

This instrument was prepared by:
MARY DOUGLAS HAWKINS
1804 7th Avenue North
Birmingham, Alabama 35203
Telephone: (205) 251-1164

THE STATE OF ALABAMA)

SHELBY COUNTY)

ACCESS and MAINTENANCE AGREEMENT

This ACCESS and MAINTENANCE AGREEMENT is entered into as of the 13th day of January 2002, by and among Wal-Mart Real Estate Business Trust, a Delaware business trust, with an address of 2001 SE Tenth Street, Bentonville, Arkansas 72712-0550, c/o Realty Management Department #44-9384 ("Wal-Mart"), Bazaar 280, LLC, an Alabama limited liability company, with an address of 200 Union Hill Drive, Suite 300, Birmingham, Alabama 35209 ("Bazaar 280") and T. Owen Vickers, with an address of Post Office Box 1596, Birmingham, Alabama 35201-1596 ("Vickers").

WHEREAS, Wal-Mart is the owner of that certain tract or parcel of land situated in Shelby County, Alabama, identified as Wal-Mart Tract on the site plan attached hereto as Exhibit A and more fully described on Exhibit B ("Wal-Mart Tract"); and

WHEREAS, Bazaar 280 is the owner of that certain tract or parcel of land situated in Shelby County, Alabama, which lies adjacent to the Wal-Mart Tract and is identified as Lot 1 on Exhibit A and more fully described on Exhibit C ("Lot 1"); and

WHEREAS, Vickers is the owner of that certain tract or parcel of land situated in Shelby County, Alabama, which lies adjacent to Lot 1 and is identified as Lot 2 on Exhibit A and more fully described on Exhibit D ("Lot 2"); and

WHEREAS, Wal-Mart, Bazaar 280 and Vickers desire to develop the sanitary sewer system for the mutual benefit of the Wal-Mart Tract, Lot 1 and Lot 2 which sanitary sewer system will require the installation of a shared length of gravity-fed sanitary sewer pipe, a common pump station and a shared sanitary force main between the Wal-Mart Tract, Lot 1 and Lot 2, with the proposed pump station being located on the Wal-Mart Tract and the majority of the force main located on Lot 1 as shown on Exhibit A and more fully described on Exhibit E ("Sanitary Sewer Easement"); and

WHEREAS, Wal-Mart, Bazaar 280 and Vickers desire to establish a cooperative access and maintenance agreement for the purpose of developing and maintaining the sanitary sewer system.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants hereinafter, the parties, intending to be legally bound, do hereby agree as follows:

1. Wal-Mart does hereby grant to Bazaar 280 and Vickers a non-exclusive easement for the construction, access and maintenance of the sanitary sewer system over and across the Wal-Mart Tract and Bazaar 280 does hereby grant to Wal-Mart and Vickers a non-exclusive easement for the construction, access and maintenance of the sanitary sewer system over and across Lot 1 and Vickers does hereby grant to Wal-Mart and Bazaar 280 a non-exclusive easement for the construction, access and maintenance of the sanitary sewer system over and across Lot 2 as shown on Exhibit A.
2. The sanitary sewer system, including the installation of a shared length of gravity-fed sanitary sewer pipe, a common pump station and a shared sanitary force main between the Wal-Mart Tract, Lot 1 and Lot 2 shall be constructed by Wal-Mart at its sole cost and expense in substantial

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conformance with the joint pump station-force main plan prepared by South & Associates, Inc. dated the 18th day of December, 2001, which is attached hereto and designated as Exhibit F. Bazaar 280, Vickers and Wal-Mart (including the Outparcel owned by Wal-Mart) will be able to tie on and use the sewer without charge, except for the Shelby County sewer impact charge.

