

**This instrument was prepared by:**  
Mary Douglas Hawkins, Esquire  
CORRETTI, NEWSOM & HAWKINS  
1804 7<sup>th</sup> Avenue North  
Birmingham, AL 35203

THE STATE OF ALABAMA )  
SHELBY COUNTY )

**ACCESS EASEMENT AGREEMENT**  
Store 4793-00 Shelby County-AL

This Access Easement Agreement ("Agreement") is made and entered into as of this 1st day of August, 2001, by and between Joe A. Scotch, Jr. and Wayne J. Scotch ("Grantee"), their heirs, personal representatives and assigns and SAM'S REAL ESTATE BUSINESS TRUST, a Delaware business trust ("Sam's").

**WITNESSETH:**

**WHEREAS**, Sam's is the owner of that certain tract or parcel of land located in the County of Shelby, State of Alabama, identified as Tract 1 on the site plans attached as Exhibits "A" and "A-1" and more fully described on Exhibit "B" ("Tract 1"); and

**WHEREAS**, Grantee is the owner of that certain tract or parcel of land in the same county, and state, which tract lies adjacent to Tract 1 and is identified as Tract 2 on Exhibits "A" and "A-1" and more fully described on Exhibit "C" ("Tract 2"); and

**WHEREAS**, Grantee has requested from Sam's, and Sam's is desirous of granting to Grantee, a non-exclusive easement for pedestrian and vehicular ingress and egress over and across that portion of Tract 1 identified as Ingress and Egress Easement on Exhibit "A" and more fully described on Exhibit "D" and/or identified as Ingress and Egress Easement on Exhibit "A-1" and more fully described on Exhibit "D-1" ("Access Area").

**NOW, THEREFORE**, in consideration of one dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Sam's does hereby grant to Grantee a non-exclusive easement for vehicular and pedestrian ingress and egress over and across the Access Area for access to and from Tract 2 subject to the following terms and conditions to which the parties hereto do hereby agree:

1. **USE OF ACCESS AREA:**

- (a) The ingress and egress rights granted hereby may be used non-exclusively by, and are limited to, Grantee and its tenants and their respective customers and employees associated with the business operation located on Tract 2. Only passenger vehicles and light trucks and pedestrian traffic associated with Tract 2 may use the Access Area, but nothing herein shall be construed to limit or restrict the ingress or egress of Sam's, its successors and assigns', customers, employees, agents, invitees, or any other person within Tract 1 or any part thereof. Grantee further agrees that heavy trucks and/or heavy equipment are restricted from using the Access Area, both during development of Tract 2 and/or for deliveries for the operation of Tract 2. All heavy equipment and heavy trucks shall utilize Old US Highway 280 as their designated truck route into Tract 2.
- (b) Grantee covenants that Tract 2 will only be used for purposes of the kind typically found in shopping centers or office complexes, and for no other purpose without the prior written consent of Sam's, or its successors, which consent shall not be unreasonably withheld. Grantee further covenants that Tract 2 will not be used for or in support of a

12/21/2001-56219  
12:00 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
010 MEL 41.50

Inst # 2001-56219

bar, tavern, dance hall, adult book store, restaurant which derives over 50% of its revenues from the sale of alcoholic beverages, billiard parlor, night club, tire and lube express, wholesale or membership club or any business whose principal revenues are from the sale of alcoholic beverages, amusement or entertainment without the prior written consent of Sam's.

2. **MAINTENANCE:**

Sam's shall be responsible for maintaining the Access Area and keeping the Access Area in a smooth and usable condition.

3. **DAMAGE TO ACCESS AREA, OR OTHER IMPROVEMENTS:**

If Grantee damages, breaks, destroys, or in any way impairs the Access Area, or any other improvements of Sam's, Sam's in its sole discretion, may require Grantee to either: (i) restore at Grantee's sole cost and expense the Access Area, or Sam's improvements to its original quality and condition; or (ii) Sam's may restore the Access Area, or improvements and invoice Grantee for Sam's costs incurred restoring the damaged Access Area, or improvements; whereupon Grantee agrees to reimburse Sam's within thirty (30) days of receipt of an invoice for such expenses. If Grantee fails to reimburse Sam's within said thirty (30) day period, Sam's has the option to terminate this agreement immediately with no further obligations or liabilities on the part of Sam's. However, Sam's may pursue any legal remedies or alternatives to collect any outstanding reimbursements related to this agreement.

