

**RIGHT OF FIRST REFUSAL AGREEMENT  
FOR THE PURCHASE AND SALE OF REAL PROPERTY**

**THIS AGREEMENT** dated as of April 13, 2001 by and between Frank C. Ellis, Jr., L.L.C., an Alabama limited liability company, Frank C. Ellis III, L.L.C., an Alabama limited liability company, Benner Investments, L.L.C., an Alabama limited liability company, McGeever Investments, L.L.C., an Alabama limited liability company, Robertson Investments, L.L.C., an Alabama limited liability company (collectively the "Grantees") and Wal-Mart Real Estate Business Trust, a Delaware business trust ("Grantors").

Inst # 2001-25185

**RECITALS:**

06/19/2001-25185  
02:15 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
010 CJI 41.00

WHEREAS, pursuant to that certain Purchase Agreement dated July 17<sup>th</sup>, 2001 by and between the Grantees and Grantor, as the assignee of Concordia Southeast, LLC, an Alabama limited liability company, (the "Purchase Agreement") the Grantees have sold, or will sell, to Grantor that certain real property described on Exhibit A attached hereto;

WHEREAS, Grantor intends to assemble several adjoining parcels in order to develop a retail shopping complex which may include space and a free-standing lot for single users as described on the site plan attached hereto as Exhibit "B" (the "Outparcel");

WHEREAS, pursuant to the Addendum to the Purchase Agreement, Grantor desires to grant to the Grantees a right of first refusal to purchase the Outparcel;

NOW THEREFORE, in consideration of the premises set forth above, the mutual promises, covenants, terms and conditions set forth below and in the Purchase Agreement, and intending to be legally bound, the Grantees and Grantor hereby agree as follows:

**1. RIGHT OF FIRST REFUSAL.** Upon receipt by Grantor of an offer to purchase all or any portion of the Outparcels, which offer Grantor intends to accept (the "Bona Fide Offer"), Grantor shall first offer to sell the Outparcel to the Grantees for the price and upon the terms and conditions set forth below:

(a) Notice. Upon receipt of a Bona Fide Offer by Grantor during the term hereof, Grantor shall deliver to Seller written notice of its intention to accept the Bona Fide Offer (the "Notice"), which Notice shall set forth the name and address of the bona fide offeror, the purchase price offered for the Outparcel, the terms of payment and all other material terms and conditions of the Bona Fide Offer.

(b) Seller's Option. For a period of fifteen (15) days following the receipt of said Notice, the Seller, or any one of the Grantees, or any combination thereof (as the Grantees shall agree), shall have the right, option and privilege, but not the duty, to match the Bona Fide Offer and purchase the Outparcel at the price and upon the terms and conditions contained in the Notice. If Seller desires to match the Bona Fide Offer, it shall give written notice (the "Acceptance Notice") of the fact to Grantor within such fifteen (15) day period. Delivery of an Acceptance Notice shall create

a contract between the Grantees and Grantor for the sale by Grantor and the purchase by the Grantees of the Outparcels, or a portion thereof, on the terms and conditions contained in the Notice.

(c) Failure to Exercise Option. If the Grantees do not exercise their option to match the Bona Fide Offer, then the option granted to Seller in this Section 1 shall be deemed not to have been exercised and Grantor may sell the Outparcel to the bona fide offeror at the price contained in the Notice; provided, however, that if the sale of the Outparcel by the Grantees to said bona fide offeror is not completed within one hundred eighty (180) days after the date of the Notice, the provisions of this Agreement shall again apply to any proposed sale by Grantor of the Outparcel.

2. **TERM.** The right of first refusal granted to the Grantees in Section 1 hereof shall be for a period of Ten (10) years (the "Term").

3. **ASSIGNMENT.** Any assignment of this Agreement shall be subject to the approval of the non-assigning party, and such assignment shall not release the assignor from its obligations hereunder. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

4. **ATTORNEYS' FEES.** If either party commences an action against the other to enforce any of the terms of this Agreement or because of the breach by either party of any of the terms hereof, the prevailing party shall recover its reasonable attorney's fees, costs and expenses incurred in connection with the prosecution or defense of such action.