3. Wal-Mart shall upon the completion of construction of the sanitary sewer system, including the installation of a shared length of gravity-fed sanitary sewer pipe, a common pump station and a shared sanitary force main provide Bazaar 280 and Vickers with an "as built" drawing of the sanitary sewer system.
4. Wal-Mart shall maintain the sanitary sewer system. Bazaar 280 and Vickers shall pay to Wal-Mart the actual cost for the electrical and routine maintenance expense of the lift station and force main, estimated to be in the combined amount of \$800.00 for the first year of operation, subject to adjustment based on actual costs after the first year of operation. Wal-Mart shall annually review the electrical and routine maintenance expense for the lift station and force main and shall notify Bazaar 280 and Vickers in writing of any adjustment in the annual maintenance fee, but in no event shall the increased annual maintenance fee exceed 25% of the annual maintenance fee at the time of review. Wal-Mart's pro rata share of the maintenance expense in excess of the routine maintenance expense referred to above shall be 50% and Bazaar 280 and Vickers's combined pro rata share of the maintenance expense in excess of the routine maintenance expense shall be 50%.
5. Wal-Mart, Bazaar 280 and Vickers shall each pay their pro rata share, as defined hereinabove, of any major or emergency maintenance, replacement or repairs, including but not limited to the replacement or repair of the motors, impellers, pump and valves within 30 days of receipt of written notice thereof. In the event any party tied onto the sewer facility changes its use requiring an upgrade of the pump (and related equipment), then such party shall be responsible for replacement of the pump (and related equipment). At present the engineering estimate for peak hourly flows are as follows: 62 gpm for Bazaar 280 and Vickers and 21 gpm for Wal-Mart.
6. Wal-Mart shall not cause loss of sewer services to Lot 1 or Lot 2 and Bazaar 280 and Vickers shall not cause loss of service to the Wal-Mart Tract. No party shall interrupt the service to the other party's property due to willful negligence. The parties agree that the rights created herein shall be exercised in a reasonable manner which is calculated to minimize any interference with the use of any party of such party's property or the operation of business conducted on such party's property.
7. The easement created herein and the covenants, rights, privileges, benefits, duties, obligations and liabilities created hereunder shall be perpetual, or at such time as the parties mutually agree that the shared sanitary sewer system is no longer necessary.
8. The easement created herein is solely for benefit of the owners of the Wal-Mart Tract, Lot 1 and Lot 2, and their respective employees, agents, representatives, independent contractors, successors and assigns, is private and is not intended to grant any rights to the public.
9. Except in the case of Bazaar 280's or Vickers' negligence, willful misconduct or breach of this Agreement, Wal-Mart hereby indemnifies and agrees to hold Bazaar 280 and Vickers harmless from and against all losses, claims, suits, liens, proceedings, actions, causes of action, responsibility, liability, damages, and cost (including, without limitation, reasonable attorneys' fees, judgments, court costs and executions) which arise from the existence of the easement herein granted or Wal-Mart's use of the easement and except in the case of Wal-Mart's negligence, willful misconduct or breach of this Agreement, Bazaar 280 and Vickers hereby indemnify and agree to hold Wal-Mart harmless from and against all losses, claims, suits, liens, proceedings, actions, causes of action, responsibility, liability, damages, and cost (including, without limitation, reasonable attorneys' fees, judgments, court costs and executions) which arise from the existence of the easement herein granted or Bazaar 280's or Vickers' use of the easement.

10. Notices. All notices or communication given under or pursuant to this Agreement shall be in writing, addressed to the parties at their respective addresses as provided below, and delivered by a national independent courier or sent certified or registered mail, postage prepaid, return receipt requested. Until further notice, the addresses of the parties to which notices are to be addressed will be as follows:

To Wal-Mart:

Wal-Mart Real Estate Business Trust
Sam M. Walton Development Complex
2001 S.E. 10th Street Dept. 8313
Ref: Store #2111-01
Bentonville, AR 72716-0550
Attention: Mary Ann Dickerson

With a copy to:

Corretti, Newsom & Hawkins
1804 7th Avenue North
Birmingham, AL 35203-2280
Attention: Mary Douglas Hawkins

To Bazaar 280:

Bazaar 280, LLC
200 Union Hill Drive, Suite 300
Birmingham, AL 35209
Attention: Mr. Hunter Williams

To Vickers:

T. Owen Vickers
Post Office Box 1596
Birmingham, AL 35201-1596

With a copy to:

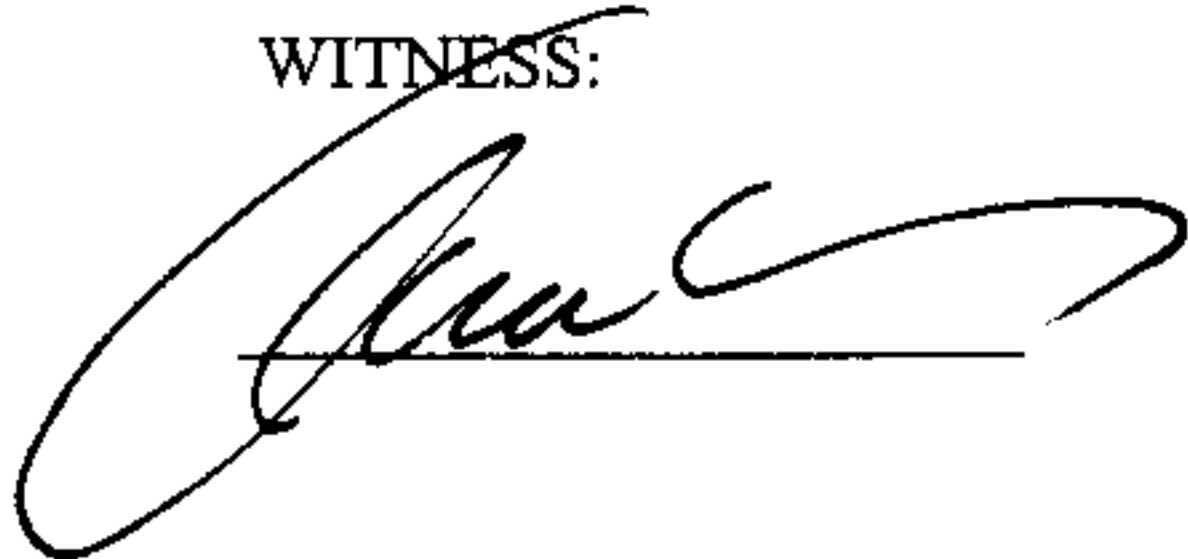
Corley, Moncus & Ward, P.C.
400 Shades Creek Parkway, Suite 100
Birmingham, AL 35209
Attention: Claude McCain Moncus

Each party may change its address by written notice given to the other in the manner hereinabove provided.

11. This Agreement may not be modified, terminated or amended except by written agreement signed by the parties hereto, their successors and assigns.
12. Nothing contained in this Agreement shall be construed to make the parties hereto partners or joint venturers or to render either of said parties liable for the debts or obligations of the other, except as expressly provided in this Agreement.
13. If any term, provision or condition contained in this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each and every other term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

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

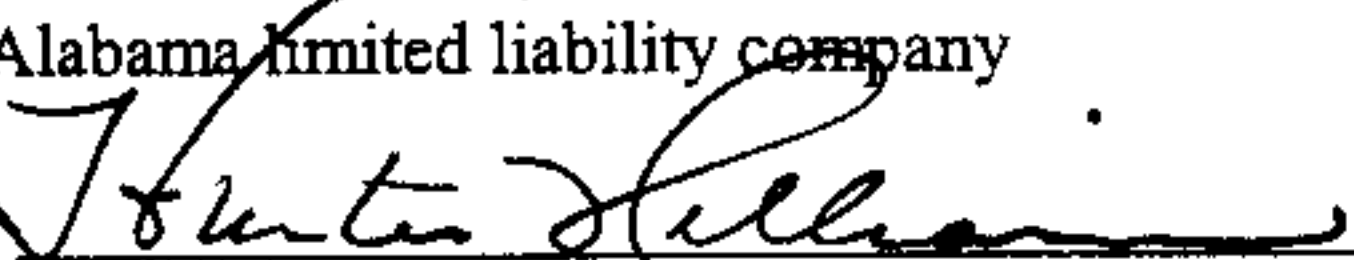
WITNESS:



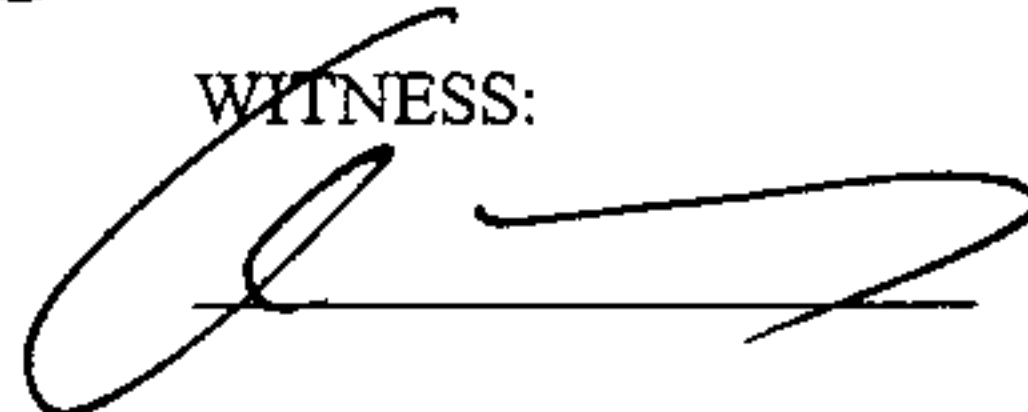
BAZAAR 280, LLC,
an Alabama limited liability company

