

RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT ("Agreement") is effective as of the 30th day of April, 1996, by and between METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation ("MetLife"), and PIER GROUP, INC., a Delaware corporation ("Pier") (MetLife and Pier are sometimes referred to herein individually as a "Party" and collectively as the "Parties").

WITNESSETH:

WHEREAS, Pier is the owner of that certain tract of land located in Hoover, Shelby County, Alabama, as more particularly described on Exhibit "A" attached hereto and incorporated herein by reference ("Pier Parcel");

WHEREAS, MetLife is the owner of that certain tract of land located in Hoover, Shelby County, Alabama, as more particularly described on Exhibit "B" attached hereto and incorporated herein by reference ("MetLife Parcel"), said parcel located adjacent to the Pier Parcel (The MetLife Parcel and the Pier Parcel are sometimes referred to herein individually as a "Parcel" and collectively as the "Parcels");

WHEREAS, both the MetLife Parcel and the Pier Parcel are a part of the Inverness Corners Shopping Center in Hoover, Shelby County, Alabama ("Shopping Center"); and

WHEREAS, the Parties desire to provide for certain easements, covenants, restrictions, and agreements as between their respective Parcels, as more particularly set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual premises set forth herein and the mutual benefits inuring to each Party and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MetLife and Pier hereby agree as follows:

1. (a) Easements for Access, Ingress, and Egress. Each Party hereby grants to the other Party a nonexclusive, perpetual easement for pedestrian and vehicular access, ingress, and egress (including delivery truck access) on and over the portion of the common driveway legally described on Exhibit "C" attached hereto located on the granting Party's Parcel for the purpose of vehicular and pedestrian access, ingress, and egress from both Parcels to the private access road located within the Shopping Center that connects to U. S. Highway 280 and Valleydale Road. The common driveway described on Exhibit "C" is shown on the site plan attached as Exhibit "D" hereto and is hereafter referred to as the "Easement Area." Pursuant to a separate instrument between MetLife and Pier dated effective of even date herewith, MetLife has conveyed to Pier easement rights over the private access road located within the Shopping Center.

(b) Easement for Utilities. Each Party hereby grants to the other Party a nonexclusive, perpetual easement for the purpose of the installation, connection, use, maintenance, repair, and replacement of lines and facilities for the delivery of underground utility services (including, without limitation, storm sewer, sanitary sewer, water, gas, electrical,

telephone, communication lines, and similar facilities) on and over the portion of the Easement Area lying within such Party's Parcel to permit the other Party or its tenants to connect to all utilities necessary to service its business location. The location of any utility line or facility on a Parcel is subject to the prior approval of the owner of such Parcel, such approval not to be unreasonable withheld, conditioned, or delayed. During any utility installation, repair, or removal, the Party performing such work shall take all appropriate steps to minimize the adverse effects of such work on the business operations being conducted on the Parcels. Once the Pier Parcel is developed, no Party shall perform any utility installation, repair, or removal within the Easement Area during the months of November or December unless (i) all Parties give their prior written consent or (ii) an emergency condition exists. The preceding sentence does not, however, restrict the owner of the MetLife Parcel from constructing improvements on its Parcel during the months of November and December as long as such owner takes all appropriate steps to minimize the adverse effects of such construction on the business operations being conducted on the Pier Parcel.

(c) **Temporary Construction Easement.** MetLife hereby grants to Pier a temporary easement on and over the MetLife Parcel for the purpose of allowing Pier, its tenants, and their respective contractors, subcontractors, and agents to construct the contemplated improvements on the Pier Parcel and to perform all necessary construction activities in connection therewith (including, without limitation, excavating, filling, grading, and site preparation work); provided, however, this temporary construction easement shall terminate automatically upon the issuance of a permanent certificate of occupancy for the improvements to be constructed by Pier or its tenant on the Pier Parcel. Following the completion of the construction of the proposed improvements on the Pier Parcel, Pier shall restore, or cause to be restored, the areas of the MetLife Parcel used by Pier's or its tenant's contractors and subcontractors to substantially the same condition as such areas existed prior to such construction.