5. **ENTIRE AGREEMENT.** This Agreement and the Purchase Agreement contain all of the agreements of the parties hereto with respect to the subject matter hereof, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest. In the event this Agreement and the Purchase Agreement conflict, this Agreement shall govern.

6. **REAL ESTATE COMMISSIONS.** The Grantees and Grantor represent to each other that no real estate commission or fee is to be paid in connection with the purchase and sale of the Outparcel, and Seller and Grantor shall each indemnify the other against and hold the other harmless from any and all claims, liabilities, suits, damages, causes of action, judgments, verdicts, expenses or costs arising from any claim against either by any broker, agent, salesman or representative for any fees or commissions claimed by or through the party making the indemnity.

7. **COUNTERPARTS.** This Agreement may be executed in two (2) or more counterparts and by facsimile and all such counterparts, taken together, shall be deemed to be one and the same instrument.

**8. NOTICE.** Any Notice which may or shall be given herein shall be in writing and shall be sent via hand delivery, by United States Registered or Certified Mail, adequate postage prepaid, or by overnight courier to the following addresses, where applicable:

**Grantor:**

2001 S.E. 10th Street,  
Bentonville, AR 72716-0550

Attn: Legal Dept #8313  
REF: Store #2111-01

**Grantees:**

162 Cahaba Valley Road  
Pelham, AL 35124  
Attn: John McGeever

No change of address by either party shall be binding on the other party until notice of such change of address is given. For purposes of the calculation of various time periods referred to herein, notice shall be deemed given on the earlier to occur of (i) actual receipt as indicated on the signed return receipt or otherwise, or (ii) three (3) days after the notice is postmarked.

**9. AUTHORITY OF GRANTEES.** The Grantees have the full right and authority to enter into this contract and to consummate the transactions contemplated herein, and the person executing this contract on behalf of the Grantees have all requisite authority and has been duly authorized to bind the Grantees.

**10. AUTHORITY OF GRANTOR.** Grantor has the full right and authority to enter into this contract and to consummate the transactions contemplated herein, and the person executing this contract on behalf of Grantor has all requisite authority and has been duly authorized to bind Grantor.