By:

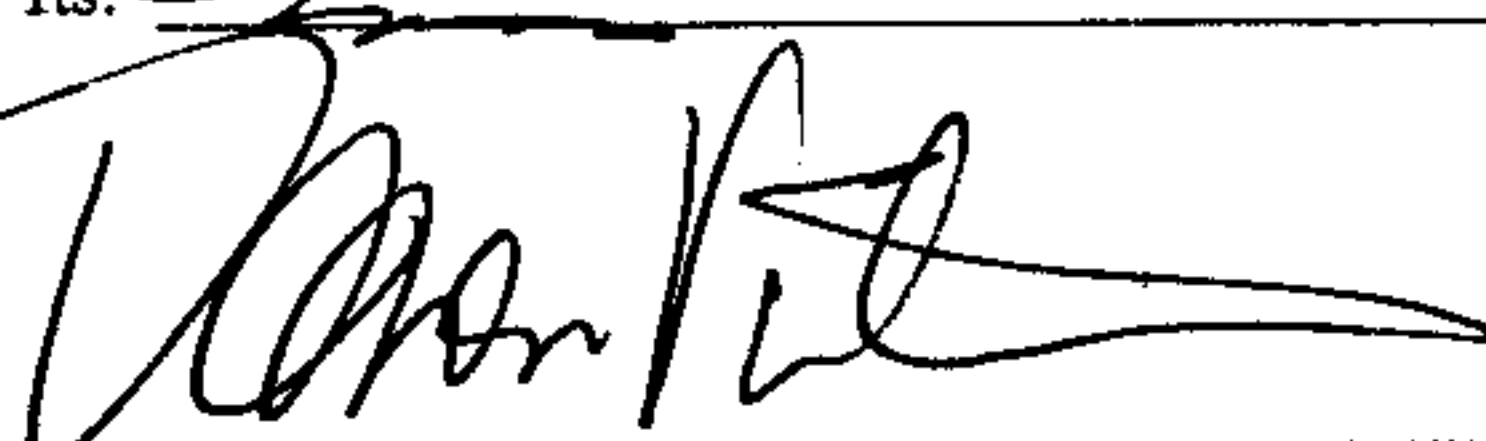
Its:



WITNESS:



T. OWEN VICKERS



ATTEST:

WAL-MART REAL ESTATE BUSINESS TRUST,
a Delaware business trust

By: _____

Its: Assistant Secretary

By: _____

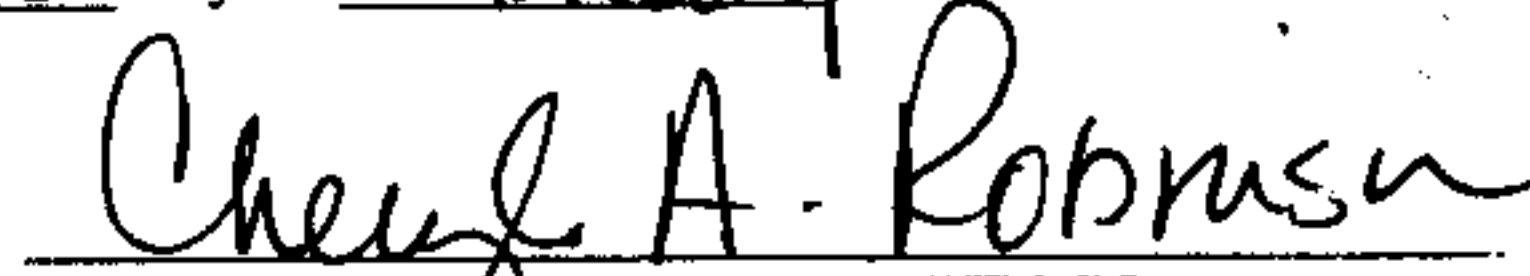
Barry Shannahan

Its: Assistant Vice President

THE STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Hunter Williams, whose name as Managing Member of Bazaar 280, LLC, an Alabama limited liability company, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, as such officer and with full authority, executed the same voluntarily as and for the act of said limited liability company.