(d) **Self-sufficient Parking.** MetLife and Pier must each have sufficient parking within its respective Parcel's boundaries to satisfy all applicable parking ratios and requirements. Each Party shall require its employees to park on its respective Parcel and shall use its best efforts to ensure that its customers, licensees, and invitees do not park on the other Party's Parcel.

(e) **No Parking in the Easement Area.** Except for the loading or unloading of delivery vehicles in the ordinary course of business, no Party shall permit its employees, invitees, licensees, customers, contractors, subcontractors, or agents to park any vehicle within the Easement Area. Each Party must keep at least one lane of traffic open through the Easement Area during any loading or unloading of delivery vehicles servicing such Party's Parcel.

2. Construction, Maintenance and Operation of Easement Area Improvements.

(a) Pier, at its expense, must cut, fill, and grade both the Pier Parcel and the MetLife Parcel in substantial accordance with a grading plan prepared by MetLife and approved by Pier prior to the date of this Agreement ("Grading Work"); provided, however, such Grading Work will not require Pier to lower the finished floor elevation of the Pier 1 Imports retail store to be constructed on the Pier Parcel more than six inches (6") below the existing grade level elevation

of the Pier Parcel as of the date of this Agreement. Once the Grading Work is complete, MetLife shall promptly reimburse Pier for one-half (1/2) of the cost of the Grading Work up to a maximum reimbursement of \$3,000.00. Together with its request for reimbursement, Pier shall provide MetLife with sufficient documentation, including receipts, of the cost of the Grading Work. Since the soil that Pier will use to fill and grade the MetLife Parcel will come solely from the Pier Parcel (which MetLife previously owned), MetLife hereby waives and releases Pier from any and all liability or claims relating to the weight-bearing capacity, condition, quality, or suitability of the soil used by Pier to complete the Grading Work on the MetLife Parcel.

(b) Pier shall have the responsibility of constructing and maintaining, at its sole expense, the initial improvements (including, without limitation, the common driveway, curb cuts, curbing, and related appurtenances) within the Easement Area, the construction of which shall be as shown on the site plan attached hereto as **Exhibit "D"**. Pier shall construct all such improvements in accordance with applicable laws, ordinances, codes, and rules. Once the development of any portion of the MetLife Parcel is commenced, however, the then owner of such portion of the MetLife Parcel shall promptly reimburse Pier for one-half (1/2) of the cost of constructing the initial improvements within the Easement Area up to a maximum reimbursement of \$5,000.00. Upon completion of the driveway improvements, Pier shall provide MetLife with sufficient documentation, including receipts, of the cost of constructing such improvements.

(c) Until such time as any portion of the MetLife Parcel is developed, Pier, at its expense, shall maintain in good condition and repair (i) the initial improvements within the Easement Area and (ii) the drive aisles, parking areas, sidewalks, and walkways located within the Pier Parcel; provided, however, MetLife shall, at its expense, keep the MetLife Parcel neatly mowed and free from trash and debris. Following the development of any portion of the MetLife Parcel, the then owners of the Parcels shall maintain the portion of the common driveway, curb cuts, curbing, drive aisles, parking areas, sidewalks, and walkways located on its respective Parcel in good repair and condition and in compliance with applicable laws, ordinances, codes, and rules. Such maintenance includes maintaining the paved surface of the Easement Area in a level, smooth and evenly covered condition; removing all litter, ice, snow, mud, sand, refuse, and other debris from the Easement Area; and placing, keeping in repair, and replacing any necessary or appropriate traffic signs, markers, and lines.

(d) Pier has no obligation to construct and/or maintain any of the driveways, curb cuts, curbing, drive aisles, parking areas, sidewalks, and walkways on the MetLife Parcel (other than the portion the common driveway initially constructed by Pier 1 on the MetLife Parcel as shown on **Exhibit "D"** hereto). The party that eventually develops the MetLife Parcel will have total responsibility for constructing, at its expense, all driveways, curbcuts, and approaches connecting the MetLife Parcel to the initial driveway improvements constructed by Pier, the location of same to be mutually agreed upon by such party and Pier.