**(Signatures to appear on the following page)**

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

**GRANTOR:**

**WAL-MART REAL ESTATE BUSINESS TRUST**

By: \_\_\_\_\_

Its: Assistant Vice President

Approved as to legal terms only

by [Signature]  
WAL-MART LEGAL TEAM

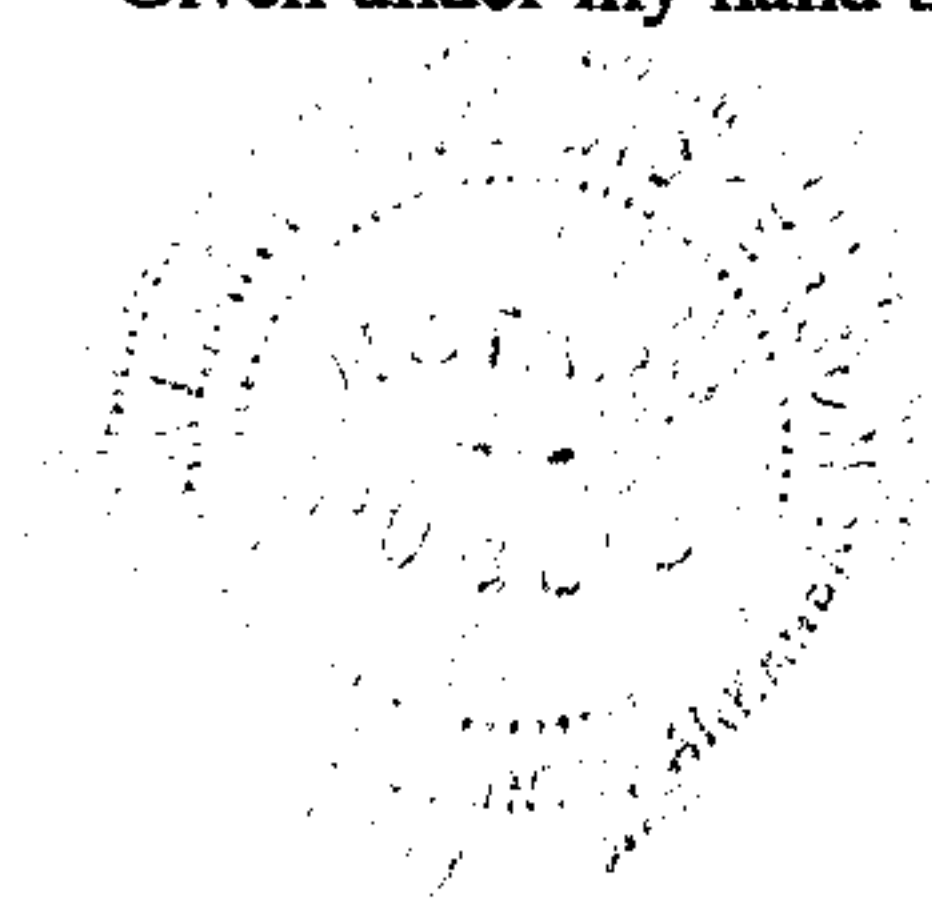
Date: 6/8/01

STATE OF ARKANSAS )

BENTON COUNTY )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Barry Shemcha, whose name as Assistant Vice President of Wal-Mart Real Estate Business Trust, is signed to the foregoing Right of First Refusal Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, in his/her capacity as such officer and with full authority, executed the same voluntarily for and as the act of said entity on the day the same bears date.

Given under my hand this the 18<sup>th</sup> day of ~~April~~ <sup>June</sup>, 2001.



[Signature]  
Notary Public

My Commission Expires: Nov 21 2007

**GRANTEES:**

**FRANK C. ELLIS, JR., L.L.C.**

By: Frank C. Ellis, III  
Frank C. Ellis, III, (as the attorney in  
fact for Frank C. Ellis, Jr., the  
authorized member of Frank C. Ellis,  
Jr., L.L.C.)

**FRANK C. ELLIS, III, L.L.C.**

By: Frank C. Ellis, III  
Frank C. Ellis, III  
Authorized Member

**BENNER INVESTMENTS, L.L.C.**

By: John Benner  
John Benner  
Authorized Member

**McGEEVER INVESTMENTS, L.L.C.**

By: John McGeever  
John McGeever  
Authorized Member

**ROBERTSON INVESTMENTS, L.L.C.**

By: William Robertson  
William Robertson  
Authorized Member

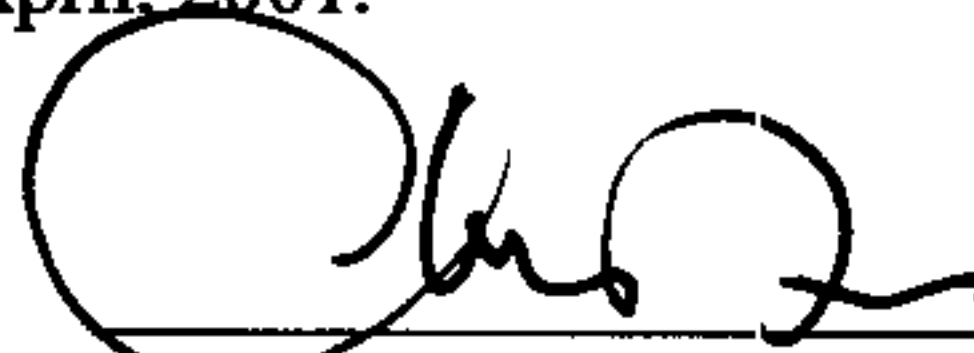
STATE OF ALABAMA     )

SHELBY COUNTY         )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Frank C. Ellis, III, whose name as Attorney in Fact for Frank C. Ellis, Jr., the Authorized Member of **Frank C. Ellis, Jr., LLC**, an Alabama limited liability company, is signed to the foregoing Right of First Refusal and who is known to me, acknowledged before me on this day that, being informed of the contents of said Instrument, he, in his capacity as such Authorized Member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this the 13th day of April, 2001.