Given under my hand and official seal this 13th day of February 2002.


NOTARY PUBLIC

My commission expires: 7/10/03

THE STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that T. Owen Vickers, whose name is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 15 day of February, 2002.


NOTARY PUBLIC

My commission expires: 2/5/06

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

WITNESS:

BAZAAR 280, LLC,
an Alabama limited liability company

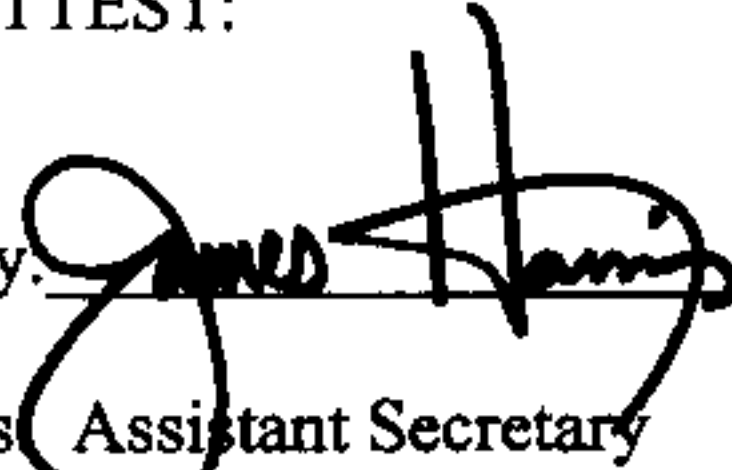
By: _____
Its: _____

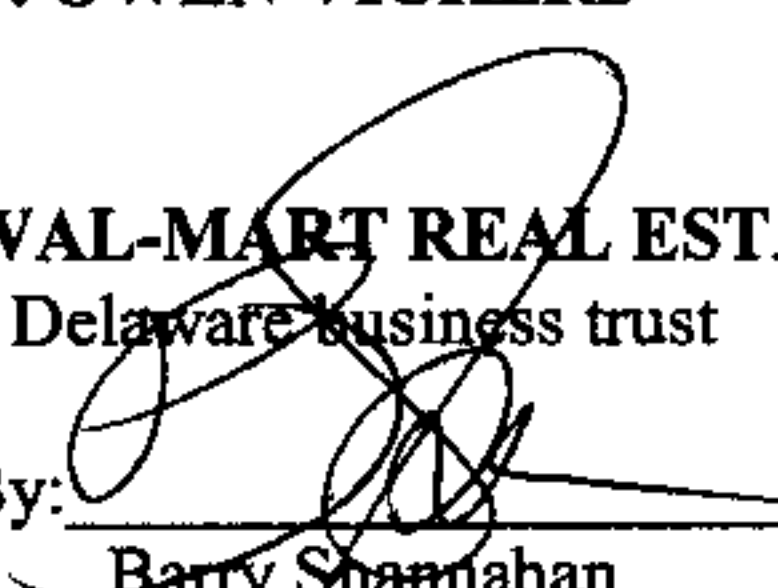
WITNESS:

T. OWEN VICKERS

ATTEST:

WAL-MART REAL ESTATE BUSINESS TRUST,
a Delaware business trust

By: 
Its Assistant Secretary

By: 
Its Assistant Vice President

THE STATE OF ALABAMA)
JEFFERSON COUNTY)



I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that _____, whose name as _____ of Bazaar 280, LLC, an Alabama limited liability company, is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, as such officer and with full authority, executed the same voluntarily as and for the act of said limited liability company.

Given under my hand and official seal this ____ day of _____, 2002.

NOTARY PUBLIC

My commission expires: _____

THE STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that T. Owen Vickers, whose name is signed to the foregoing Agreement and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this ____ day of _____, 2002.

NOTARY PUBLIC

My commission expires: _____

THE STATE OF ARKANSAS)
BENTON COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Barry Shannahan, whose name as Assistant Vice President, of Wal-Mart Real Estate Business Trust, a Delaware business trust, is signed to the foregoing Agreement, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, he, as such officer and with full authority, executed the same voluntarily as and for the act of said business trust.

Given under my hand and official seal this 15th day of February 2002.

