


STATE OF ALABAMA       )  
COUNTY OF SHELBY       )

  
20030618000380510 Pg 1/18 62.00  
Shelby Cnty Judge of Probate, AL  
06/18/2003 07:54:00 FILED/CERTIFIED

**ACCESS ROAD CONSTRUCTION AND EASEMENT AGREEMENT**  
**AND DRAINAGE EASEMENT AGREEMENT**

**THIS ACCESS ROAD CONSTRUCTION AND EASEMENT AGREEMENT AND DRAINAGE EASEMENT AGREEMENT** (this "Agreement") made this 17 day of June, 2003, by and between **METROPOLITAN LIFE INSURANCE COMPANY**, a New York corporation (hereinafter "Grantor"), and **THE MANDALA PROJECT, LLC**, an Alabama limited liability company (hereinafter "Grantee").

**RECITALS**

**WHEREAS**, by Statutory Warranty Deed dated of even date herewith (the "Deed"), Grantee purchased from Grantor, and Grantor conveyed unto Grantee, certain real estate situated in Shelby County, Alabama as described in Exhibit "A" attached hereto ("Site 203"), and

**WHEREAS**, Grantee intends to develop Site 203 and construct a retail shopping center and other improvements thereon, and

**WHEREAS**, Grantor owns a certain parcel of property described in Exhibit "B" attached hereto ("Parcel 29"; Parcel 29, together with Site 203, are sometimes collectively referred to herein as the "Parcels") which is adjacent to and contiguous with Site 203, and

**WHEREAS**, Grantor has requested, as a condition to selling the Property to Grantee, that Grantee create, grant and reserve certain easements and rights with respect to access, ingress, egress, pedestrian and vehicular traffic over and across that certain property more particularly described on Exhibit "C" attached hereto (which consists of a portion of Site 203) (the "Access Road Easement Property") for the use and benefit of the owner of Parcel 29, its successors and assigns (all of which persons are collectively hereafter referred to as the "Parcel 29 Owner"), and

its agents, customers, patrons, guests, invitees, licensees, and employees, servants, contractors, mortgagees, tenants and such tenants' agents, customers, patrons, guests, invitees, licensees, employees, servants, contractors and mortgagees (all of which persons are hereinafter referred to as the "Parcel 29 Permittees"), and

**WHEREAS**, Grantee has requested, as a condition to purchasing the Property from Grantor, that Grantor create and grant to Grantee a temporary construction easement over and across that certain property more particularly described on Exhibit "D" attached hereto (which consists of a portion of Parcel 29) (the "Construction Easement Property"; the Access Road Easement Property and the Construction Easement Property being sometimes collectively hereinafter referred to as the "Easement Property") for the use and benefit of the owner of Site 203, its successors and assigns (all of which persons are collectively hereafter referred to as the "Site 203 Owner"; the Parcel 29 Owner and the Site 203 Owner are sometimes hereinafter collectively referred to as the "Owners"), and its agents, employees and contractors (all of which persons are hereinafter referred to as the "Site 203 Permittees"; the Parcel 29 Permittees and the Site 203 Permittees being sometimes collectively hereinafter referred to as the "Permittees"), and

**WHEREAS**, Grantee has requested, as a condition to purchasing the Property from Grantor, that Grantor grant certain easements and rights with respect to drainage over and across certain of Grantor's real property (the "Drainage Easement Property") which is immediately contiguous with the Inverness Piping (as hereinafter defined) and is more particularly described on Exhibit "E" attached hereto for the use and benefit of the Parcel 203 Owner and Parcel 203 Permittees.

## AGREEMENT

**NOW, THEREFORE**, Grantor and Grantee hereby declare that the Parcels, and the various portions thereof as set forth herein, shall be benefited and burdened by the following easements and rights:

1.     ACCESS ROAD EASEMENT. Grantee hereby creates, declares and imposes on the Access Road Easement Property, solely for the benefit of Parcel 29 and no other property, a non-exclusive easement (the "Access Road Easement") for the purpose of vehicular traffic over and across the Access Road Easement Property.