(e) If a mechanic's or other lien for the payment of money shall be filed against a Party's Parcel as a result of any construction, maintenance, or repair work performed by the other Party, the Party performing such work shall, at its sole cost, within fifteen (15) days after notice by the other Party of the filing of such lien, either (i) cause the lien to be canceled and

discharged of record or (ii) furnish to the other Party a surety bond issued by a surety company licensed in the State of Alabama protecting the other Party from any loss from any non-payment of such lien or claim.

3. **Right of Self Help.** In the event that a Party fails or refuses to maintain the Easement Area as required, then upon thirty (30) days' prior written notice to the defaulting Party specifying the manner in which it has failed to properly maintain the Easement Area (or immediately in the case of an emergency which threatens life or property), the non-defaulting Party may enter upon the Parcel of the defaulting Party (but not any building on such Parcel) to perform the necessary work or furnish any necessary materials or services to cure the default of the defaulting Party. The defaulting Party shall reimburse the non-defaulting Party for the cost of curing such default within thirty (30) days of receipt of paid invoices evidencing the cost and expense to cure the default. If such maintenance cannot be reasonably performed by the defaulting Party within thirty (30) days, however, then the defaulting Party shall have a reasonable period of time not to exceed 90 days to correct the deficiency if the defaulting Party commences such cure within thirty (30) days following written notice from the other Party and diligently prosecutes same to completion.

4. **Insurance, Indemnity, and Release.**

(a) Each Party shall at all times after the effective date of this Agreement maintain, or cause to be maintained, in full force and effect, commercial general liability insurance insuring the Easement Area with an insurance company or companies licensed to do business in the State of Alabama and rated at least B+XV in "Best's Insurance Guide." Coverage limits of such commercial general liability insurance shall be at least One Million and No/100 Dollars (\$1,000,000.00) combined single limits for bodily injury, death and property damage per occurrence. Additionally, such liability insurance shall name each Party as an additional insured. Each Party shall furnish to the other Party, on or before the effective date of this Agreement and on the anniversary date of the Agreement, evidence that the insurance referred to herein is in force and effect and that the premiums therefor have been paid. Such insurance shall provide that the same may not be canceled, reduced or materially amended without at least thirty (30) days prior written notice being given by the insurer to the other Party.

(b) Pier shall indemnify, defend, and hold harmless MetLife and its successors or assigns from any and all claims, losses, liabilities, cost, and expenses (including, without limitation, attorneys' fees and court costs) arising out of or in connection with (i) any negligent act or omission of Pier or (ii) any breach of this Agreement by Pier. Likewise, MetLife shall indemnify, defend, and hold harmless Pier and its successors or assigns from any and all claims, losses, liabilities, cost, and expenses (including, without limitation, attorneys' fees and court costs) arising out of or in connection with (i) any negligent act or omission of MetLife or (ii) any breach of this Agreement by MetLife.

(c) Each Party for itself (and, to the extent legally possible, for its insurer) hereby releases and waives any right to recover against the other Party from any liability for (i) damages for injury or for death of persons, (ii) any loss or damage to the property of any Party or any tenant of any Party, and (iii) any loss or damage to buildings or other improvements on the Parcels, which loss or damage is covered by the insurance required to be

carried hereunder by such Party, regardless of any negligence on the part of the other Party which may have contributed to such loss or damage. The provisions of this Paragraph 4(c) are intended to restrict each Party (as permitted by law) to recovery against insurance carriers for loss or damage caused by a risk required to be insured against hereunder, and to waive fully, and for the benefit of the other Party any rights and/or claims which might give rise to a right of subrogation in any insurance carrier. Each Party shall, to the extent such insurance endorsement is available, obtain for the benefit of the other Party, a waiver of any right of subrogation which the insurer of such Party may acquire against the other Party by virtue of the payment of such loss covered by such insurance. Neither Party shall be liable to the other Party for any claims of loss of business income.