4. **INDEMNIFICATION.** Except in the case of Grantee's negligence, willful misconduct or breach of this Agreement, Sam's hereby indemnifies and agrees to hold Grantee harmless from and against all claims, suits, proceedings, actions, causes of action, responsibility, liability, damages, and cost (including, without limitation, reasonable attorneys' fees, judgments, court costs and executions) which arise at any time during the construction, operation, or maintenance of the Access Area or from Sam's use of the Access Area. Except in the case of Sam's negligence, willful misconduct or breach of this Agreement, Grantee hereby indemnifies and agrees to hold Sam's harmless from and against all claims, suits, proceedings, actions, causes of action, responsibility, liability, demands, and costs (including, without limitation, reasonable attorneys' fees, judgments, court costs and executions) which arise at any time during the construction, operation, or maintenance of the Access Area or from Scotch's use of the Access Area.

5. **INSURANCE.** Grantee and Sam's agree that they will at all times during the duration of this easement maintain and pay for comprehensive general liability insurance affording protection to Sam's and Grantee with Grantee's policy or policies naming Sam's as an additional insured and with Sam's policy or policies naming Grantee as an additional insured for a combined bodily injury and property damage limit of liability no less than \$2,000,000.00 for each occurrence. Grantee further agrees, upon request to deliver to Sam's a certificate or certificates from an insurance company or insurance companies satisfactory to Sam's evidencing the existence of such insurance and naming Sam's as an additional insured. Sam's shall furnish Grantee with a certificate or certificates of insurance upon written request. Notwithstanding anything to the contrary contained herein, as long as Sam's net worth shall exceed One Hundred Million Dollars (\$100,000,000.00), it shall have the right to self-insure.

6. **CURB CUTS**

Grantee shall be entitled to install no more than two (2) thirty-six (36) foot curb cuts as shown on Exhibit "A" and/or Exhibit "A-1" between Tract 2 and Tract 1 within the Access Area.

7. **RELOCATION**

Sam's reserves the right to modify or relocate the Access Area in its sole and absolute discretion provided such modification or relocation does not materially restrict or prevent ingress and egress to and from Tract 2.

8. **PUBLIC GRANT**

Nothing contained herein shall be used or construed as a grant of any rights to any public or governmental authority or agency.

9. **DURATION**

The agreements contained herein and the rights granted hereby shall run with the titles to Tract 2 and the Access Area and shall bind and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. Grantee, at their sole discretion and their sole cost, shall have the right at any time to close the curb cut(s) and thereby terminate this access easement agreement. In the event Grantee should elect to close the curb cut(s), then in that event, the rights of ingress and egress herein granted shall be terminated forever, never to be used again, and this access easement agreement shall become null and void, and of no force and effect.

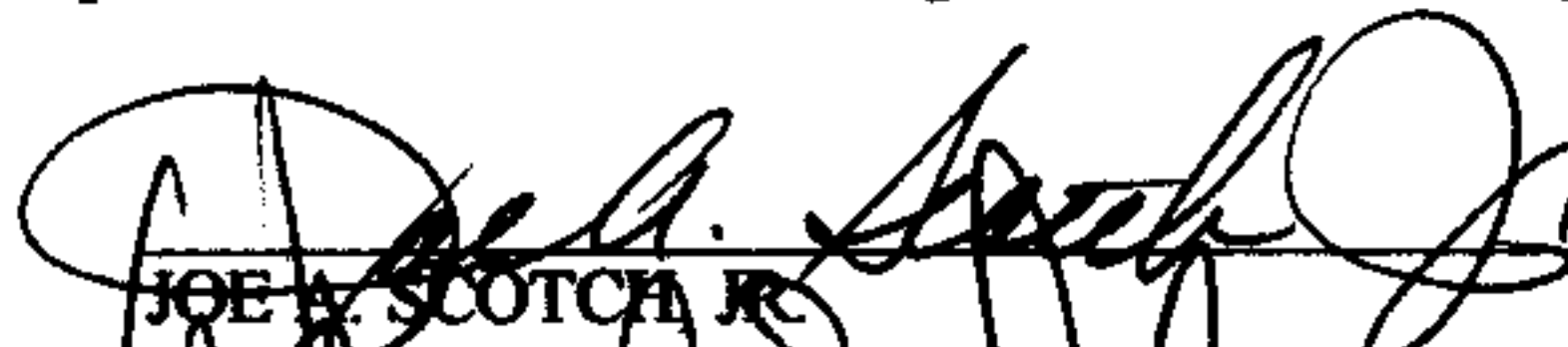

10. **CHANGE OF OWNERSHIP**

In the event Grantee conveys or transfers title to Tract 2 to another party, Sam's shall be notified thereof within thirty (30) days thereafter. Sam's shall be provided the name and address of such transferee. The parties specifically agree that this Agreement may be assigned (or subleased) to an affiliate, subsidiary or related entity of Wal-Mart Stores, Inc., or a third party, without consent or notice.