2.     DRAINAGE EASEMENT. Grantor hereby creates, declares and imposes on the Drainage Easement Property a non-exclusive easement for the drainage of storm water from Parcel 203 across, through and over the Drainage Easement Property for drainage of such storm water into Lake Heather. Notwithstanding the foregoing, Grantor's granting of such drainage easement shall in no way constitute a representation, warranty or future covenant on the part of Grantor as to the sufficiency of the Inverness Piping (as defined below) or other drainage facilities for Grantee's intended development of its property, and it shall be the sole responsibility of Grantee to determine whether such facilities are or will be sufficient for Grantee's drainage requirements or needs.

3.     CONSTRUCTION OF ACCESS ROAD. Grantee hereby agrees to construct within the Access Road Easement Property, at Grantee's sole cost and expense (subject to Grantee's right of contribution set forth in Section 6 below), an access road (the "Road") in accordance with certain plans and specifications (the "Plans"), which Plans must be approved by Grantor in its sole and absolute discretion and shall be subject to any applicable provisions set forth in those certain

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covenants and restrictions set forth in Exhibit B to the Deed (the "Protective Covenants"). The Road shall be so constructed and completed by Grantee not later than one hundred twenty (120) days after the date hereof, subject to force majeure. Grantor shall be entitled to select the name of the Road, subject to Grantee's reasonable approval, which approval shall not be unreasonably withheld, denied or delayed.

In the event Grantee has not completed construction of the Road within such time period, Grantor may, upon thirty (30) days written notice and reasonable opportunity to cure, complete the construction of the Road in accordance with the Plans, at Grantee's expense for all reasonable costs associated therewith. Grantee shall pay to Grantor the foregoing construction costs to complete the Road within thirty (30) days of its receipt of an invoice and reasonable supporting documentation for the same after the Road is completed. In the event that Grantee fails to pay such invoice as aforesaid, the invoice amount shall be a lien against Site 203.

In addition, Grantee agrees to install, at Grantee's sole cost and expense (subject to Grantee's right of contribution set forth in Section 6 below), stormwater drainage piping (the "Access Road Piping") under the Road in accordance with the Plans and subject to Grantor's approval. The Access Road Piping shall be connected to the Inverness Piping (as defined below), which Grantor has agreed to construct pursuant to Section 4 below. Grantor and Grantee hereby agree that the cost of construction of the Road (and related stormwater drainage and piping) shall be \$114,000.00, which amount may not be exceeded by more than ten (10%) by Grantee without the prior written consent of Grantor.

4. STORMWATER PIPING. Grantor shall use its best efforts to install, within sixty (60) days after the closing of the purchase by Grantee of Site 203 (except for delays arising from or

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through acts of God, strikes, lockouts, labor difficulties, explosions, sabotage, accidents, legal requirements, or other causes beyond the reasonable control of Grantor, unless such delay results from the willful misconduct or gross negligence of Grantor), certain storm water piping under Inverness Center Drive (the "Inverness Piping"), at the location indicated on and in accordance with the specifications set forth on Exhibit "F" attached hereto, which storm water piping shall be installed at Grantor's sole cost and expense. In the event Grantor has not completed the installation of such storm water piping within one hundred twenty (120) days after the closing of the purchase of Site 203 (except for delays arising from or through acts of God, strikes, lockouts, labor difficulties, explosions, sabotage, accidents, legal requirements, or other causes beyond the reasonable control of Grantor, unless such delay results from the willful misconduct or gross negligence of Grantor), Grantee shall have the right, upon ten (10) days written notice to Grantor, to install such Inverness Piping and shall be reimbursed by Grantor for the reasonable cost thereof within thirty (30) days after demand therefor.

