mart's sole discretion and at any time during the term of this Agreement, cease the operation of its business on Tract 1; and Stevens hereby waives any legal action for damages or for equitable relief which might be available to Stevens because of such cessation of business activity by Wal-Mart.
- c.** Notwithstanding anything to the contrary contained herein, it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Stevens on Tract 2. Wal-Mart recognizes and agrees that Stevens may, at Stevens' sole discretion and at any time during the term of this Agreement, cease the operation of any business on Tract 2; and Wal-Mart hereby waives any legal action for damages or for equitable relief which might be available to Wal-Mart because of such cessation of business activity on Tract 2.

3. **Competing Business.**

- a.** Stevens covenants that as long as Wal-Mart, or any affiliate of Wal-Mart, is the user of Tract 1, as owner, no space in or portion of Tract 2, and no space in or portion of any other real property adjacent to the Shopping Center which may subsequently be acquired by Stevens, shall be leased or occupied by or conveyed to any other party for use as (i) a grocery store or supermarket, as hereinafter defined below, (ii) a wholesale club operation similar to that of a Sam's Club owned and operated by Wal-Mart, (iii) a discount department store or other discount store, as hereinafter defined, or (iv) pharmacy. In the event of a breach of this covenant, Wal-Mart shall have the right, to terminate this Agreement and to seek any and all remedies afforded by either law or

equity, including, without limitation, the rights to injunctive relief. "Grocery store" and "supermarket", as those terms are used herein, shall mean a food store or a food department containing more than 10,000 square feet of gross leasable area, other than the Demised Premises, for the purpose of selling food for consumption off the premises, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products normally sold in such stores or departments, "Discount department store" and/or discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than 35,000 square feet of gross leasable area, other than the Demised Premises, for the purpose of selling a full line of hard goods and soft goods (e.g. including clothing, cards, gifts, electronics, garden supplies, furniture, pharmacy, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart.

- b. Wal-Mart covenants that so long as there shall be any restaurant, including full service, fast food or otherwise, on any portion of Tract 2, then that portion of Tract 1 fronting on U. S. Highway 280 and reflected on the Site Plan as the "Future Lease Parcel" shall not be used as a restaurant, fast food, full service or otherwise.

4. **Buildings.**

- a. **Design and Construction.** The Buildings Areas shall be designed so that the exterior elevation of each shall be architecturally and aesthetically compatible and so that building wall footings shall not encroach from one Tract onto another Tract except as provided for in Subsection d. below. The design and construction shall be of high quality. No building shall exceed thirty-five feet (35') in height above finished grade. No building shall have a metal exterior. It is understood that any proposed Building situated on Tract 2 shall not be required to be architecturally compatible to the Building on Tract 1 if the proposed Building shall be owned or leased by a national or regional tenant or occupant which shall desire to construct a proto-type building and improvements.
- b. **Location.** No building shall be constructed on Tracts 1 and 2 (as either immediate development or future expansion) except within the Building Areas and no improvements or alterations which substantially vary from those shown on Exhibit A may be made without the prior written consent of the owner of the other Tract, such consent not to be unreasonably withheld. The front wall(s) of the building(s) on Tracts 1 shall be constructed in the location shown in Exhibit A.
- c. **Fire Protection.** Any building constructed in the Shopping Center shall be constructed and operated in such a manner, which will preserve the sprinklered rate on the other buildings in the Shopping Center.

- d. **Easements.** In the event building wall footings encroach from one Tract onto another, despite efforts to avoid that occurrence, the party onto whose Tract the footings encroach shall cooperate in granting an encroachment permit or easement to the party whose building wall footings encroach.

5. **Common Areas.**

- a. **Grant of Easements.** Wal-Mart, as owner of Tract 1, hereby establishes and grants a permanent nonexclusive easement for the benefit of the owner of Tract 2, and its agents, customers, invitees, licensees, tenants and employees, over, through and around those roadways, driving lanes, walkways, means of ingress and egress and curb cuts located on Tract 1 and as reflected on the Site Plan attached as **Exhibit A.** Wal-Mart agrees that such roadways, driving lanes, walkways, means of ingress and egress and curb cuts over and across Tract 1 shall remain substantially as shown on **Exhibit A,** except as modification thereof shall be required by the governmental authorities having jurisdiction over Tract 1, provided, however, that no such modification shall operate to obstruct or materially diminish any vehicular and pedestrian access to and from such roadways, driving lanes, walkways, means of ingress and egress and curb cuts as shown on **Exhibit A.**

b. **Limitations on Use.**

- (1) **Customers.** Each party shall use reasonable efforts to ensure that customers and invitees shall not be permitted to park on the Common Areas except while shopping or transacting business on Tracts 1 and 2.
- (2) **Employees.** Each party shall use reasonable efforts to ensure that employees shall not park on the Common Areas, except in areas designated on **Exhibit A** as "employee parking areas," if any. The parties hereto may from time to time mutually designate and approve "employee parking areas" not shown on **Exhibit A.**
- (3) **General.** Any activity within the Common Areas other than its primary purpose of the Common Areas, which is to provide for parking for the customers, invitees and employees of those businesses conducted within the Building Areas and for the servicing and supplying of such businesses, shall be permitted so long as such activity shall not unreasonably interfere with such primary purpose. Persons using the Common Areas in accordance with this Agreement shall not be charged any fee for such use.
- (4) **Seasonal Sales.** The use by the owner or tenant(s) of Tract 1 of the Common Areas on such Tract 1 for the display, sale and storage of merchandise and for the use of seasonal sales structures is expressly permitted, provided that the roadways, driving lanes and means of ingress and egress to and from Tract 2 as shown on **Exhibit A** shall not be

obstructed or diminished. Stevens currently uses a portion of Tract 2 for seasonal uses, such as the sale of Christmas trees and playground equipment, and, notwithstanding Section 5.b.(3), shall be entitled to continue such uses until Tract 2 shall be fully developed.