11. **HEADINGS**

The headings of the paragraphs contained herein are intended for reference purposes only and shall not be used to interpret the agreements contained herein or the rights granted hereby.

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

  
JOE A. SCOTCH JR.  
  
WAYNE J. SCOTCH

**SAM'S REAL ESTATE BUSINESS TRUST,**  
a Delaware business trust

By:   
Barry Shanahan  
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 Joe A. Scotch, Jr. and Wayne J. Scotch, whose names are signed to the foregoing Agreement and who are known to me, acknowledged before me on this day that, being informed of the contents of the Agreement, they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 3rd day of August, 2001.

E. Kay Wallace  
NOTARY PUBLIC

My commission expires: 11-28-04

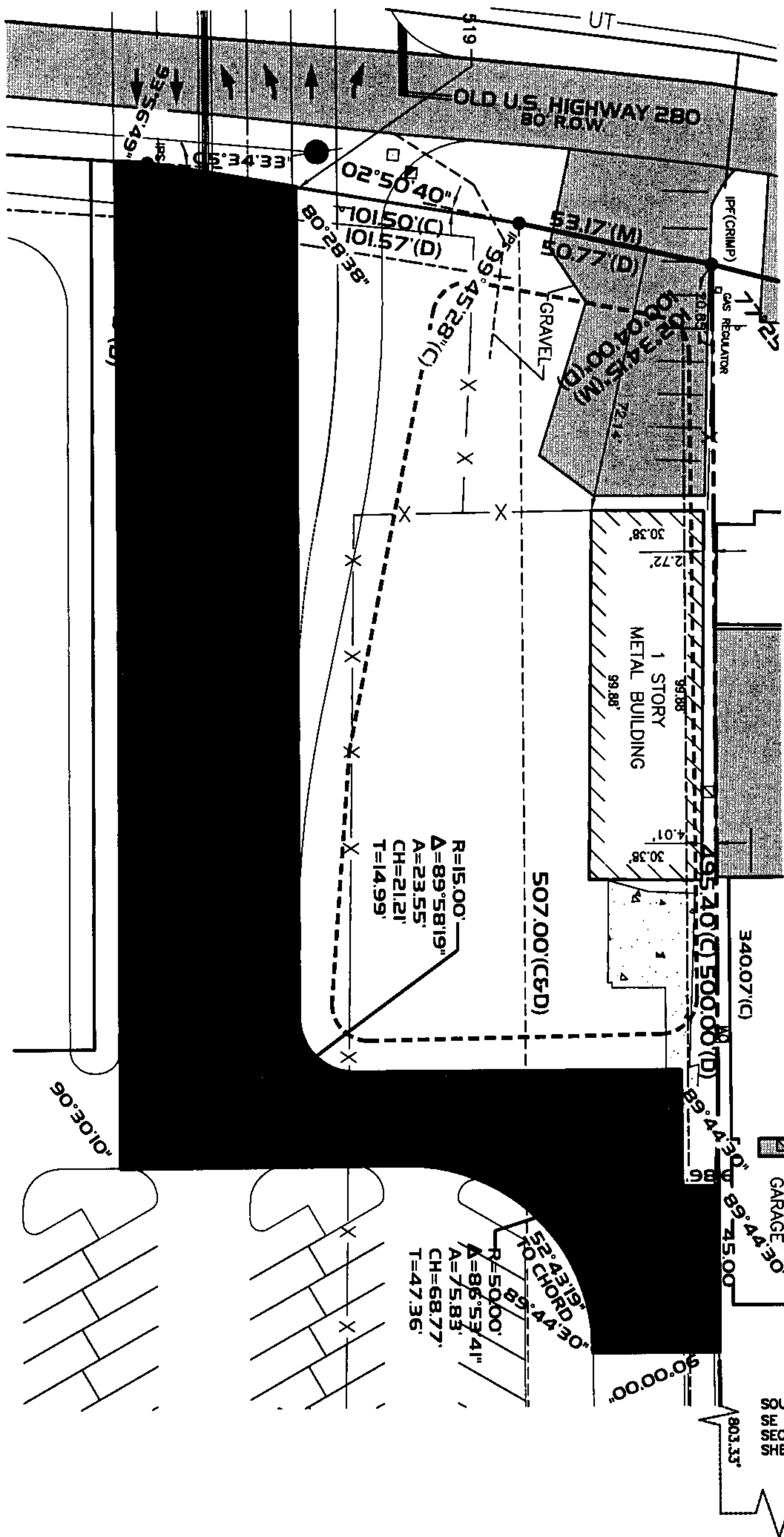
THE STATE OF ALABAMA )  
JEFFERSON COUNTY )

