

**COMMON AREA MAINTENANCE AGREEMENT**

THIS AGREEMENT, entered into as of this 30<sup>th</sup> day of April, 1996, by and between METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation, party of the first part (hereinafter referred to as "Developer"), and PIER GROUP, INC., a Delaware corporation, party of the second part (hereinafter referred to as "Pier");

**WITNESSETH:**

WHEREAS, Pier is the owner of a parcel of land described in Exhibit "A" attached hereto and by this reference made a part hereof (said land being hereinafter referred to as the "Pier Property") on which there is to be constructed improvements by Pier;

WHEREAS, Developer maintains certain areas (hereinafter referred to as the "Common Areas") as hereinafter set forth for the benefit of certain owners and tenants of a substantial portion of the development known as Inverness Corners Shopping Center (said development and said areas thereof being generally within the property shown on the copy of a plan thereof attached hereto as Exhibit "B" and by this reference made a part hereof, said substantial portion thereof consisting of approximately thirty-one (31) acres):

WHEREAS, Pier recognizes that the maintenance by Developer of the Common Areas as hereinafter set forth will inure to the benefit of the Pier Property as well as to the benefit of such other owners and tenants within the Inverness Corners Shopping Center development; and

WHEREAS, Developer and Pier desire to enter into this Agreement to establish the basis on which Pier will share in the costs and expenses of Developer in maintaining the Common Areas as hereinafter set forth.

NOW THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) in hand paid by Developer to Pier, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Pier covenant and agree as follows:

- 1. **Agreement to Share.** Pier hereby recognizes that Developer presently maintains in a neat and orderly appearance the signs, lighting, entrances, parking areas and other landscaping located within Inverness Corners Shopping Center and within the right-of-way of a public highway fronting Inverness Corners Shopping Center known as Valleydale Road, and that Developer

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presently intends to so maintain any other roads constructed on land owned by Developer in Inverness Corners Shopping Center, all as shown on Exhibit "B". Pier hereby agrees for itself, its successors and assigns, that for a period of twenty (20) years from the date hereof, Pier shall pay annually its pro rata share of all expenses incurred by Developer or its successors directly in so maintaining said signs, lighting, entrances, parking areas and other landscaping. Notwithstanding the foregoing, Pier agrees that the care and maintenance of the grass within the Highway U.S. 280 right-of-way in front of the Pier Property is not a part of the Common Areas and shall be maintained by Pier at a quality level equal to the quality level of maintenance of the Common Areas of Inverness Corners Shopping Center.

2. **Method of Allocation.** Pier's pro rata share of such maintenance costs and expenses within Inverness Corners Shopping Center, as shown by Exhibit "B", shall be Two Thousand One Hundred and No/100 Dollars (\$2,100.00) for the first year and shall be increased by five percent (5%).

3. **Payment of Allocated Costs and Expenses.** Such Common Area maintenance costs and expenses shall be paid annually by Pier, or its successors and assigns, to Developer, or its successors, within forty-five (45) days after receipt each calendar year by Pier, of a statement from Developer certified by a duly authorized representative of Developer, or its successors, reflecting Pier's share of such costs. On or before the 30th day of April following each calendar year during the continuance of such Common Area maintenance by Developer, Developer shall submit such statement of expenses for the immediately preceding calendar year. Payments for any partial calendar years covered by the term of this Agreement shall be prorated according to the portion of the year covered.

4. **Maintenance Standards: Self-help.** Subject to Paragraph 5 below, Developer shall maintain the Common Areas in good condition and repair. Such maintenance includes, without limitation, the following:

- (a) Keeping all roadways, drive aisles, curb-cuts, sidewalks, and paved parking surfaces in a good, safe, clean, and sightly condition;
- (b) Removing promptly snow, ice, surface water and debris;

(c) Keeping all directional signs, pavement signs, and stripping in the parking and drive areas distinct and legible;

(d) Repairing, replacing, and renewing lighting, fixtures, bulbs, tubes, and ballasts as may be necessary; and

(e) Caring for and replanting all landscaped and planted areas so as not to allow dead or unsightly plants to remain within the Common Areas.