c. **Utility and Service Easements.** Wal-Mart, as the owner of Tract 1, hereby establishes and grants a nonexclusive easement for the benefit of the owner of Tract 2, on, across and under the Common Areas of Tract 1 not used for buildings, to install, use, maintain and repair underground storm drains and pipes necessary for the orderly development and operation of Tract 2, to the extent necessary to service Tract 2 as developed to its maximum density. Both parties shall use their best efforts to cause the installation of such storm drains and pipes prior to paving of the Common Areas. The storm drains and pipes and the detention basin (the "Storm Drainage System") shall be installed by Wal-Mart at its own expense in accordance with the grading and drainage plan prepared by South and Associates, dated April 6, 2001. Any such installed storm drains and pipes may be relocated by the owner of a Tract 1, subject to compliance with applicable laws, at the expense of the owner of that Tract, provided that such relocation shall not interfere with, increase the cost of, or diminish the storm drainage run-off from Tract 2 over and across Tract 1, and, further provided, that no utilities shall be relocated on Tract 1 without the prior written consent of Wal-Mart as long as it is the owner of Tract 1.

d. **Water Flow.** Wal-Mart, as the owner of Tract 1, hereby establishes and grants a nonexclusive easement for the benefit of the owner of Tract 2 to use, maintain and repair the Storm Drainage System now or hereafter located on Tract 1 in accordance with the design of the Storm Drainage System. Stevens acknowledges that the Storm Drainage System is designed to accept the water flow from Tract 2 as if fully developed to its maximum density in accordance with applicable law and the parking ratios set forth in Section 6.a(2)., and agrees that the water flow from Tract 2 shall not exceed the 25 year, 24 hour storm. Stevens agrees that no toxic or hazardous substances, exposure to which is prohibited, limited or regulated by any federal, state, county, local or regional authority shall be discharged into the Storm Drainage System. In the event the Storm Drainage System becomes contaminated by any toxic or hazardous substances and the source of such contamination is determined to be the water flow from Tract 2, Stevens shall, at its sole cost and expense, perform all acts necessary to eliminate the contamination. Stevens agrees to indemnify, defend and hold Wal-Mart harmless from all claims, costs, liabilities, judgments or expenses resulting from the discharge of toxic or hazardous substances from Tract 2 into the Storm Drainage System, excepting from this indemnification the negligence of Wal-Mart. Any alteration in the natural water flow which may occur as a natural consequence of normal construction activities and the existence of the party's improvements substantially as shown on **Exhibit A** (including without

limitation building and building expansion, curbs, drives and paving) shall be permitted; provided that Wal-Mart shall grade Tract 1 in accordance with the grading and drainage plan prepared by South and Associates, dated April 6, 2001.

- c. **Grading.** The parties agree that Tract 1 and portions of Tract 2 which lie adjacent to Tract 1 shall be graded in accordance with a comprehensive grading plan for both properties as shown on the South and Associates grading and drainage plan dated April 6, 2001. Stevens, as the owner of Tract 2, hereby establishes and grants to Wal-Mart, as the owner of Tract 1, a temporary grading easement for the purpose of the control of water and the installation of storm drainage, *in the area shown on Exhibit A-1.*

6. **Development, Maintenance, and Taxes.**

a. **Development.**

- (1) **Arrangement.** The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Agreement.
- (2) **"Parking Area" Ratio.** Stevens, as the owner of Tract 2, agrees that at all times there shall be independently maintained on Tract 2 parking area sufficient to accommodate no fewer than five (5) car spaces for each one thousand (1000) square feet of Building Area on such Tract for any use other than a restaurant use. Wal-Mart acknowledges that a portion of Tract 2 is currently developed with a restaurant, and the parking ratios set out herein shall not apply to the existing restaurant, whether such restaurant shall be remodeled or sold, it being understood that the existing restaurant is and will be required to comply with applicable code requirements. In the event Tract 2 shall be developed or redeveloped with a restaurant, Stevens agrees that the parking area (other than with respect to the existing restaurant) shall be sufficient to accommodate no fewer than twelve (12) car spaces for each one thousand (1000) square feet of Building Area in the event the Building Area exceeds six thousand (6000) square feet, and no fewer than ten (10) car spaces for each one thousand (1000) square feet of Building Area in the event the Building Area is less than six thousand (6000) square feet. Wal-Mart, as the owner of Tract 1, agrees that at all times there shall be independently maintained on Tract 1 parking area sufficient to meet the requirements of applicable governmental ordinances or regulations, subject to such variances as Wal-Mart or Developer, as the owner of Tract 1, may obtain.
- (3) **Construction of Building and Improvements.** During the construction of the Wal-Mart store, Wal-Mart agrees to take all reasonable steps to prevent any unreasonable interference with Stevens' remaining property or its business operation. Wal-Mart shall cause to be erected proper construction barricades surrounding the construction site and shall instruct its contractors to direct all construction traffic to and from the construction

site to access the construction site from Highway 280 East and/or Meadowlark Drive, Wal-Mart, or its contractors, shall use all reasonable efforts to control construction traffic so that the construction traffic shall not use the access drive between the Hamburger Heaven facility and the Lloyd's restaurant located on a portion of Tract 2. Wal-Mart agrees that Stevens may post a "no construction traffic" sign to deter construction traffic from utilizing said access drive. Wal-Mart shall use its reasonable good faith efforts to complete the driveway adjacent to Tract 1 as soon as practical to allow customers of the business located on Tract 2 to utilize such driveway as soon as practical.

b. **Maintenance.**

- (1) **Standards.** Following completion of improvements (including buildings and Common Areas) on any Tract or Outparcel, the owner of such Tract or Outparcel shall maintain such improvements in good condition and repair. The maintenance is to include, without limitation, the following:
 - (a) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability;
 - (b) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
 - (c) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
 - (d) Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
 - (e) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair;
 - (f) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and
 - (g) Maintaining elements of the Storm Drainage System.