5. CONSTRUCTION EASEMENT. Grantor hereby creates, declares and imposes on the Construction Easement Property, solely for the benefit of Site 203 and no other property, a temporary, non-exclusive easement (the "Construction Easement") in connection with and as necessary to permit the construction of the Road, such temporary easement to terminate thirty (30) days following substantial completion of the construction of the Road.

6. ADJACENT PARCEL CONTRIBUTION. Grantor hereby agrees that, upon the sale of Parcel 29 by Grantor, or any conveyance thereof, Grantor shall require the purchaser under such sale or transferee to pay at the closing of such sale or conveyance fifty percent (50%) of the budgeted costs (the "Adjacent Parcel Contribution") to be incurred in connection with the construction of the

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Road and the stormwater drainage piping to be constructed under the Road. Upon and at the time of closing or the sale of Parcel 29 by Grantor or other conveyance, the Grantor shall cause the purchaser or transferee of such parcel to remit to Grantor the Adjacent Parcel Contribution, which shall be immediately paid to Grantee. In the event that such purchaser or transferee fails to remit the Adjacent Parcel Contribution at the time of closing of Parcel 29, the Parcel 29 Owner shall have no right to the use of the Road and any and all easement and other rights of the Parcel 29 Owner to the Access Road Easement Property shall terminate. Notwithstanding the foregoing, in the event Grantor (or its successors or assigns) repurchases Parcel 29 in accordance with Article 5 of the Protective Covenants, upon such repurchase the rights and obligations of Grantor (and any subsequent purchaser of Parcel 29) hereunder shall be automatically revived and reinstated subject to the terms and conditions hereof.

7. UNIMPEDED ACCESS. The Owners shall do nothing to prohibit or discourage the free and uninterrupted flow of vehicular traffic in the areas designated for such purpose by each Owner with respect to the property it owns that is subject to this Agreement; provided, however, that (i) the Owners shall have the right to erect barriers temporarily to avoid the possibility of dedicating such areas for public use or creating prescriptive rights therein; and (ii) each Owner shall have the right to erect such walls, fences or other artificial or natural barriers at the perimeter of, on or within its Parcel as may be necessary or convenient for the enjoyment of its rights in such Parcel so long as such barriers shall otherwise be in compliance with all laws, regulations and restrictions governing the use of such Parcel (including, without limitation, the Protective Covenants), and so long as gates, openings, doors or other means of free passage are provided so as to continue the unimpeded flow of vehicular access along the Road and other areas



designated for such purpose on the Easement Property, subject, however, to the rights of the Owner to impose such reasonable rules, regulations and restrictions thereon as may be reasonably desirable and as may be contemplated pursuant to the provisions of Section 8 hereof.

8. EASEMENT RULES AND REGULATIONS. Subject to the reasonable rules and regulations adopted for the use of Parcel 29 and/or Site 203 by the Owners thereof, the use of all easements created by this Agreement will, in each instance, be non-exclusive and for the use and benefit of the Owners and their respective Permittees. The Owners, for their benefit and for the benefit of their successors in title, specifically reserve the right, at any time and from time to time, (i) to promulgate such rules and regulations applicable to their respective Parcels as might be reasonably imposed to promote the health, safety, welfare and security of such Parcel, any improvements located thereon and the their respective Permittees, (ii) with respect to the Site 203 Owner, to post traffic signs and otherwise regulate vehicular traffic flow from Inverness Center Drive along the Road, and (iii) to remove, exclude or restrain any person from the use, occupancy or enjoyment of any easement hereby created or the area covered thereby for the failure to observe any such reasonable rules and regulations so established. In addition to the foregoing, under no circumstances shall the Road be used as a means of access to any property other than Parcel 29 and Site 203 except with the consent of all of the Owners, Grantor and Grantor's successors and assigns (including any subsequent Inverness Developer, as such term is defined in the Protective Covenants). Moreover, the Parcel 29 Owner shall have the right to use the Road for construction traffic so long as (i) such construction traffic does not block or unreasonably impede access to the Road and (ii) the Parcel 29 Owner shall repair any damage to the Road caused by such construction traffic and, in the event the Parcel 29 Owner does not complete such repair within thirty (30) days