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 Sam's 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 corporation.

Given under my hand and official seal this 1st day of August, 2001.

E. Kay Wallace  
NOTARY PUBLIC

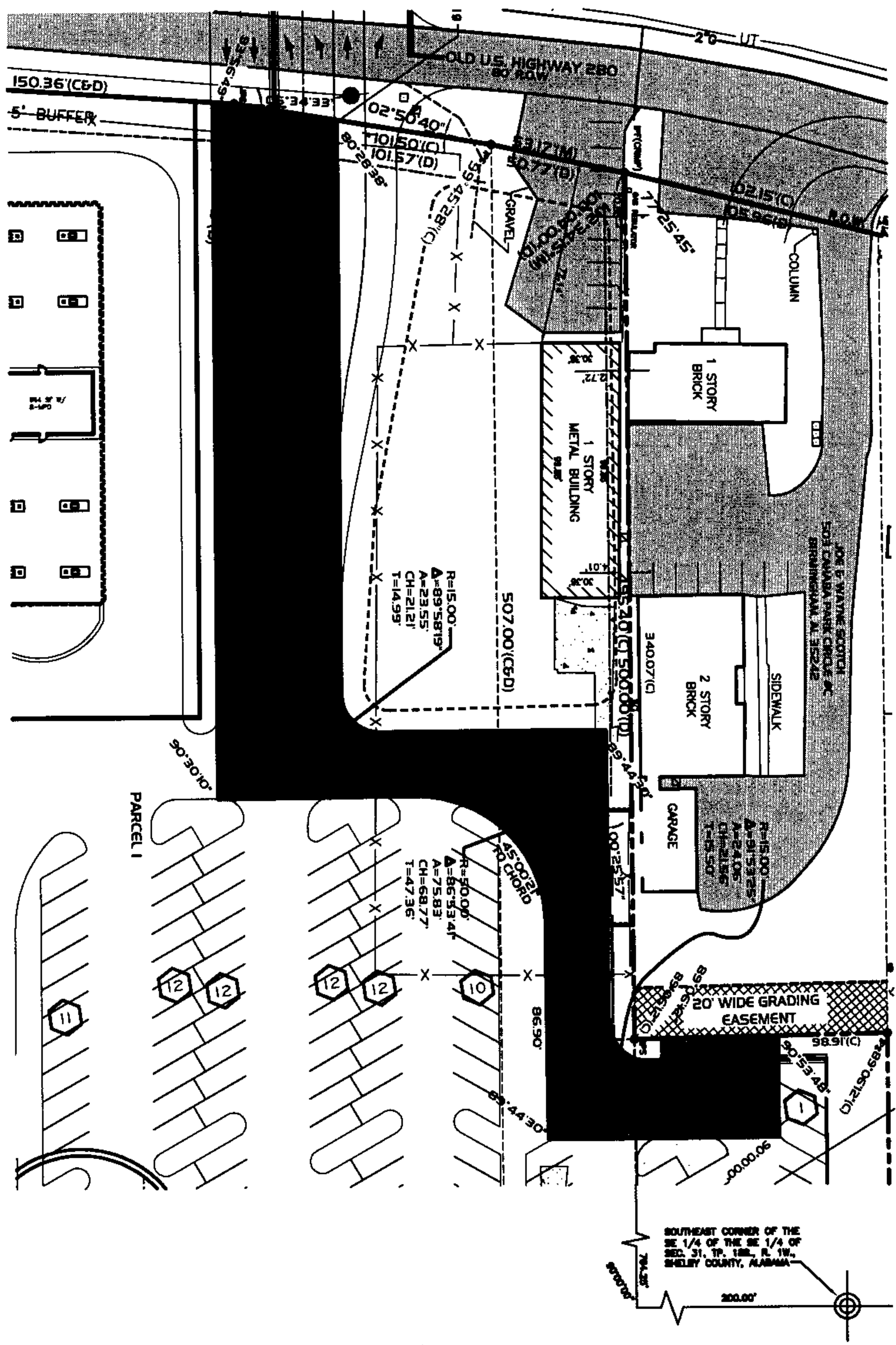
My commission expires: 11-28-04







**EXHIBIT "A-1"**



**EXHIBIT "B"**  
**Sam's Parcel legal description**

Commence at the Southeast corner of the Southeast quarter of the Southeast quarter of Section 31, Township 18 South, Range 01 West and run westerly along said quarter-quarter line a distance of 200.00 feet to the Point of Beginning; thence deflect right 90 degrees 53 minutes 48 seconds and run in a northeasterly direction for a distance of 230.03 feet; thence deflect right 89 degrees 06 minutes 12 seconds and run in a northeasterly direction for a distance of 98.91 feet; thence deflect left 89 degrees 06 minutes 12 seconds and run in a northeasterly direction for a distance of 573.00 feet; thence deflect left 90 degrees 53 minutes 48 seconds and run in a southwesterly direction for a distance of 98.91 feet; thence deflect right 90 degrees 53 minutes 48 seconds and run in a northeasterly direction for a distance of 340.07 feet to the southerly right of way line of Old U.S. Highway 280; thence deflect left 77 degrees 25 minutes 45 seconds and run in a northwesterly direction along said right of way line for a distance of 53.17 feet; thence deflect left 02 degrees 50 minutes 40 seconds and run in a northwesterly direction for a distance of 101.50 feet; thence deflect left 05 degrees 34 minutes 33 seconds and run in a northwesterly direction for a distance of 150.36 feet; thence leaving said right of way line deflect left 94 degrees 00 minutes 00 seconds and run in a southwesterly direction for a distance of 389.68 feet; thence deflect right 89 degrees 23 minutes 12 seconds and run in a southwesterly direction for a distance of 300.00 feet; thence deflect left 89 degrees 42 minutes 32 seconds and run in a southwesterly direction for a distance of 800.00 feet; thence deflect left of 90 degrees 56 minutes 07 seconds and run along said quarter-quarter line for a distance of 600.59 feet to the Point of Beginning. Said parcel containing 649,637 square feet or 14.91 acres more or less.