It is understood that Tract 2 will not be developed in the immediate future. Stevens, its successors and assigns, shall have no obligation to make any repairs or increase the level of maintenance with respect to Tract 2 until such time as a development of Tract 2 shall occur. At such time as Tract 2 shall be developed by the construction of a building or buildings in addition to the existing restaurant building, Stevens, its successors and assigns, shall maintain such improvements in good condition and repair as set out above.

- (2) **Expenses.** The respective owners shall pay the maintenance expense of their Tracts.

- (3) **By Agent.** Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined. If the parties shall mutually agree, said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.
- c. **Taxes.** Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the real property and improvements owned by it.
7. **Signs.** No sign shall be located on the Common Areas on Tracts 1 and 2 except signs advertising businesses conducted thereon, of which, there shall be no more than two (2) signs on the Common Areas on Tract 1 and two (2) signs on the Common Areas on Tract 2. No signs shall obstruct the ingress and egress shown on **Exhibit A.** With respect to Tract 2, the term "sign" may include a pylon sign containing the names of one or multiple occupants so long as such sign shall not interfere with the visual corridor of Tract 1.
8. **Indemnification/Insurance.**
- a. **Indemnification.** The owner of each Tract hereby indemnifies and saves the other parties harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from personal injury, death, or property damage and occurring on or from its own Tract, except if caused by the act or negligence of the other party hereto.
- b. **Insurance.**
- (1) The owner of each Tract shall procure and maintain in full force and effect throughout the term of this Agreement general public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about its property, each party's insurance to afford protection to the limit of not less than \$5,000,000.00 for injury or death of a single person, and to the limit of not less than \$5,000,000.00 for any one occurrence, and to the limit of not less than \$5,000,000.00 for property damage. The owner of each Tract shall provide Wal-Mart and the owner of the other Tract with certificates of such insurance from time to time upon written request to evidence that such insurance is in force. Such insurance may be written by additional premises endorsement on any master policy of insurance carried by the party which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be canceled without thirty (30) days prior written notice to the other party. The obligations of the owner of Tract 1 to maintain insurance under this provision may be satisfied by Wal-Mart.

- (2) At all times during the term of this Agreement, the owner of each Tract shall keep improvements on its property insured against loss or damage by fire and other perils and events as may be insured against under the form of All-Risk insurance coverage in effect from time to time in the state in which the parties' respective properties are located, with such insurance to be for the full replacement value of the insured improvements. The obligations of the owner of Tract 1 to maintain insurance under this provision may be satisfied by Wal-Mart. The owner of a Tract shall pay for any increase in the cost of insuring the improvements on the other Tract if such increase is due to the use by such owner or its tenant(s) of the first Tract.
- (3) Notwithstanding anything to the contrary contained in this Paragraph 8, so long as the net worth of Wal-Mart shall exceed One Hundred Million Dollars (\$100,000,000.00), and so long as Wal-Mart is owner of Tract 1, Wal-Mart shall have the right to retain the financial risk for any claim.

9. **Eminent Domain.**

- a. **Owner's Right To Award.** Nothing herein shall be construed to give the owner of any Tract or Outparcel any interest in any award or payment made to another party in connection with any exercise of eminent domain or transfer in lieu thereof affecting said other party's Tract or giving the public or any government any rights in said Tract. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Areas located on Tracts 1 and 2, the award attributable to the land and improvements of such portion of the Common Areas shall be payable only to the owner thereof, and no claim thereon shall be made by the owners of any other portion of the Common Areas.
- b. **Collateral Claims.** All other owners of Tracts may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken from another owner.
- c. **Tenant's Claim.** Nothing in this Paragraph 9 shall prevent a tenant from making a claim against an owner pursuant to the provisions of any lease between tenant and owner for all or a portion of any such award or payment.
- d. **Restoration Of Common Areas.** The owner of any portion of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas within its respective Tract as nearly as practicable to the condition of the same immediately prior to such condemnation or transfer, to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other owner.

10. **Rights And Obligations Of Lenders.** If by virtue of any right or obligation set forth herein a lien shall be placed upon any Tract, such lien shall expressly be subordinate and inferior to the lien of any first lienholder now or hereafter placed on such Tract. Except as set forth in the preceding sentence, however, any holder of a first lien on any Tract, and any assignee or successor in interest of such first lienholder, shall be subject to the terms and conditions of this Agreement.

11. **INTENTIONALLY DELETED.**

12. **Release from Liability.** Any person acquiring fee or leasehold title on any Tract subject hereto shall be bound by this Agreement only as to the Tract, or portion thereof, acquired by such person. In addition, such person shall be bound by this Agreement only during the period such person is the fee or leasehold owner of such Tract, or portion thereof, except as to obligations, liabilities or responsibilities that accrue during said period. Although persons may be released under this paragraph, the easements, covenants and restrictions in this Agreement shall continue to be benefits to and servitudes upon said Tracts running with the land.