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after notice thereof from the Site 203 Owner (unless such repair cannot reasonably be completed within thirty (30) days in which case such repair must be made within a reasonable time not to exceed ninety (90) days), then the Site 203 Owner shall have the right to conduct such repair and the Parcel 29 Owner shall reimburse the Site 203 Owner for the reasonable cost therefor. If unauthorized use is being made of any easement area, such unauthorized use may be restrained or terminated by appropriate proceedings after written notice to the defaulting Owner.

9. MAINTENANCE OF EASEMENT AREAS. Except to the extent that such areas might be operated and maintained by public authorities or utilities or that such operation and maintenance are otherwise provided in this Agreement, each Owner will operate and maintain, at its own expense and in accordance with the Protective Covenants, all the areas of its Parcel that are subject to the vehicular and other easements created by this Agreement in sound structural and operating condition. In addition, any and all costs and expenses incurred by the Owners with respect to the maintenance of the Access Easement Property (including the Road), and the infrastructure related thereto, including landscaping, shall be shared equally between the Owners. Invoiced amounts of such costs and expenses (with reasonable supporting documentation) shall be due within thirty (30) days of receipt of such invoice. If an Owner fails to pay its share as aforesaid, the overdue amount shall be a lien against the defaulting Owner's Parcel. Notwithstanding anything herein to the contrary, in the event the Parcel 29 Owner chooses not to use the Road and does not make the Adjacent Parcel Contribution as set forth in Section 6 hereof, the Parcel 29 Owner shall have no obligation for any of the costs or expenses incurred in connection with the maintenance of the Road.

10. DURATION OF EASEMENTS. The term of this Agreement and each easement created hereby (other than the Construction Easement) shall be perpetual.

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11. LEGAL EFFECT. The Access Road Easement shall run with the land and shall be appurtenant to Parcel 29 for the term specified in Section 10 and shall not be transferred, assigned or encumbered except as an appurtenance to Parcel 29. Each covenant contained in this Agreement (i) constitutes a covenant running with the land, (ii) binds the parties hereto, their successors, assigns and mortgagees, and (iii) will inure to the benefit of the parties hereto, their successors, assigns, and mortgagees. Upon conveyance of all or any part of any Parcel, the grantee, by accepting such conveyance, will thereby become a party to and be bound by this Agreement.

12. NO DEDICATION. Nothing contained in this Agreement will be deemed to constitute a gift, grant or dedication of any part of any Parcel to the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement will be strictly limited to the private use of the Owners and their respective Permittees. This Agreement is intended to benefit the Owners and their respective successors, assigns and mortgagees.

13. AMENDMENT. This Agreement may be amended only by an instrument in writing duly executed by the Owners, their respective successors or assigns who are affected by the terms of such amendment. No amendment shall be affected by any course of conduct or dealing among the Owners or by custom or practice.

14. SEVERABILITY. The provisions of this Agreement are severable, and in the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

15. GOVERNING LAW. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

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16. TIME OF THE ESSENCE. Time is of the essence in this Agreement.

17. EFFECT OF BREACH. Breach of any of the covenants contained in this Agreement shall not defeat or render invalid title to a Parcel or the lien of any mortgage or deed of trust made in good faith or for value as to any portion of any of the Parcels, but all of the foregoing easements and covenants shall be binding and effective against any Owner, including any Owner whose title is acquired by foreclosure, deed in lieu of foreclosure or otherwise.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the date first above written.