5. Use and Development Restrictions.

Neither MetLife or Pier shall permit the use of its respective Parcel for any of the following purposes: (i) bowling alley, (ii) movie theater, (iii) arcade, (iv) tavern or bar, (v) health club, spa or gymnasium, (vi) night club or discotheque, (vii) any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction), (viii) any dumping, disposing, incineration, or reduction of garbage (exclusive of dumpsters located in the rear of any building), (ix) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation, (x) any central laundry, dry cleaning plant, or laundromat, (xi) any automobile, truck, trailer or R.V. sales, leasing, display or repair, (xii) any skating rink, (xiii) any living quarters, sleeping apartments, or lodging rooms, (xiv) any veterinary hospital, animal raising facilities or pet shop, (xv) any mortuary, or (xvi) any establishment renting, selling or exhibiting pornographic materials.

6. Right to Cure Upon Breach. Except for maintenance obligations which are covered by Paragraph 3 hereof, in the event any Party defaults in the performance of its obligations under this Agreement, the non-defaulting Party may, upon ten (10) days' prior written notice to the defaulting Party, cure such default for the account of and at the expense of the defaulting Party. Any notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in detail the action which the Party giving such notice proposes to take in order to cure the claimed default. The defaulting Party shall reimburse the non-defaulting Party for the cost of curing such default within thirty (30) days of receipt of paid invoices evidencing the cost and expense to cure the default.

7. Other Relief Available Upon Breach. Each Party shall have the right to prosecute any proceedings at law or in equity against any other Party hereto, or any other person, for violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Agreement, notwithstanding any provisions of this Agreement to the contrary.

8. Costs and Expenses. All costs and expenses reasonably incurred by any Party to cure a default of a defaulting Party under the provisions of Paragraphs 3 and 6 hereof, together with interest thereon at the rate of the lesser of ten percent (10%) per annum or the maximum rate allowed by law and all costs and expenses of any proceedings at law or in equity, including reasonable attorneys' fees, shall be assessed against and paid by the defaulting Party.

9. **Covenants Run with the Land.** All of the provisions hereof are binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns and are equitable servitudes and covenants running with, touching, and binding the Parcels. The conveyance, sale, or transfer of the fee ownership of a Parcel shall release the conveying Party from all obligations under this Agreement other than obligations existing and accrued at the time of such conveyance.

10. **Attorneys' Fees and Costs.** In the event either Party is required to initiate or defend any legal action or proceeding to enforce or interpret this Agreement as it relates to the Parties hereto, the prevailing Party in any such action or proceeding shall be entitled to recover from the other Party its reasonable costs and attorneys' fees (including its costs and attorneys' fees on any appeal) as determined by the court in the same or separate proceeding.

11. **Force Majeure.** Each Party shall be excused for the period of any delay in the performance of any obligation hereunder (other than the payment of money) when prevented by causes beyond the reasonable control of such Party, including, but not limited to, labor disputes, civil unrest, war, governmental regulations or controls, fire or other casualty, weather, inability to obtain any materials or services, or acts of God.

12. **Notices.** Any notice, demand, request or other instrument which may be or is required to be given under this Agreement shall be delivered in person, or by overnight carrier or sent by certified United States mail, postage paid, return receipt requested, and shall be addressed to the Party to receive such notice at its address indicated below:

METLIFE:

Metropolitan Life Insurance Company
303 Perimeter Center North, Suite 600
Atlanta, Georgia 30346

with a copy to:

Metropolitan Life Insurance Company
47 Perimeter Center East, Suite 350
Atlanta, Georgia 30346
Attn: Regional Counsel

with a copy to:

Taylor & Mathis
22 Inverness Center Parkway, Suite 510
Birmingham, Alabama 35242
Attn: J. B. Flood, II

PIER GROUP:

Pier Group, Inc.
301 Commerce Street, Suite 600
Fort Worth, Texas 76102
Attention: General Counsel

Any Party may designate another address by written notice to the other Party. Any notice shall be deemed given upon hand delivery or upon deposit in the United States Mail or overnight courier as described above.