13. **Breach.**

a. **Parties With Remedies.** In the event of breach or threatened breach of this Agreement, only all record owners of Tract 1 as a group, or all record owners of Tract 2 as a group, or Wal-Mart so long as it or any affiliate has an interest as owner of Tract 1 or Stevens so long as it or any affiliate has an interest as owner of Tract 2, shall be entitled to institute proceedings for full and adequate relief from the consequences of said breach or threatened breach, but in no event shall the easements contained in this Agreement be terminated. The unsuccessful party in any action shall pay to the prevailing party a reasonable sum for attorney's fees, which shall be deemed to have accrued on the date such action was filed.

b. **Remedies.** If any owner shall fail to perform any covenant or condition contained in this ECR, the aggrieved party shall give the defaulting party at least thirty (30) days written notice of such alleged default. If such default shall not have been cured within said period of thirty (30) days after the service of notice of default (or if such default be not reasonably susceptible of being cured within said period of thirty (30) days, and said defaulting party shall have not in good faith commenced curing such default within said thirty (30) day period and shall not thereafter prosecute curing such default with diligence and continuity to completion) the aggrieved party may institute legal proceedings for full and adequate relief from the consequences of said default or threatened default.

c. **Right of Entry.** The defaulting party hereby grants to the aggrieved party a non-exclusive right of entry and non-exclusive easements across and under any and all parts of the defaulting party's Tract (excluding the right to enter any buildings demised to or owned by others) for all purposes reasonably necessary to enable the aggrieved party (acting directly or through agents, contractors, or subcontractors), to perform any of the terms, provisions, covenants or conditions of this ECR

which the defaulting party shall have failed to perform, after notice and time to cure, as aforesaid, but no notice and time to cure need be given in the event of any emergency.

14. **Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.

15. **Document Execution, Modification and Cancellation.** It is understood and agreed that until this document is fully executed by both Stevens and Wal-Mart there is not and shall not be an agreement of any kind between the parties hereto upon which any commitment, undertaking or obligation can be founded. This Agreement (including exhibits) may be modified or canceled only by the mutual agreement of (a) Wal-Mart as long as it or its affiliate has any interest as either owner or Lessor of Tract 1, or its successors in interest; (b) Stevens, as long as it or its affiliate has any interest as either owner or Lessor of Tract 2, or its successors in interest. 16. **Non-Merger.** So long as Wal-Mart or its affiliate is owner of Tract 1, this Agreement shall not be subject to the doctrine of merger.

17. **Duration.** Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.

18. **Headings.** 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 document nor in any way affect the terms and provisions hereof.

19. **Transfer of Interests: Notices.**

- a. In the event that any person or entity (the "Acquiring Party") shall acquire a fee or mortgage interest in any tract subject to this ECR, or any portion thereof, the Acquiring Party shall execute and file in the land records of Shelby County, Alabama, a statement setting forth the name of the Acquiring Party, the address of the Acquiring Party to which all notices for the purposes of this ECR may be sent, the nature of the interest held by the Acquiring Party, and the date that such interest was acquired (the "Notice Statement"). Contemporaneously with such filing, the Acquiring Party shall also send by certified mail, return receipt requested, a copy of such Notice Statement to all other persons or entities then holding fee or mortgage interests in any tract subject to this ECR, or any portion thereof, as reflected by the Notice Statements then of record in the land records of Shelby County, Alabama (the "Existing Interest Holders"). Until such time as an Acquiring Party files and mails such Notice Statement in accordance with the terms of this Subparagraph (a), it shall not be entitled to receive any notice required or permitted to be given under this Declaration, and the Existing Interest Holders shall have no obligation to give any such notice to the Acquiring Party. Any change of address shall require the filing and mailing of a new Notice Statement. It is understood and agreed that the provisions of this Paragraph 19

regarding the recordation of the Notice Statement are satisfied with respect to Stevens and Wal-Mart.

- b. Any notice hereunder shall be in writing and shall be served by overnight delivery or certified mail, return receipt requested, postage prepaid, addressed to the respective addresses of the parties as follows:

If intended for Developer:

Mr. and Mrs. Eli T. Stevens and Eli's, Inc.

3161 Guilford Road

Birmingham, Alabama 35223

Attention: Mr. and Mrs. Eli T. Stevens

If intended for Wal-Mart:

Wal-Mart Real Estate Business Trust

2001 SE 10th Street, *STONE #2111*

Bentonville, Arkansas 72712-6489

Attention: Property Management Department

Each party to this ECR may designate by notice in writing a new or other address to which such notice shall thereafter be so given or served. A copy of any such notice shall also be contemporaneously delivered in the manner herein specified to any fee mortgagee or tenant who shall have duly registered with any party its name and address. Notice shall be deemed given when received.

20. **Consent.** The owner of Tract 1 agrees that for so long as a lease of all or a portion of Tract 1 is in effect, whenever the consent of the owner of Tract 1 is required under the ECR, the owner of Tract 1 will give such consent only after obtaining Wal-Mart's consent.

21. **Obligations of the Owner of Tract 1.** Wal-Mart hereby agrees that so long as a lease of all or a portion of Tract 1 is in effect, it will satisfy the obligations of the owner of Tract 1 hereunder, and will hold harmless and indemnify the owner of Tract 1 from any and all loss, damage, expense, fees, claims, costs, and liabilities, including, but not limited to, attorneys' fees and costs of litigation, arising out of this ECR, except for those arising out of the acts or omissions of the owner of Tract 1 or its employees, agents, contractors or invitees.

22. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

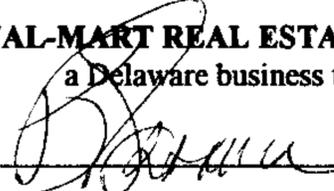
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

ATTEST

Its Assistant Secretary

(SEAL)

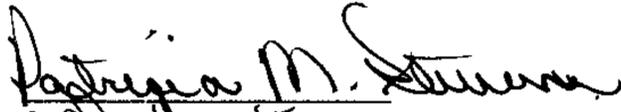
WAL-MART REAL ESTATE BUSINESS TRUST
a Delaware business trust



Its Assistant Vice President

"Wal-Mart"

ATTEST

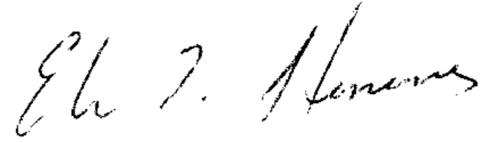


Its Secy. - Treasurer

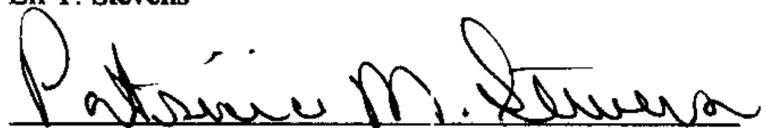
ELI'S, INC.