**METROPOLITAN LIFE INSURANCE  
COMPANY, a New York corporation**

By: Victor W. Turner RA  
Its: VICE PRESIDENT fw

STATE OF GEORGIA                    )  
                                                  )  
FULTON COUNTY                    )

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Victor W. Turner whose name as VICE PRESIDENT of Metropolitan Life Insurance Company, a New York corporation, is signed to the foregoing Access Road Construction and Easement Agreement, and who is known to me, acknowledged before me on this day, that being informed of the contents of the foregoing Access Road Construction and Easement Agreement, he executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 16<sup>th</sup> day of June, 2003.

[SEAL]



Kathleen D. Coady  
Notary Public



**THE MANDALA PROJECT, LLC, an Alabama  
limited liability company**

By: Can Pham  
Its: Manager

STATE OF Alabama )  
 )  
Jefferson COUNTY )

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that Can Pham whose name as Manager of The Mandala Project, LLC, an Alabama limited liability company, is signed to the foregoing Access Road Construction and Easement Agreement, and who is known to me, acknowledged before me on this day, that being informed of the contents of the foregoing Access Road Construction and Easement Agreement, he executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 17<sup>th</sup> day of June, 2003.

Myrt D. Goley  
Notary Public

[SEAL]

MY COMMISSION EXPIRES NOVEMBER 4th, 2006

This instrument prepared by:  
Thomas C. Clark, III, Esq.  
MAYNARD, COOPER & GALE, P.C.  
1901 Sixth Avenue North  
2400 AmSouth/Harbert Plaza  
Birmingham, Alabama 35203-2602  
(205) 254-1000

## Exhibit A

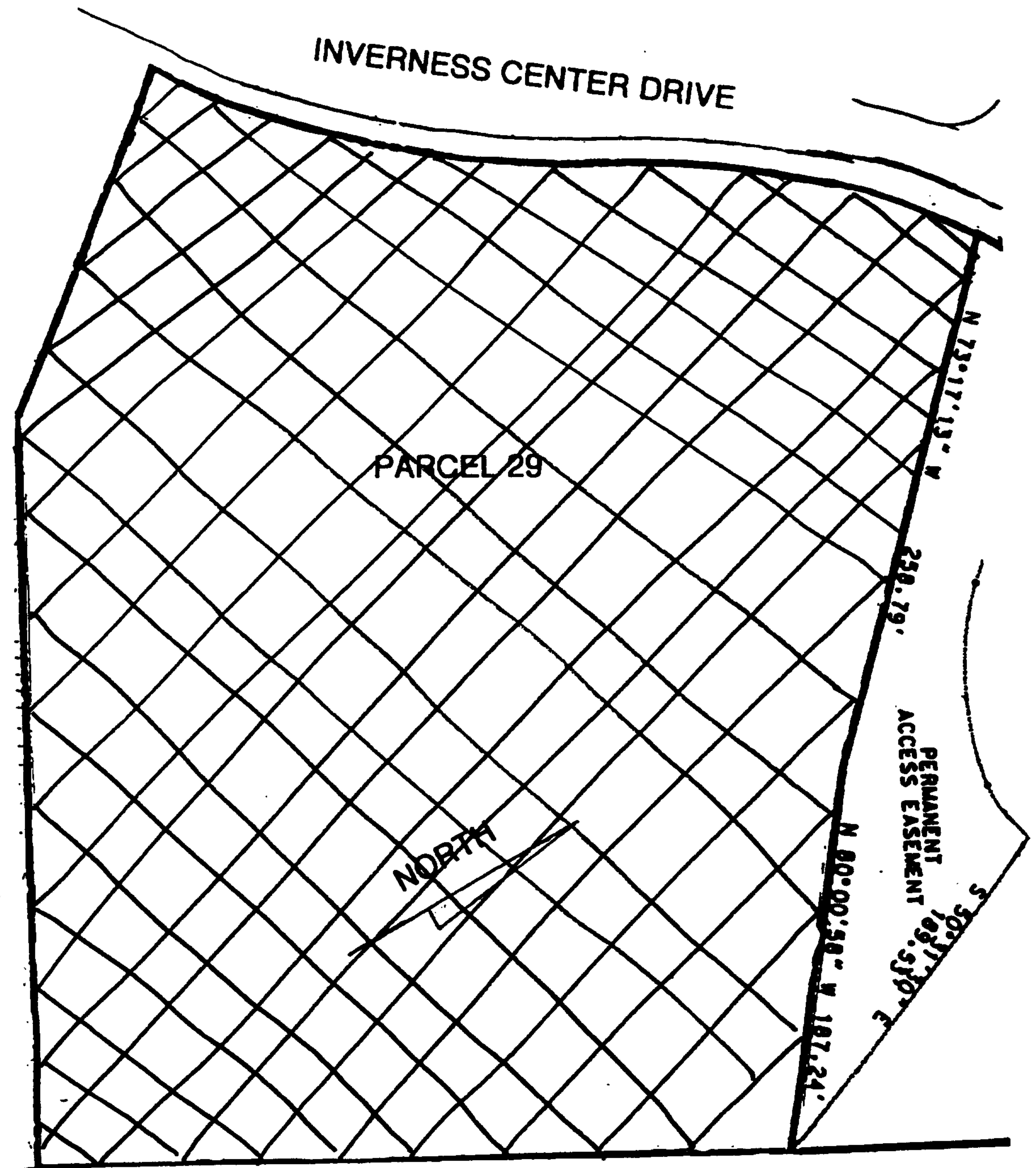
### (Legal Description of Site 203)