**EXHIBIT "C"**  
**Scotch's Parcel legal description**

Commence at the Southeast corner of the Southeast quarter of the Southeast quarter of Section 31, Township 18 South, Range 01 West and run west along said forty acres 100 feet to the Point of Beginning of lot herein described; from said point of beginning run North 2 degrees West 1115.7 feet, more or less, to the south right of way line of Florida Short Route Highway, thence along the South right of way line of said Highway North 76 degrees 40 minutes West 106 feet, to a point which would be 200 feet West of the East line of said forty acres; thence run South 2 degrees East 1144.2 feet, more or less, to the South line of said forty acres; thence along said South line run East 100 feet, to the point of beginning.

Less and Except:

A parcel of land situated in the Southeast quarter of the Southeast quarter, Section 31, Township 18 South, Range 1 West, Shelby County, Alabama, more particularly described as follows: Commence at the Southeast corner of the Southeast quarter of the Southeast quarter of Section 31, Township 18 South, Range 1 West, Shelby County, Alabama; thence in a westerly direction along the South line of said Southeast quarter of the Southeast quarter for a distance of 200 feet (measure 199.93 feet); thence at an angle to the right of 90 degrees 07 minutes (measure 90 degrees 09 minutes) and in a northerly direction for a distance of 984.72 feet to the point of beginning of the property herein described; thence continue North along last described course for a distance of 159.00 feet to a point on the South right of way line of Old U.S. Highway 280; thence at an angle to the right of 105 degrees 20 minutes and in a southeasterly direction along the southerly right of way line of Old U.S. Highway No. 280 for a distance of 72.58 feet; thence at an angle to the right of 74 degrees 40 minutes and in a Southerly direction for a distance of 139.62 feet; thence at an angle to the right of 89 degrees 51 minutes and in a Westerly direction for a distance of 70.0 feet to the point of beginning.