If Developer fails to maintain the Common Areas as required under this Paragraph 4, and such failure continues for a period of thirty (30) days after Pier has given written notice to Developer specifying the nature of the default (provided, however, no such notice is required in an emergency), Pier may enter upon Inverness Corners Shopping Center and perform the necessary maintenance or repair work.

5. **Term of Maintenance.** Nothing contained herein shall require or obligate Developer to maintain said signs, lighting, entrances, parking areas and other landscaping and Pier recognizes that Developer, after thirty (30) days notice, may cease providing such maintenance at any time at its sole discretion. In such event, Pier's obligation to pay Developer a pro rata share of Common Area Maintenance costs will immediately cease and Pier may exercise its self-help rights under Paragraph 4 above without the necessity of giving Developer prior notice thereof. This Agreement shall continue in full force and effect until, the earlier of twenty (20) years from the date hereof, or the 31st day of May of the year following the last year in which Developer, or its successors, has incurred any chargeable costs or expenses in connection with such maintenance. Developer and Pier hereby agree that the obligation of Pier hereunder is a real covenant and shall bind and be enforceable against all subsequent owners of the Pier Property, and Pier covenants and agrees that in the event Pier conveys all or any portion of the Pier Property, that in connection with such conveyance Pier shall require the purchaser thereof to assume the obligations of Pier under this Agreement.

6. **Invalid Provisions.** If any clause or provision of this Agreement shall be illegal, invalid, or unenforceable under present or future laws, the remainder of this Agreement shall not be affected thereby. It is the intention of Developer and Pier that in lieu of each clause or provision in this Agreement which shall be illegal, invalid, or unenforceable, there shall be added as a part of this

Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as possible in order to give effect to the intent of this Agreement.

7. **Entire Agreement.** This Agreement supersedes all prior discussions and agreements between Developer and Pier with respect to Common Area maintenance and constitutes the sole and entire agreement between Developer and Pier with respect thereto.

8. **Headings.** The headings of the paragraphs of this Agreement are for convenience of reference only and are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

9. **Effect.** This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, and assigns whether voluntary by act of the parties or involuntary by operation of law.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed under seal as of the date first above written.

TAYLOR & MATHIS, INC., as Manager for METROPOLITAN LIFE INSURANCE COMPANY

By: *Andrew M. Taylor*  
Andrew M. Taylor  
President

*Deborah Howell Mitchell*  
Witness

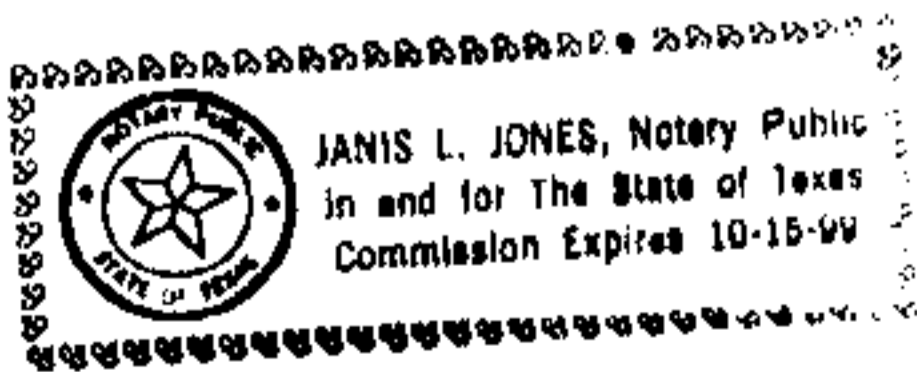
*Quinn Adams*  
Notary Public  
Notary Public, DeKalb County, Georgia  
My Commission Expires September 25, 1999

PIER GROUP, INC.