A parcel of land situated in the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest Corner of the Northwest Quarter of the Southeast Quarter of Section 36, Township 18 South, Range 2 West; thence run North 00°01'03" West along the West line of said Quarter-Quarter for a distance of 518.01 feet to the Point of Beginning; thence leaving said Quarter line run North 80°00'58" West for a distance of 187.24 feet; thence run North 73°17'13" West for a distance of 258.79 feet to the Southeasterly right-of-way of Inverness Center Drive (R.O.W. varies); said Point also being the Point of Curvature of a curve to the right, having a radius of 386.00 feet, a central angle of 22° 19' 05", a chord length of 149.41 feet and a chord bearing of North 39° 33' 18" East; thence continue along the arc of said curve and along said right-of-way for a distance of 150.36 feet to the Point of Tangency of said curve; thence run North 54°35'51" East along said right-of-way for a distance of 173.20 feet; to the Point of Curvature of a curve to the left, having a radius of 289.00 feet, a central angle of 49°11'49", a chord length of 240.60 feet and a chord bearing of North 30°12'19" East; thence continue along the arc of said curve and along said right-of-way for a distance of 248.15 feet to the Point of Tangency of said curve; thence run North 05°36'24" East along said right-of-way for a distance of 52.15 feet to the Point of Curvature of a curve to the right, having a radius of 166.00 feet, a central angle of 33°07'51", a chord length of 94.66 feet and a chord bearing of North 21°59'22" East; thence continue along the arc of said curve and along said right-of-way for a distance of 95.99 feet to the Southwesterly right-of-way of U.S. Highway 280 (R.O.W. varies); thence run South 60°53'29" East along said Southwesterly right-of-way for a distance of 608.78 feet; thence leaving said right-of-way run South 29°08'00" West for a distance of 430.11 feet; thence run North 72°07'15" West for a distance of 102.38 feet; thence run North 60°54'30" West for a distance of 218.18 feet to the West line of the Northwest Quarter of the Southeast Quarter of Section 36, Township 18 South, Range 2 West; thence run South 00°01'03" East along said Quarter line for a distance of 135.69 feet to the Point of Beginning; said described tract containing 328,930 Square Feet (7.55 Acres) more or less.