By

Its: _____



Eli T. Stevens



Patricia M. Stevens

"Stevens"

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) ss
COUNTY OF BENTON)

On this 14th day of April, 2001, before me, Mary Ann Dickerson, the undersigned Notary Public, personally appeared Barry Shannahan, who acknowledged himself to be the Assistant Vice President of Wal-Mart Real Estate Business Trust, a Delaware business trust, and that he as such Assistant Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as its Assistant Vice President.

In witness whereof I hereunto set my hand and official seal.

Mary Ann Dickerson
Notary Public
Mary Ann Dickerson

(Seal)

My Commission Expires: March 2007

ACKNOWLEDGEMENT

STATE OF ALABAMA)
) ss
COUNTY OF Jefferson)

I, undersigned authority, a Notary Public in and for said County and in said State, hereby certify that Eli T. Stevens, whose name as President of ELI'S, INC., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, 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 seal of office this 16th day of April, 2001.

Notary Public
E. Jay Walker

(Seal)

My Commission Expires: 11-28-04

ACKNOWLEDGMENT

STATE OF ALABAMA)
COUNTY OF Jefferson) ss

I, undersigned authority a Notary Public in and for said County and in said State, hereby certify that Eli T. Stevens, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily.

Given under my hand and seal of office this 16th day of April, 2001.

E. Kay Wallace
Notary Public

(Seal)

My Commission Expires: 11-28-04

ACKNOWLEDGEMENT

STATE OF ALABAMA)
COUNTY OF Jefferson) ss

I, undersigned authority, a Notary Public in and for said County and in said State, hereby certify that Patricia M. Stevens, whose name is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, she executed the same voluntarily.

Given under my hand and seal of office this 16th day of April, 2001.

E. Kay Wallace
Notary Public

(Seal)

My Commission Expires: 11-28-04

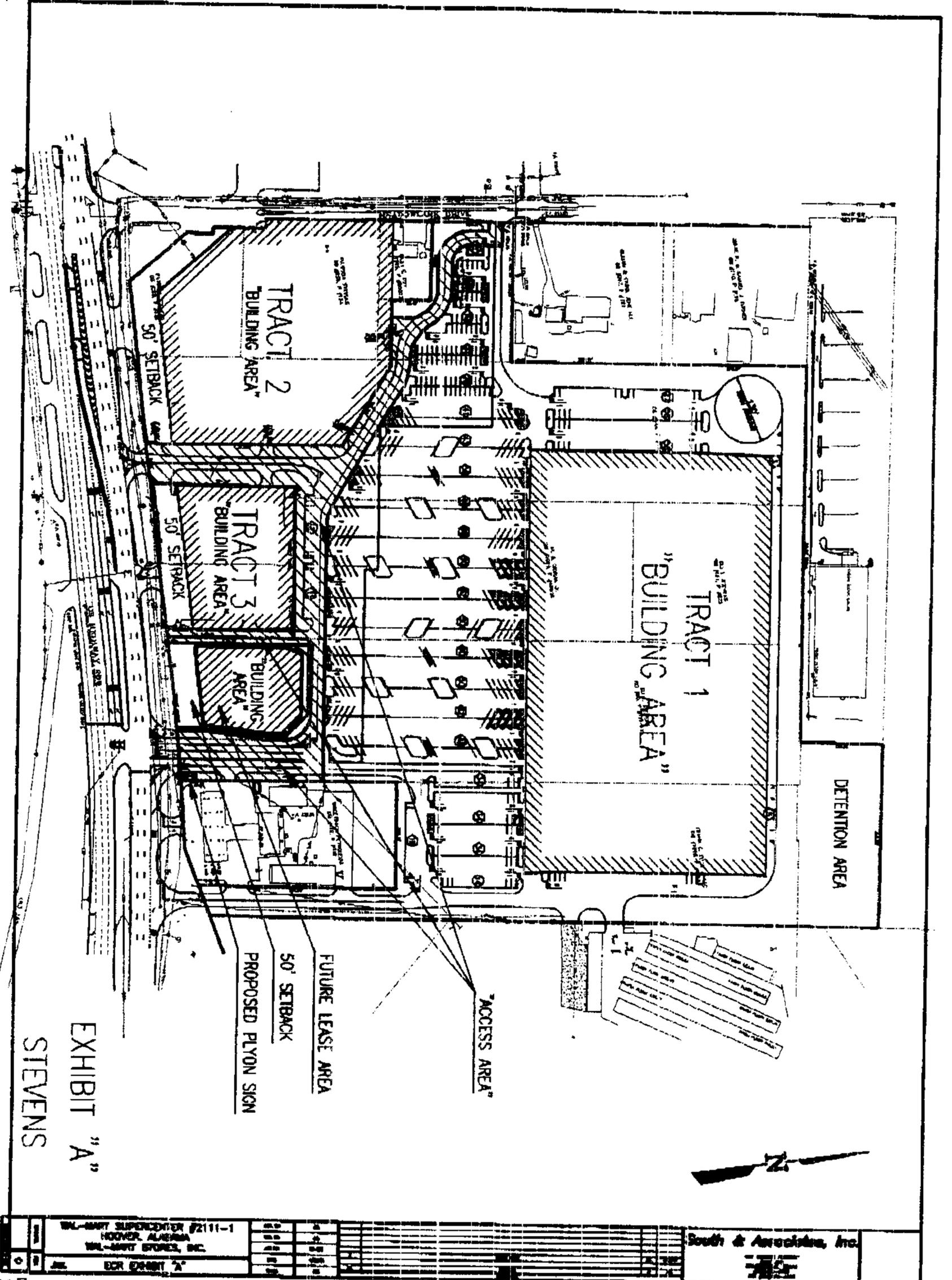
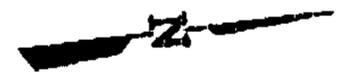