13. (a) **Accord and Satisfaction.** No payment by any Party or receipt by any Party of an amount less than is due hereunder shall be deemed to be other than payment towards or on account of the earliest portion of the amount then due, nor shall any endorsement or statement on any check or payment (or in any letter accompanying any check or payment) be deemed an "accord and satisfaction" (or payment in full), and any Party may accept such check or payment without prejudice to such Party's right to recover the balance of such amount or pursue any other remedy provided herein.

(b) **Interpretation of Agreement.** **THIS AGREEMENT SHALL BE INTERPRETED AND GOVERNED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ALABAMA.** Each Party agrees that it has fully reviewed this Agreement with the assistance of counsel of such Party's choice and that this Agreement shall not in its interpretation be construed more strictly against one Party than the other.

(c) **Relationship Created.** None of the provisions hereof shall be deemed to create between the Parties a partnership, agency relationship, employer-employee relationship or joint venture.

(d) **Cancellation or Modification.** This Agreement may be modified or canceled in whole or in part only by a written instrument executed by each Party or their respective successors in interest or assigns.

(e) **Severability.** If any provision of this Agreement is found to be invalid, the remaining agreements shall be construed insofar as possible to be valid.

(f) **Captions.** The captions preceding the text of each section and subsection hereof are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

14. **Mortgages.** This Agreement shall not restrict a Party's right to assign or convey its interest in its Parcel or in this Agreement to a mortgagee as additional security or collateral security. However, any and all mortgages granted to mortgagees on any Parcel shall be subordinate and subject to this Agreement and any person foreclosing any such mortgage or acquiring title to a Parcel affected thereby shall do so subject to all of the terms of this Agreement. Upon receipt of a written request by a Party or by any such mortgagee, the other Party shall thereafter send any such mortgagee copies of all notices given in accordance with any provisions of this Agreement. Once a Party or its Mortgagee has so notified the other Party, no notices sent hereunder by the other Party shall be binding on said mortgagee unless and until such mortgagee receives a copy thereof; provided, however, that such notices shall be effective as against the Party to whom the notices are sent in accordance with the terms and conditions contained in this Agreement. Any notice given by or to any such mortgagee shall be given by the means set forth in, and shall be deemed given, as provided in this Agreement.

15. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which when taken together shall constitute one and the same instrument.

Executed by the Parties as indicated below, but effective as of the date first set forth above.

METROPOLITAN LIFE INSURANCE COMPANY,
a New York corporation

By: _____

Title: ASST. VICE PRESIDENT KDA 40

Date of Execution: 4-26-96

PIER GROUP, INC.,
a Delaware corporation

By: _____

Charles L. Horn, President

Date of Execution: _____

GEORGIA
STATE OF ~~ALABAMA~~ §
§
COUNTY OF DE KALB §

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that WAYNE A. HUEY, whose name as ASST. VICE PRESIDENT of Metropolitan Life Insurance Company, a New York 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 said 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 official seal this 26th day of April, 1996.