Exhibit B

(Legal Description of Parcel 29)



\*\*Within sixty (60) days of the execution of this Agreement, Grantor shall replace this Exhibit B with a revised Exhibit B containing a legal description of Parcel 29 and shall re-record this Agreement with such revised Exhibit B at that time.

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## Exhibit C

### (Legal Description of Access Road Easement Property)

A parcel of land situated in the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest Corner of the Northwest Quarter of the Southeast Quarter of Section 36, Township 18 South, Range 2 West; thence run North 00°01'03" West along the West line of said Quarter for a distance of 518.01 feet to the **POINT OF BEGINNING**; thence leaving said Quarter-Quarter line thence run North 80° 00' 58" West for a distance of 187.24 feet; thence run North 73° 17' 13" West for a distance of 258.79 feet to the Southeasterly right-of-way of Inverness Center Drive (R.O.W. varies); said Point also being the Point of Curvature of a curve to the right, having a radius of 386.00 feet, a central angle of 09° 00' 07", a chord length of 60.58 feet and a chord bearing of North 32° 53' 49" East; thence continue along the arc of said curve and along said right-of-way for a distance of 60.65 feet to the Point of Curvature of a curve to the left, having a radius of 28.50 feet, a central angle of 47° 06' 49", a chord length of 22.78 feet and a chord bearing of South 46° 45' 13" East; thence leaving said right-of-way continue along the arc of said curve for a distance of 23.44 feet to the Point of Tangency of said curve; thence run South 69° 07' 06" East for a distance of 124.51 feet to the Point of Curvature of a curve to the left, having a radius of 143.50 feet, a central angle of 39° 08' 22", a chord length of 96.13 feet and a chord bearing of North 89° 21' 10" East; thence continue along the arc of said curve for a distance of 98.03 feet to the Point of Curvature of a curve to the left, having a radius of 43.50 feet, a central angle of 43° 37' 06", a chord length of 32.32 feet and a chord bearing of North 47° 58' 25" East; thence continue along the arc of said curve for a distance of 33.12 feet; thence run South 50° 31' 30" East for a distance of 189.53 feet to the **POINT OF BEGINNING**; said described tract containing 20,841 Square Feet (0.48 Acres) more or less.

## Exhibit D

### (Legal Description of Construction Easement Property)

A parcel of land situated in the Northwest Quarter of the Southeast Quarter and the Northeast Quarter of the Southwest Quarter of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, being more particularly described as follows:

Commence at the Southwest Corner of the Northwest Quarter of the Southeast Quarter of Section 36, Township 18 South, Range 2 West; thence run North 00°01'03" West along the West line of said Quarter for a distance of 492.63 feet to the **POINT OF BEGINNING** ; thence leaving said Quarter-Quarter line North 80° 00' 58" West for a distance of 193.10 feet; thence run North 73° 17' 13" West for a distance of 264.57 feet to the Southeasterly right-of-way of Inverness Center Drive (R.O.W. varies); said Point also being the Point of Curvature of a curve to the right, having a radius of 386.00 feet, a central angle of 03° 45' 59", a chord length of 25.37 feet and a chord bearing of North 26° 30' 46" East; thence continue along the arc of said curve and along said right-of-way for a distance of 25.37 feet; thence leaving said right-of-way run South 73° 17' 13" East for a distance of 258.79 feet; thence run South 80° 00' 58" East for a distance of 187.24 feet to the west line of said Quarter-Quarter; thence run South 00° 01' 03" West along said West line for a distance of 25.38 feet to the **POINT OF BEGINNING**; said described tract containing 11,300 Square Feet (0.26 Acres) more or less.