(Notarial Seal)



Notary Public

My Commission Expires: 4-19-2004

STATE OF ALABAMA     )

SHELBY COUNTY         )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Frank C. Ellis, III, whose name as Authorized Member of **Frank C. Ellis, III, LLC**, an Alabama limited liability company, is signed to the foregoing Right of First Refusal Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Instrument, he, in his capacity as such Authorized Member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this the 13th day of April, 2001

(Notarial Seal)



Notary Public

My Commission Expires: 4-19-2004

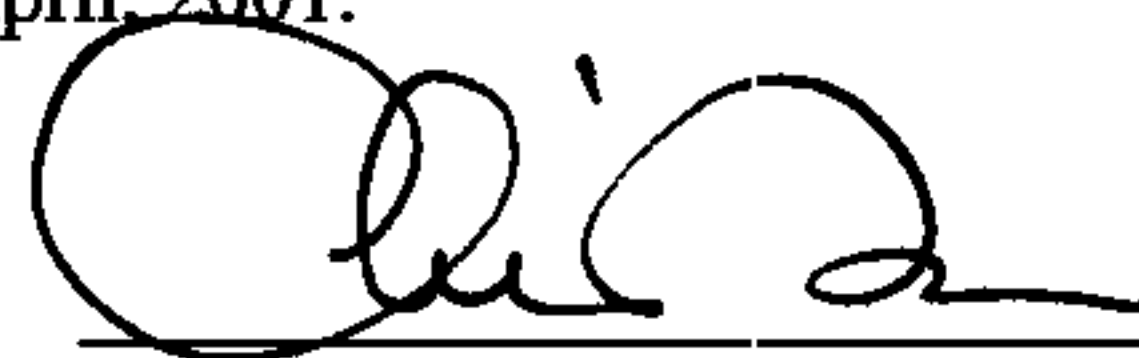
STATE OF ALABAMA     )

SHELBY COUNTY         )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that John Benner, whose name as Authorized Member of **Benner Investments, LLC**, an Alabama limited liability company, is signed to the foregoing Right of First Refusal Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Instrument, he, in his capacity as such Authorized Member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this the 13th day of April, 2001.

(Notarial Seal)



Notary Public

My Commission Expires: 4-19-2004

STATE OF ALABAMA     )

SHELBY COUNTY         )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that John McGeever, whose name as Authorized Member of **McGeever Investments, LLC**, an Alabama limited liability company, is signed to the foregoing Right of First Refusal Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Instrument, he, in his capacity as such Authorized Member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this the 13th day of April, 2001

(Notarial Seal)



Notary Public

My Commission Expires: 4-19-2004

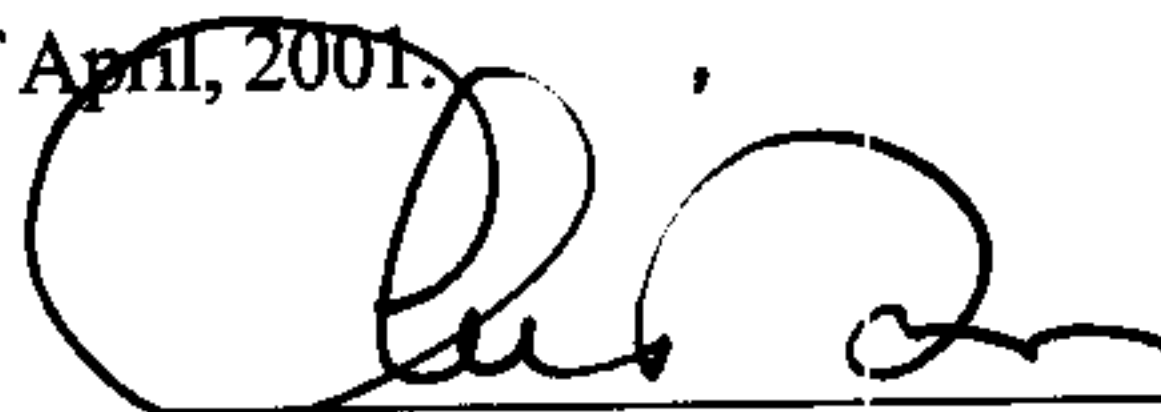
STATE OF ALABAMA )

SHELBY COUNTY )

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that William R. Robertson, whose name as Authorized Member of **Robertson Investments, LLC**, an Alabama limited liability company, is signed to the foregoing Right of First Refusal Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of said Instrument, he, in his capacity as such Authorized Member and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand this the 13th day of April, 2001.