Mary Ann Dickerson
NOTARY PUBLIC

MARY ANN DICKERSON
NOTARY PUBLIC
BENTON COUNTY, ARKANSAS
My Commission Expires NOV. 1, 2011

My commission expires: 11-1-01

EXHIBIT A

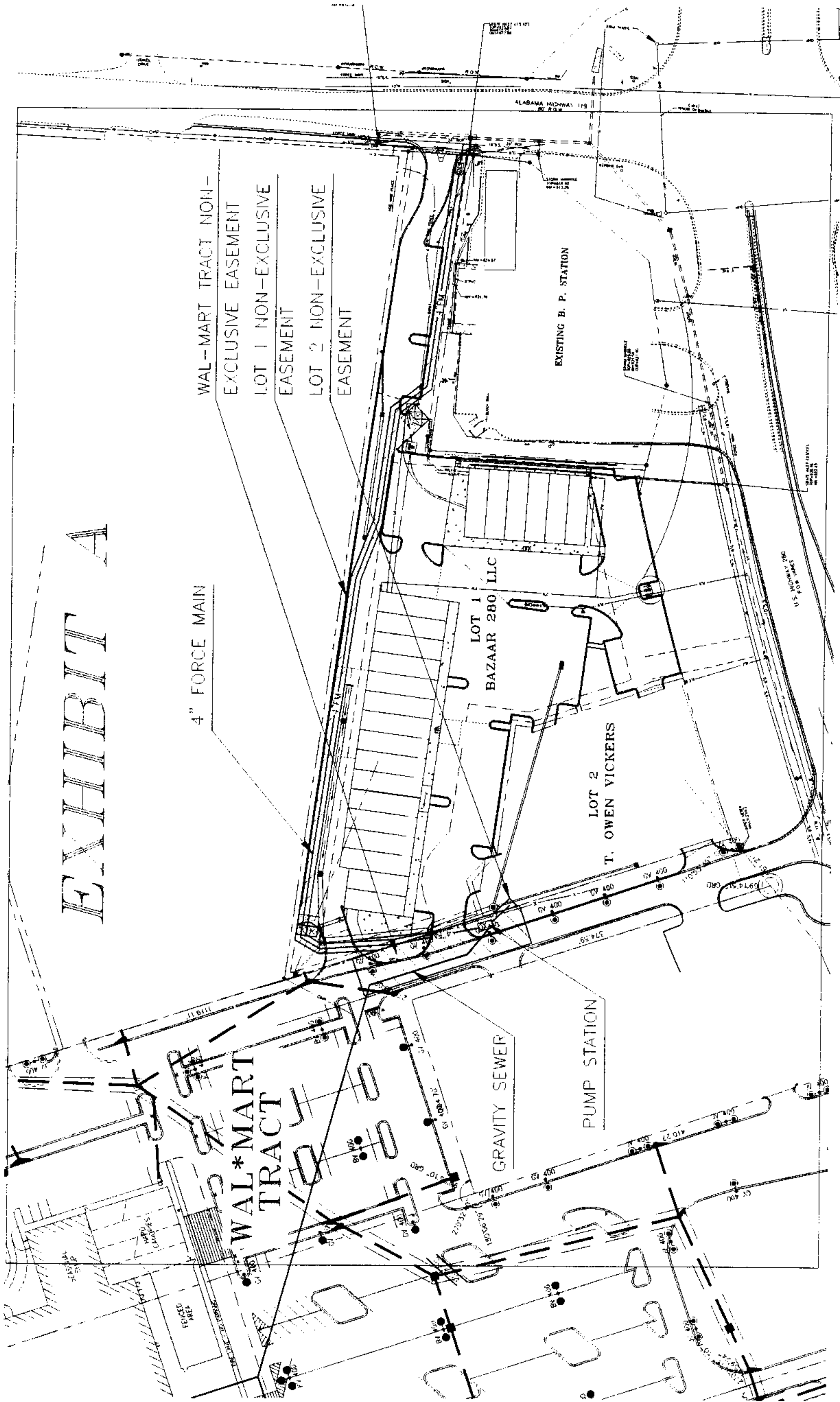


EXHIBIT B
(THE WAL-MART TRACT)