By: *Charles L. Horn*  
Charles L. Horn  
President

*Paul C. Bupp*  
Witness

*Janis L. Jones*  
Notary Public



**EXHIBIT "A"**

**Legal Description**

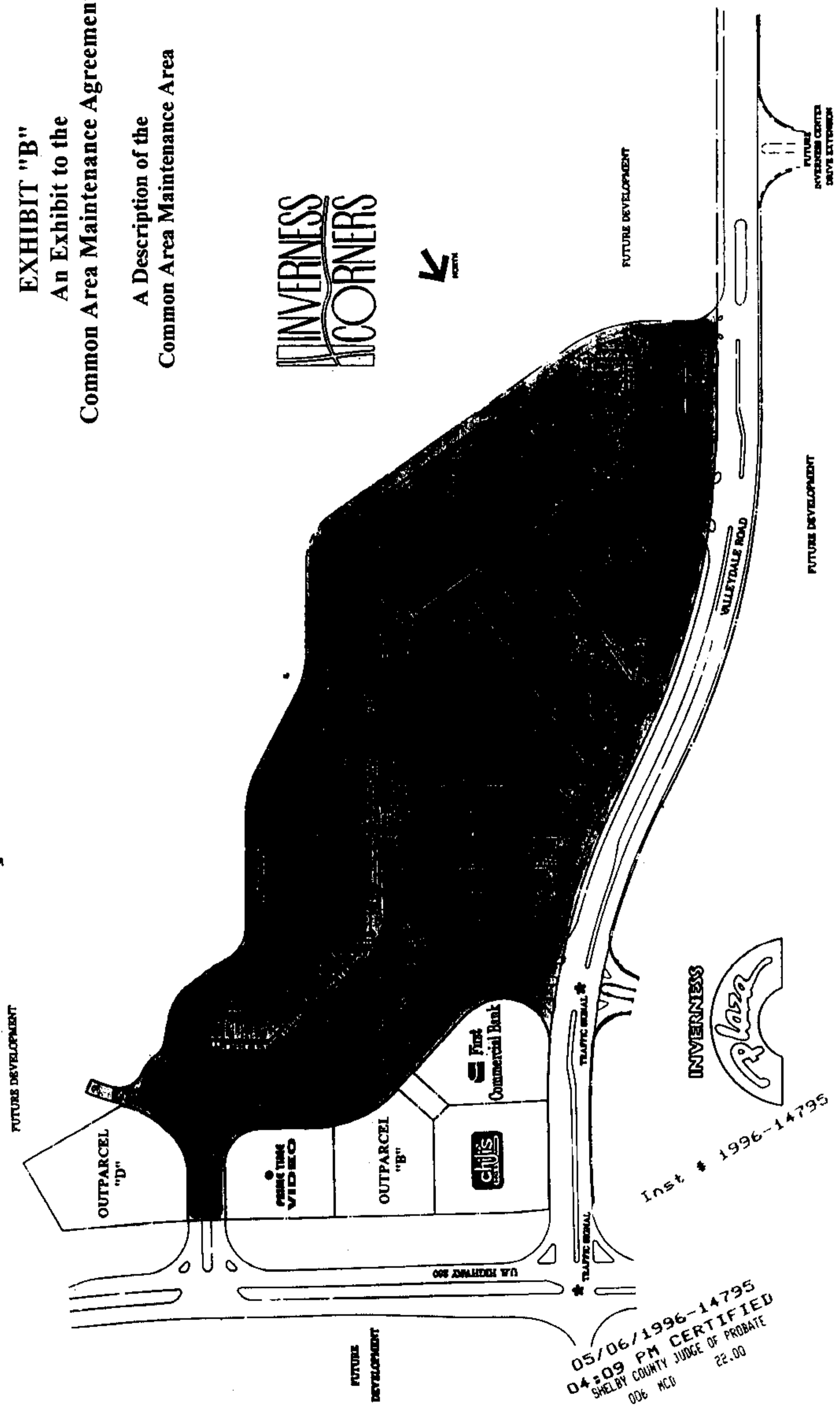
Lot D-1 of PIER 1 IMPORTS SURVEY, as recorded in Map Book 21, Page 13, in the Office of the Judge of Probate of Shelby County, Alabama.

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° 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° 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° 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°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° 00'46"; thence right 89° 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° 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"**  
**An Exhibit to the**  
**Common Area Maintenance Agreement**

**A Description of the**  
**Common Area Maintenance Area**

**INVERNESS**  
**CORNERS**



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