(Notarial Seal)



Notary Public

My Commission Expires: 4-19-2004

## Exhibit "A"

### Legal Description

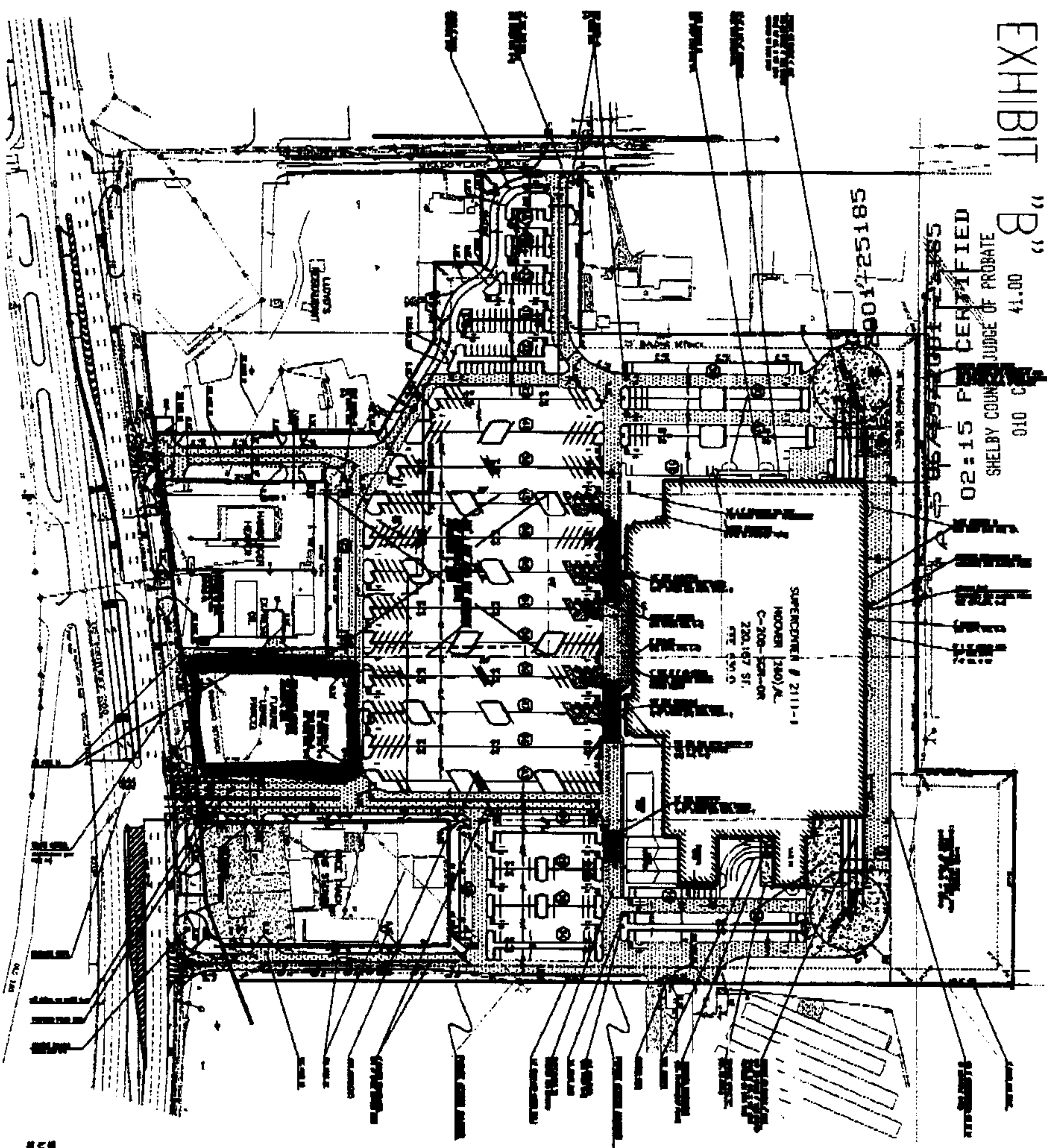
A parcel of land located in the Northeast Quarter of the Southeast Quarter of Section 31, Township 18 South, Range 1 West in Shelby County, Alabama and being more particularly described as follows:

As a POINT OF BEGINNING, begin at the Northeast corner of the Northeast Quarter of the Southeast Quarter of said Section 31; thence run in a Southerly direction and along the East boundary of said Northeast Quarter of the Southeast Quarter for a distance of 1119.11 feet to a point on the North boundary of U.S. Highway No. 280; thence with an interior angle of 110 degrees 55 minutes 35 seconds run in an Southwesterly direction and along the North boundary of said U.S. Highway No. 280 for a distance of 61.21 feet to a point on the East boundary of Racetrack Petroleum property, as recorded in Deed Book 129, Page 749; thence with an interior angle of 69 degrees 14 minutes 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 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 90 degrees 26 minutes 10 seconds run in a Northerly direction for a distance of 762.70 feet to a point; thence with an interior angle of 89 degrees 38 minutes 46 seconds run in an Easterly direction for a distance of 105.45 feet to a point; thence with an interior angle of 269 degrees 42 minutes 44 seconds run in a Northerly direction for a distance of 3.97 feet to a point on the North boundary of the Northeast Quarter of the Southeast Quarter of said Section 31; thence with an interior angle of 90 degrees 00 minutes run in an Easterly direction and along the North boundary of said Northeast Quarter of the Southeast Quarter for a distance of 165.68 feet to the POINT OF BEGINNING, at which point the interior angle being 90 degrees 01 minute 53 seconds;

# EXHIBIT "B"

02:15 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
41.00  
010 C

BOOK 1725185



SCALE: 1/4" = 1'-0"

- 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 2. FINISHES TO BE DETERMINED BY THE ARCHITECT.
- 3. SEE SPECIFICATIONS FOR MATERIALS AND METHODS OF CONSTRUCTION.
- 4. SEE SPECIFICATIONS FOR FINISHES.
- 5. SEE SPECIFICATIONS FOR EQUIPMENT.
- 6. SEE SPECIFICATIONS FOR MECHANICAL AND ELECTRICAL SYSTEMS.
- 7. SEE SPECIFICATIONS FOR PLUMBING AND SANITARY SYSTEMS.
- 8. SEE SPECIFICATIONS FOR PAINTS AND COATINGS.
- 9. SEE SPECIFICATIONS FOR FLOORING.
- 10. SEE SPECIFICATIONS FOR CEILING.
- 11. SEE SPECIFICATIONS FOR WALLS.
- 12. SEE SPECIFICATIONS FOR DOORS AND WINDOWS.
- 13. SEE SPECIFICATIONS FOR STAIRS.
- 14. SEE SPECIFICATIONS FOR ELEVATORS.
- 15. SEE SPECIFICATIONS FOR SIGNAGE.
- 16. SEE SPECIFICATIONS FOR FURNITURE AND FIXTURES.
- 17. SEE SPECIFICATIONS FOR LIGHTING.
- 18. SEE SPECIFICATIONS FOR SOUNDING.
- 19. SEE SPECIFICATIONS FOR SECURITY.
- 20. SEE SPECIFICATIONS FOR ACCESSIBILITY.

NOTED: SEE SPECIFICATIONS FOR MATERIALS AND METHODS OF CONSTRUCTION.

SOUTH & ASSOCIATES, INC.		SHEET NO. 1	
PROJECT: SUPERMARKET #2111-1		DATE: 08/05/2001	
LOCATION: HOOPER, ALABAMA		DRAWN BY: [Signature]	
OWNER: WAL-MART STORES, INC.		CHECKED BY: [Signature]	
SITE PLAN		SCALE: 1/4" = 1'-0"	