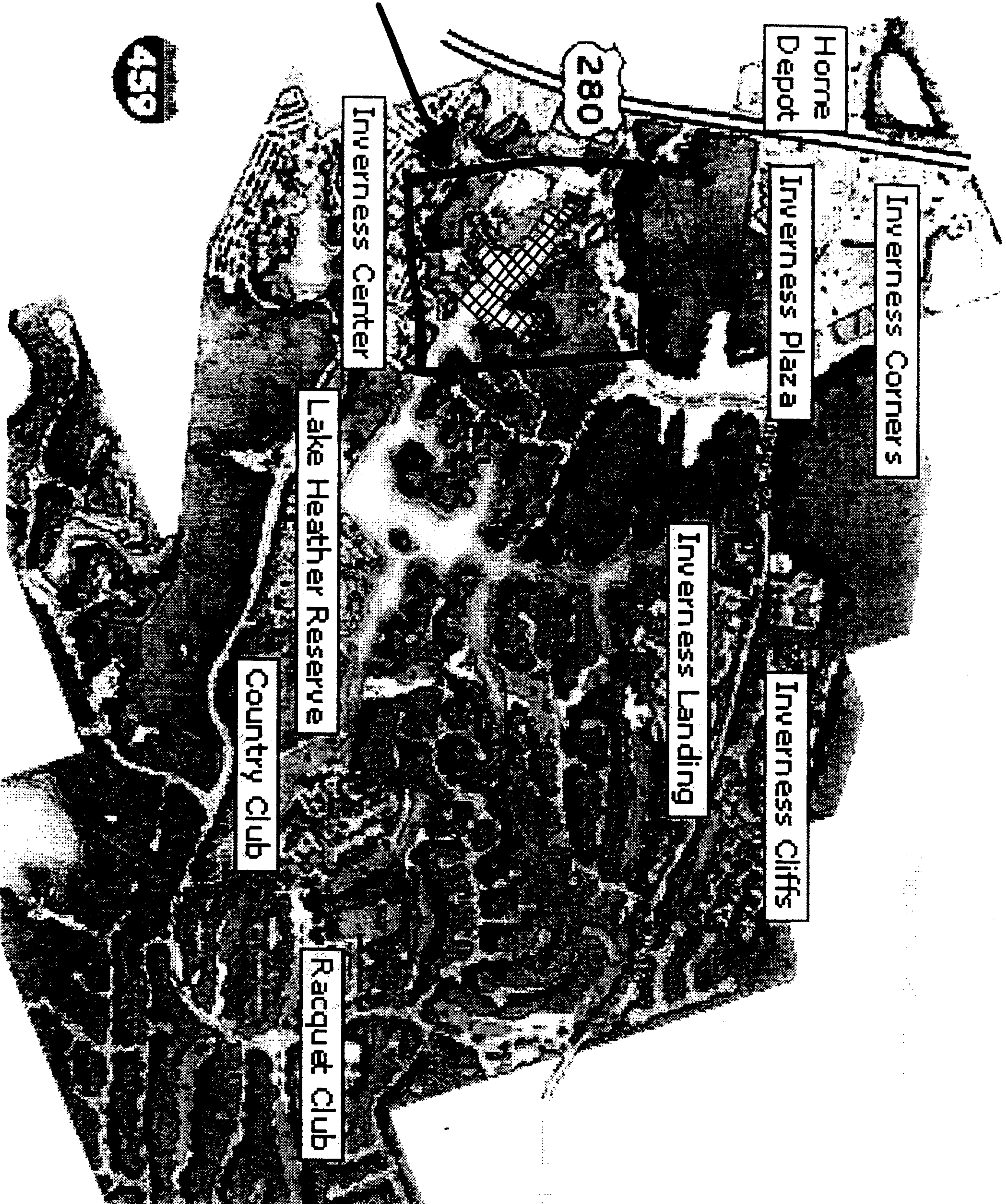
Exhibit E

(Drainage Easement Property)

\*\*The cross-hatched portion of Lake Heather (as shown below) shall constitute the Drainage Easement Property

# Master Site Plan

Regional Map Local Map





PRELIM. ENG. INC. JAN 23, 2003  
SCALE: 1" = 50'