EXHIBIT "A"
STEVENS



WL-SMRT SUPERCENTER #2111-1 HOOVER, ALABAMA WL-SMRT STORES, INC.		South & Associates, Inc. 	
ECR EXHIBIT "A"		04/11/2001 WED 13:31 FAX 205 979 4023	

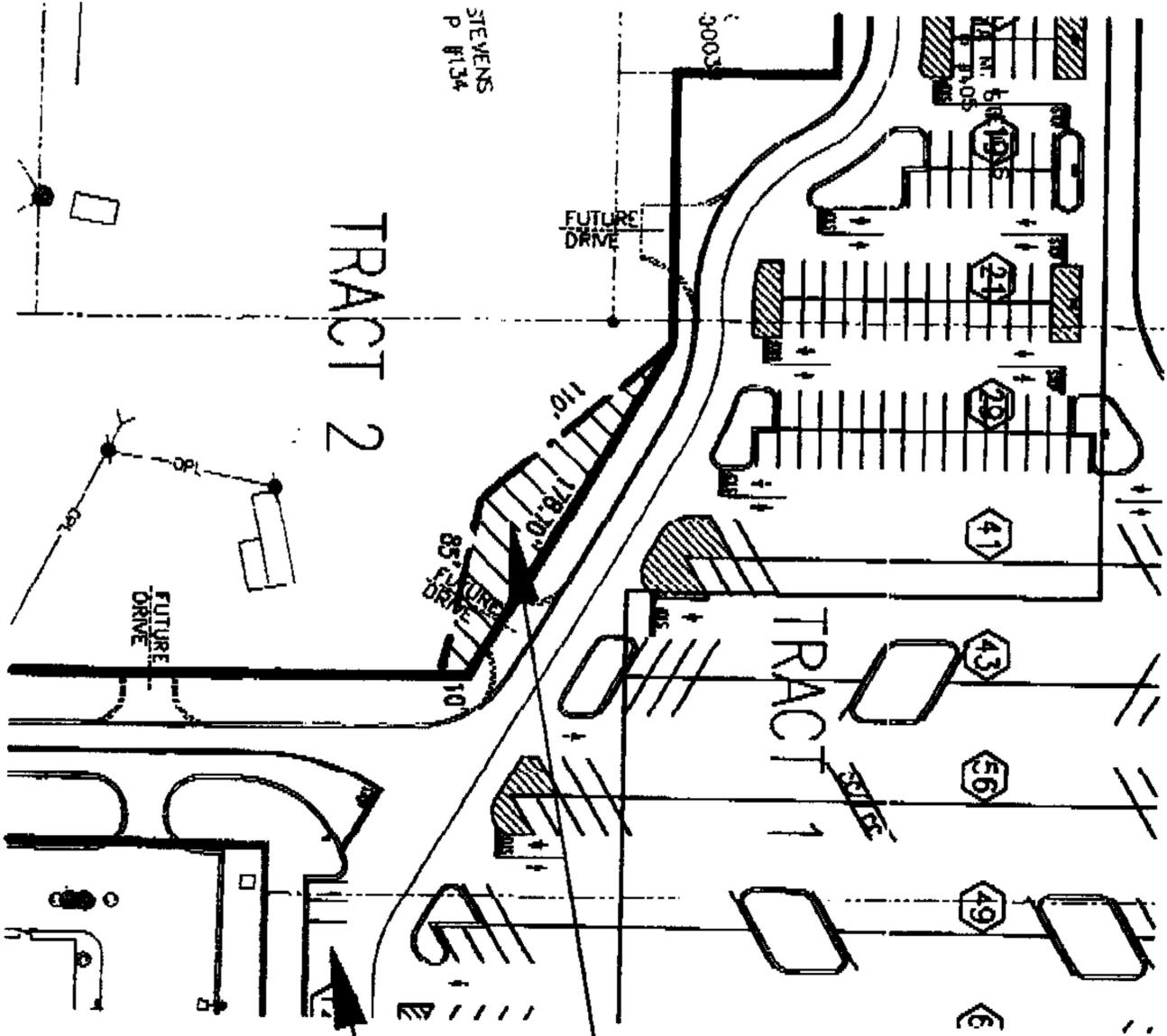


EXHIBIT "A-1"
 STEVENS

WL-800 SUPERORDER #2111-1 MOBILE, ALABAMA WL-800 STORES, INC.		South & Associates, Inc. 1000 1000	
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

EXHIBIT "B"

LEGAL DESCRIPTION REVISED 1-30-01

TOTAL PROPERTY: PARCELS I, II, III, IV, V & VI

A parcel of land located in the Northeast Quarter of the Southeast Quarter and the Southeast Quarter of the Northeast Quarter of Section 31, Township 18 South, Range 1 West in Shelby County, Alabama and being more particularly described as follows:

As a starting point, start at the Northeast corner of the Northeast Quarter of the Southeast Quarter of Section 31; thence run in a Southerly direction and along the East boundary of the Northeast Quarter of the Southeast Quarter of said Section 31 for a distance of 1,119.11 feet to a point on the North boundary U.S. Highway 280; thence with interior angle of 110 degrees 55 minutes and 35 seconds run in a Southwesterly direction and along the North boundary of said U.S. Highway 280 for a distance of 61.21 feet to a point on the East boundary Racetrack Petroleum property and being recorded in Deed Book 129, Page 749; thence with an interior angle of 69 degrees 14 minutes and 51 seconds run in a Northerly direction and along the East boundary of said Racetrack Petroleum property for a distance of 374.59 feet to a point; thence with an interior angle of 270 degrees 00 minutes 00 seconds run in a Westerly direction and along the North boundary of said Racetrack Petroleum property for a distance of 204.70 feet to a point; thence with an interior angle of 270 degrees 32 minutes 40 seconds run in a Southerly direction and along the West boundary of said Racetrack Petroleum property for a distance of 410.27 feet to a point on the North boundary U.S. Highway 280; thence with an interior angle of 95 degrees 34 minutes 56 seconds to the chord run in a Westerly direction and along the curving North boundary of said U.S. Highway 280 for a chord distance of 273.43 feet to a point on the East boundary of James F. Donovan property as recorded in Deed Book 1996, Page 21512; thence with an interior angle of 84 degrees 04 minutes 08 seconds run in a Northerly direction and along the East boundary of said James F. Donovan property for a distance of 239.39 feet to a point; thence with an interior angle of 270 degrees 01 minute 17 seconds run in a Westerly direction and along the North boundary of James F. Donovan property for a distance of 287.22 feet to a point; thence with an interior angle of 269 degrees 14 minutes 24 seconds run in a Southerly direction for a distance of 274.52 feet to a point on the North boundary U.S. Highway 280; thence with an interior angle of 97 degrees 35 minutes 55 seconds run in a Westerly direction and along the North boundary of said U.S. Highway 280 for a distance of 76.76 feet to a point; thence with an interior angle 83 degrees 10 minutes 53 seconds run in a Northerly direction for a distance of 373.60 feet to a point; thence with an interior angle 239 degrees 29 minutes 20 seconds run in a Northwesterly direction for a distance of 178.70 feet to a point; thence with interior angle of 210 degrees 05 minutes 46 seconds run in a Westerly direction for a distance of 126.48 feet to a point on the East boundary of Billy E. Cox property, as recorded in Deed Book 1999, Page 00003; thence with an interior angle of 90 degrees 19 minutes 40 seconds run in a Northerly direction and along the East boundary of said Billy E. Cox property for a distance of 73.47 feet to a point; thence with an interior angle of 269 degrees 06 minutes 18 seconds run in a Westerly direction and along the North boundary of said Billy E. Cox property for a distance of 150.02 feet to a point on the East boundary of Meadow Lark Drive; thence with an interior angle of 90 degree 53 minutes 39 seconds run in a Northerly direction and along the East boundary of said Meadow Lark Drive for a distance of 159.37 feet to a point on the South boundary of William and Carol Jene Nix property as recorded in Deed Book 247, Page 791; thence with an interior angle of 89 degree 11 minutes 21 seconds run in an Easterly direction and along the South boundary of said William and Carol Jene Nix property for a distance of 266.09 feet to a point; thence with an interior angle of 270 degree 33 minutes 37 seconds run in a Northerly direction and along the East boundary of William and Carol Jene Nix property for a distance of 280.47 feet to the Southeast corner of Jimmy K. and Samuel J. Turner property as recorded in Deed Book 210, Page 176; thence with an interior angle 180 degrees 20 minutes 29 seconds continue in a Northerly direction and along the East boundary of Jimmy K. and

Samuel J. Turner property for a distance of 278.84 feet to a point on the North boundary of the Northeast Quarter of the Southeast Quarter of Section 31, said point also being on the South boundary of Skates 280 LLC property and being recorded in Deed Book 1995, Page 07233 and also being the South boundary of Lot 1 Jessica Ingram Survey as recorded in Map Book 3, Page 54; thence with an interior angle of 89 degrees 33 minutes 17 seconds run in an Easterly direction and along the North boundary of said Northeast Quarter of Southeast Quarter and the South boundary of Skates 280, LLC property for a distance of 716.18 feet to a point; thence with an interior angle of 269 degrees 29 minutes 55 seconds run in a Northerly direction for a distance of 158.08 feet to a point on the North boundary of Skates 280, LLC property, said point also being the North boundary of Lot 1 Jessica Ingram survey; thence with an interior angle of 90 degrees 01 minute 30 seconds run in a Easterly direction and along the North boundary of said Skates 280, LLC property for a distance of 350.00 feet to a point on the East boundary of the Southeast Quarter of the Northeast Quarter of Section 31; thence with an interior angle of 90 degrees 31 minutes 38 seconds run in a Southerly direction and along the East boundary of said Southeast Quarter of the Northeast Quarter and the East boundary of Skates 280, LLC property for a distance of 155.16 feet to the point to the POINT OF BEGINNING, at which point the interior angle being 179 degrees 58 minutes 51 seconds. Said parcel containing 26.777 acres and having 1,166,426.45 square feet.