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 of U.S. Highway 280; thence with an interior angle of $110^{\circ} 55' 36''$ 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 of the Racetrack Petroleum property and being recorded in Deed Book 129, Page 749; thence with an interior angle of $69^{\circ} 14' 51''$ 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 $270^{\circ} 00' 00''$ 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 $270^{\circ} 32' 40''$ run in a Southerly direction and along the West boundary of said Racetrack Petroleum property for a distance of 410.2 feet to a point on the North boundary of U.S. Highway 280; thence with an interior angle of $95^{\circ} 34' 56''$ 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 $84^{\circ} 04' 08''$ 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 $270^{\circ} 01' 17''$ 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 $269^{\circ} 14' 24''$ run in a Southerly direction for a distance of 274.52 feet to a point on the North boundary of U.S. Highway 280; thence with an interior angle of $97^{\circ} 35' 55''$ 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 of $83^{\circ} 10' 53''$ run in a Northerly direction for a distance of 373.60 feet to a point; thence with an interior angle of $239^{\circ} 29' 20''$ run in a Northwesterly direction for a distance of 178.70 feet to a point; thence with interior angle of $210^{\circ} 05' 46''$ 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 $90^{\circ} 19' 40''$ 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 $269^{\circ} 06' 18''$ 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 $90^{\circ} 53' 39''$ 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 $89^{\circ} 11' 21''$ 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 $270^{\circ} 33' 37''$ 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 of $180^{\circ} 20' 29''$ 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 $89^{\circ} 33' 17''$ run in an Easterly direction and along the North boundary of said Northeast Quarter of the 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 $269^{\circ} 29' 55''$ 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 $90^{\circ} 01' 30''$ run in an 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 $90^{\circ} 31' 38''$ 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 of beginning, at which point the interior angle being $179^{\circ} 58' 51''$. Said parcel containing 26.777 acres and having 1,166,426.45 square feet.

EXHIBIT C
(BAZAAR 280, LLC PROPERTY)

Lot 1, according to the Survey of Aultman's Addition to 280, as recorded in Map Book 29, Page 1, in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT D
(T. OWEN VICKERS' PROPERTY)

Lot 2, according to the Survey of Aultman's Addition to 280, as recorded in Map Book 29, Page 1, in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT E
(SANITARY SEWER EASEMENT)

ACCESS & MAINTENANCE EASEMENT OVER WAL-MART TRACT

A 40' Access & Maintenance Agreement Easement 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 Southerly direction and along the East boundary of said Northeast Quarter of the Southeast Quarter for a distance of 708.22 feet to the POINT OF BEGINNING of the easement herein described; thence continue in a Southerly direction and along the East boundary of said Northeast Quarter of the Southeast Quarter for a distance of 175.00 feet to a point; thence with an interior angle of 90 degrees 00 minutes run in a Westerly direction for a distance of 40.00 feet to a point; thence with an interior angle of 90 degrees 00 minutes run in a Northerly direction for a distance of 175.00 feet to a point; thence with an interior angle of 90 degrees 00 minutes run in an Easterly direction for a distance of 40.00 feet to the POINT OF BEGINNING, at which point the interior angle being 90 degrees 00 minute. Said parcel containing 0.161 acres and having 7,000 square feet.

ACCESS & MAINTENANCE EASEMENT OVER LOT 1

A tract of land situated in the Southwest Quarter of Section 32, Township 18 South, Range 1 West, being more particularly described as follows:

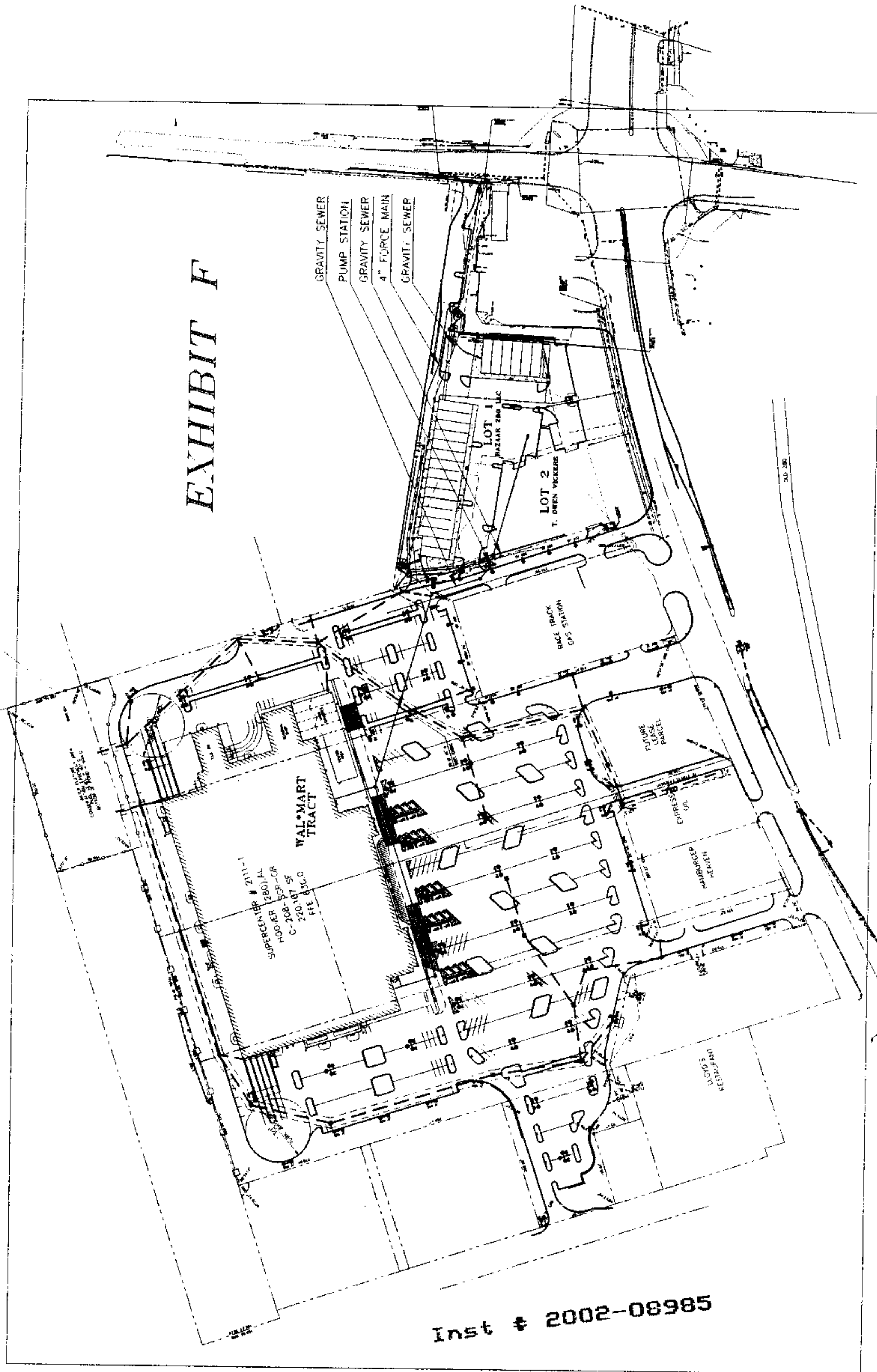
Commence at the Northwest corner of the Northwest Quarter of the Southwest Quarter of said Section 32 and run in a Southerly direction along the Western boundary line of Section 32 for a distance of 770.93 feet to the point of beginning and the centerline of a 10 foot sanitary sewer easement; thence deflect left 165°41'18" and run in a Northeasterly direction along said centerline for a distance of 77.16 feet; thence deflect right 33°49'36" and run in a Northeasterly direction along said centerline for a distance of 22.59 feet; thence deflect right 68°08'32" and run in a Southeasterly direction along said centerline for a distance of 364.71 feet; thence deflect right 12°33'32" and run in a Southeasterly direction along said centerline for a distance of 62.40 feet; thence deflect left 12°54'24" and run in a Southeasterly direction along said centerline for a distance of 112.21 feet; thence deflect right 44°54'31" and run in a Southeasterly direction along said centerline for a distance of 39.34 feet; thence deflect left 45°00'00" and run in a Southeasterly direction along said centerline for a distance of 235.06 feet to a point on Alabama Highway No. 119 (80 foot R.O.W.) and the end of said easement.

ACCESS & MAINTENANCE EASEMENT OVER LOT 2

A parcel of land situated in the Southwest Quarter of Section 32, Township 18 South, Range 1 West, being more particularly described as follows:

Commence at the Northwest corner of the Northwest Quarter of the Southwest Quarter of said Section 32 and run in a Southerly direction along the western boundary line of Section 32 for a distance of 871.30 feet to the point of beginning; thence continue along last described course for a distance of 22.62 feet; thence deflect left 26°14'23" and run in a Southeasterly direction for a distance of 1.80 feet; thence deflect left 90°00'00" and run in a Northeasterly direction for a distance of 10.00 feet; thence deflect left 90°00'00" and run in a Northwesterly direction for a distance of 22.08 feet to a point on the western boundary line of Section 32 and the point of beginning.

EXHIBIT F



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