Patricia A. Monahan
NOTARY PUBLIC, STATE OF GEORGIA

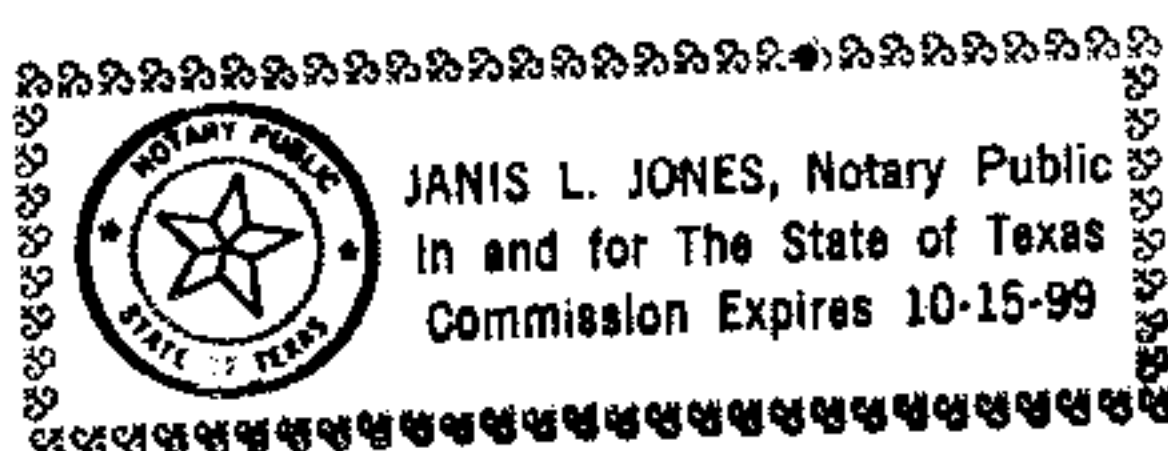
PATRICIA A. MONAHAN
Notary's Typed or Printed Name:
My Commission Expires: 2-18-97.

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

I, the undersigned authority, a Notary Public in and for said County, in said State, hereby certify that Charles L. Horn, whose name as president of Pier Group, Inc., a Delaware 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 said 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 official seal this 24 day of April, 1996.

Janis L. Jones
NOTARY PUBLIC, STATE OF TEXAS



Notary's Typed or Printed Name:
My Commission Expires: _____

EXHIBIT "A"

Legal Description

Lot D-1 of PIER 1 IMPORTS SURVEY, as recorded in Map Book 21, Page 13, in the Office of the Judge of Probate of Shelby County, Alabama.