File: 1-29b-01/desc

EXHIBIT "C"

LEGAL DESCRIPTION

PART OF ELI T. AND PATRICIA M. STEVENS PROPERTY
SOURCE OF TITLE: DEED BOOK 338, PAGE 405

A parcel of land located in the Northeast Quarter of the Southeast Quarter of Section 31, Township 18 South, Range 1 West in Shelby County, Alabama and being more particularly described as follows:

As a starting point, start at the Northeast corner of the Northeast Quarter of the Southeast Quarter of said Section 31; thence run in a Westerly direction and along the North boundary of said Northeast Quarter of the Southeast Quarter for a distance of 1,067.69 feet to a point; thence with a deflection angle of 90 degrees 26 minutes 43 seconds to the left run in a Southerly direction for a distance of 278.84 feet to a point; thence with a deflection angle of 0 degrees, 20 minutes 29 seconds to the right continue in a Southerly direction for a distance of 512.55 feet to the POINT OF BEGINNING of the property herein described; thence continue in a Southerly direction for a distance of 27.68 feet to a point, said point also being on the South boundary of Eli T. and Patricia M. Stevens property, as recorded in Deed Book 338, Page 405; thence with an interior angle of 89 degrees 21 minutes 19 seconds run in a Westerly direction and along the South boundary of said Eli T. and Patricia M. Stevens property for a distance of 114.94 feet to a point on the East boundary of Billy E. Cox property, as recorded in Deed Book 1999, Page 00003; thence with an interior angle of 90 degrees 53 minutes 46 seconds run in a Northerly direction along the East boundary of said Billy E. Cox property for a distance of 26.54 feet to a point; thence with an interior angle of 89 degrees 40 minutes 20 seconds run in an Easterly direction for a distance of 115.05 feet to the POINT OF BEGINNING, at which point the interior angle being 90 degrees 04 minutes 36 seconds. Said parcel containing 0.072 acres.

file: 4-9c-01/desc

LEGAL DESCRIPTION

PART OF ELI'S, INC. PROPERTY
SOURCE OF TITLE: DEED BOOK 344, PAGE 434

A parcel of land located in the Northeast Quarter of the Southeast Quarter of Section 31, Township 18 South, Range 1 West in Shelby County, Alabama and being more particularly described as follows:

As a starting point, start at the Northeast corner of the Northeast Quarter of the Southeast Quarter of said Section 31; thence run in a Westerly direction and along the North boundary of said Northeast Quarter of the Southeast Quarter for a distance of 1,067.69 feet to a point; thence with a deflection angle of 90 degrees 26 minutes 43 seconds to the left run in a Southerly direction for a distance of 278.84 feet to a point; thence with a deflection angle of 0 degrees, 20 minutes 29 seconds to the right continue in a Southerly direction for a distance of 512.55 feet to the POINT OF BEGINNING of the property herein described; thence with a deflection angle of 89 degrees 55 minutes 24 seconds to the left run in an Easterly direction for a distance of 11.43 feet to a point; thence with an interior angle of 149 degrees 54 minutes 14 seconds run in a Southeasterly direction for a distance of 178.70 feet to a point; thence with an interior angle of 120 degrees 30 minutes 40 seconds run in a Southerly direction for a distance of 373.60 feet to a point on the North boundary of U.S. Highway No. 280; thence with an interior angle of 96 degrees 49 minutes 07 seconds run in a Westerly direction and along the North boundary of said U.S. Highway No. 280 for a distance of 165.42 feet to a point; thence with an interior angle of 83 degrees 20 minutes 42 seconds run in a Northerly direction for a distance of 456.37 feet to a point; thence with an interior angle of 179 degrees 29 minutes 53 seconds continue in a Northerly direction for a distance of 27.68 feet to the POINT OF BEGINNING of the property herein described. Said parcel containing 1.635 acres.

file: 4-9f-01/desc

Commence at the northeast corner of the Northeast quarter of the Southeast quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; thence run west along the north line of said quarter-quarter section for a distance of 1064.0 feet to a point; thence turn an angle left of 90 degrees 42' and run in a southerly direction for a distance of 1080.0 feet to the point of beginning; thence continue on last described course for a distance of 194.60 feet to a point on the northerly right of way line of U. S. Highway No. 280; thence turn an angle right of 83 degrees 13' and run southwesterly along said right of way line for a distance of 145.63 feet; thence turn an angle right of 54 degrees 47'30" and run along right of way line for a distance of 141.71 feet to a point; thence turn an angle right of 42 degrees 36' 30" and run in a northerly direction for a distance of 50.0 feet; thence turn an angle left of 90 degrees 00' and run west for a distance of 10.0 feet; thence turn an angle right of 90 degrees 00' and run in a Northerly direction for a distance of 59.41 feet to a point; thence turn an angle right of 90 degrees 05' and run east for a distance of 248.28 feet to the point of beginning.

Subject to ad valorem taxes for the current year, due and payable October 1, 1975.

Grantors warrant that the above described real estate is contiguous with the parcel of real estate simultaneously conveyed by Donald T. Kreider and wife, Jenny J. Kreider, to Grantee along the 248.28 feet north boundary line of the above described real estate.

Commence at the Northeast corner of the Northeast quarter of the Southeast quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; thence run West along the North line of said quarter-quarter section for a distance of 1064.0 feet to a point; thence turn an angle left of 90 degrees 42' and run in a southerly direction for a distance of 820.0 feet to the point of beginning; thence continue on last described course for a distance of 260.0 feet to a point; thence turn an angle right of 90 degrees 42' and run West for a distance of 248.28 feet to a point; thence turn an angle right of 89 degrees 55' and run in a northerly direction for a distance of 40.59 feet to a point; thence turn an angle left of 90 degrees 00' and run West for a distance of 18.16 feet; thence turn an angle right of 89 degrees 23' and run in a northerly direction for a distance of 219.43 feet to a point; thence turn an angle right of 90 degrees 42' and run East for a distance of 266 feet to the point of beginning.

Subject to ad valorem taxes for the current year, due and payable October 1, 1975.

Grantors warrant that the above described real estate is contiguous with the parcel of real estate simultaneously conveyed by J. T. Kreider and wife, Zona Kreider, to Grantee along the 248.28 feet south boundary line of the above described real estate.

289-134

Inst # 2001-14728

04/17/2001-14728
12:52 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
021 MEL 74.00