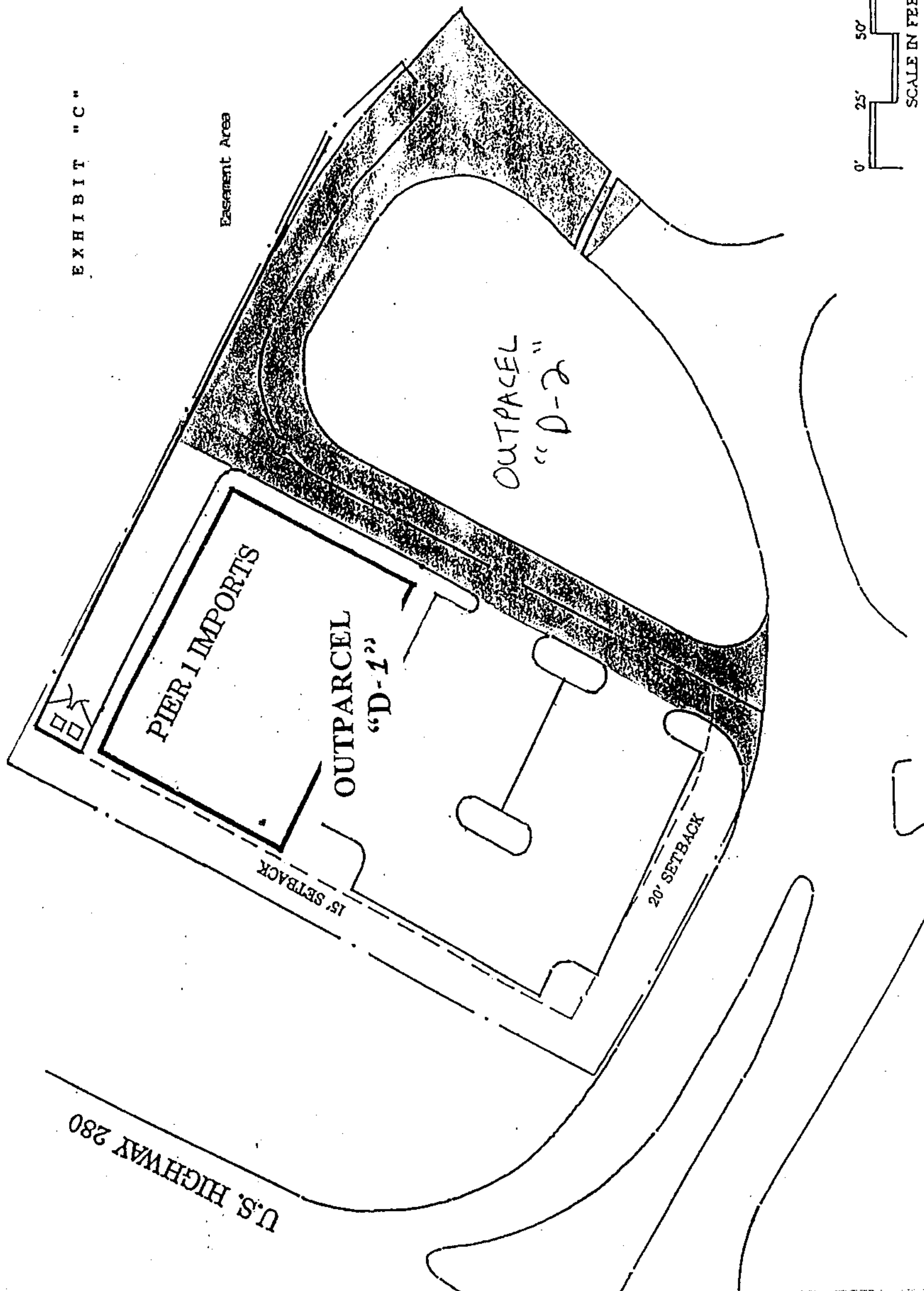
Situated in the Southeast 1/4 of the Southeast 1/4 of Section 36, Township 18 South, Range 2 West, Shelby County, Alabama, and being more particularly described as follows: Commence at the Southeast corner of said 1/4 1/4 section and run north along the east line of said 1/4-1/4 section 876.66 feet to the SE Corner of INVERNESS CORNERS OUTPARCEL "D"; thence $90^{\circ} 00' 00''$ left and run westerly for 152.80 feet to the P.O.B. of the parcel herein described; thence continue along the last stated course for 17.14 feet; thence $118^{\circ} 57' 14''$ right and run northeasterly for 74.30 to the beginning of a curve to the left, said curve having a radius of 30.00 feet and subtending a central angle of $90^{\circ} 00' 00''$ thence run northwesterly along the arc of said curve for 47.12 feet to the end of said curve; thence at tangent to said curve run northwesterly for 191.11 feet to point on a curve on the back of curb of INVERNESS CORNERS ACCESS DRIVE; said curve having a radius of 100.00 feet and a central angle of $21^{\circ} 23' 43''$; thence run northwesterly along said back of curb and arc of curve 37.34 feet to the Point of Tangent; thence run northeasterly along aid back of curb 110.82 feet to a Point on curve on the southwesterly right of way of U.S. Highway No. 280, said curve having a radius of 3474.05 feet and a central angle of $04^{\circ} 00' 46''$; thence right $89^{\circ} 21' 54''$ to the tangent of said curve and run southeasterly along said southwesterly right of way and arc of curve 243.31 feet to a Point on said curve; said point being 32.39 feet as measured along the arc of said curve west of the east line of said 1/4-1/4 section line; thence $94^{\circ} 38' 52''$ right from tangent of said curve and run southwesterly for 254.51 feet to the P.O.B. Said parcel contains 38,422 s.f. or 0.88 acres more or less.

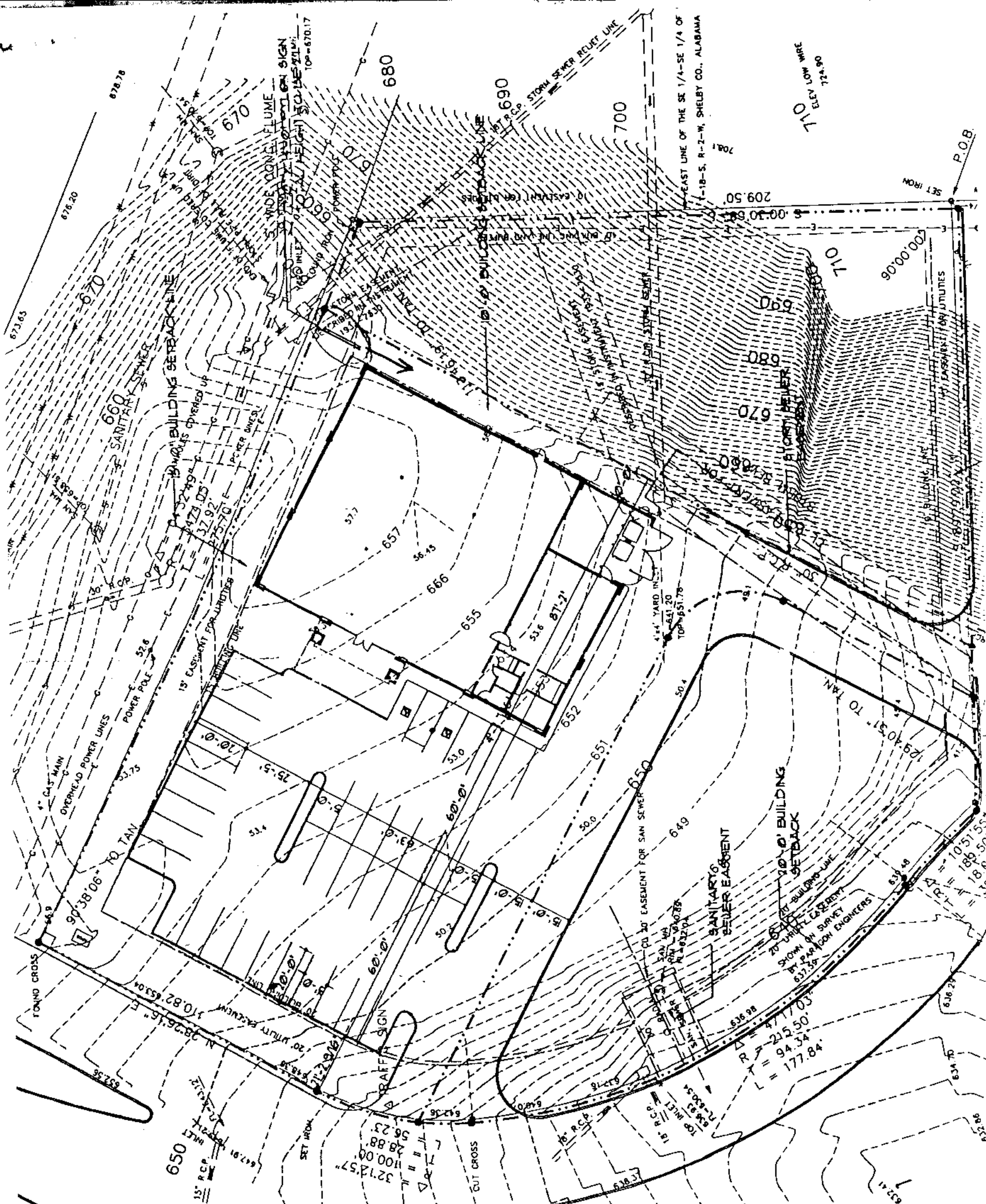
EXHIBIT "B"

Legal Description

Lot D-2 of PIER IMPORTS SURVEY, as recorded in Map Book 21, Page 13, in the Office of the Judge of Probate of Shelby County, Alabama.

EXHIBIT "C"





Inst # 1996-14793

05/06/1996-14793
04:09 PM CERTIFIED

SHELBY COUNTY JUDGE OF PROBATE
113 MCD 39.50

EXHIBIT "D"