Also Less and Except:

The South 230 feet of the following described property: Commence at the Southeast corner of the Southeast quarter of the Southeast quarter of Section 31, Township 18 South, Range 01 West and run west along said forty acres 100 feet to the Point of Beginning of lot herein described; from said point of beginning run North 2 degrees West 1115.7 feet, more or less, to the south right of way line of Florida Short Route Highway, thence along the South right of way line of said Highway North 76 degrees 40 minutes West 106 feet, to a point which would be 200 feet West of the East line of said forty acres; thence run South 2 degrees East 1144.2 feet, more or less, to the South line of said forty acres; thence along said South line run East 100 feet, to the point of beginning.

Also Less and Except:

Commence at the Southeast corner of the Southeast quarter of the Southeast quarter of Section 31, Township 18 South, Range 01 West and run westerly along said quarter-quarter line a distance of 200.00 feet; thence deflect right 90 degrees 53 minutes 48 seconds and run in a northeasterly direction for a distance of 230.03 feet to the Point of Beginning; thence deflect right 89 degrees 06 minutes 12 seconds and run in a northeasterly direction for a distance of 98.91 feet; thence deflect left 89 degrees 06 minutes 12 seconds and run in a northeasterly direction for a distance of 573.00 feet; thence deflect left 90 degrees 53 minutes 48 seconds and run in a northwesterly direction for a distance of 98.91 feet; thence deflect left 89 degrees 06 minutes 12 seconds and run in a southwesterly direction for a distance of 573.00 feet to the Point of Beginning.



EXHIBIT "D"  
INGRESS/EGRESS EASEMENT

Commence at the Southeast corner of the Southeast quarter of the Southeast quarter of Section 31, Township 18 South, Range 01 West and run westerly along said quarter-quarter line a distance of 200.00 feet; thence turn a deflection angle of 90 degrees 53 minutes 48 seconds to the right and run in a northeasterly direction for a distance of 848.03 feet to the POINT OF BEGINNING; thence turn a deflection angle left 90 degrees 00 minutes 00 seconds and run in a Westerly direction for a distance of 34.08 feet; thence turn a deflection angle right 89 degrees 44 minutes 30 seconds and run in a Northerly direction for a distance of 3.12 feet to the point of commencement of a curve to the left; said curve having a radius of 50.00 feet, a central angle of 86 degrees 53 minutes 41 seconds, a deflection left 45 degrees 00 minutes 21 seconds to chord for a chord distance of 68.77 feet; thence run along arc of said curve for a distance of 75.83 feet; thence turn a deflection angle left 45 degrees 02 minutes 07 seconds from chord and run in a Westerly direction for a distance of 78.05 feet; thence turn a deflection angle right 90 degrees 30 minutes 10 seconds and run in a Northerly direction for a distance of 273.26 feet to the Southern most right of way line of Old U.S. Highway 280; thence turn a deflection angle right 93 degrees 56 minutes 49 seconds and run in an Easterly direction along said Southern most right of way line for a distance of 8.12 feet; thence turn a deflection angle right 05 degrees 34 minutes 33 seconds and run in a Southeasterly direction along said Southern most right of way line for a distance of 40.46 feet; thence turn a deflection angle right 80 degrees 28 minutes 38 seconds and run in a Southerly direction for a distance of 225.42 feet to the point of commencement of a curve to the left; said curve having a radius of 15.00 feet, a central angle of 89 degrees 58 minutes 19 seconds, a deflection angle left 45 degrees 13 minutes 03 seconds to chord for a chord distance of 21.21 feet; thence run along arc of said curve for a distance of 23.55 feet; thence turn a deflection angle left 44 degrees 59 minutes 10 seconds and run in an Easterly direction for a distance of 87.85 feet; thence turn a deflection angle right 89 degrees 44 minutes 30 seconds and run in a Southerly direction for a distance of 31.54 feet; thence turn a deflection angle left 89 degrees 44 minutes 30 seconds and run in an Easterly direction for a distance of 9.86 feet; thence turn a deflection angle right 90 degrees 00 minutes 00 seconds and run in a Southerly direction for a distance of 45.00 feet to the POINT OF BEGINNING. Said easement contains 17,803 square feet, or 0.41 acres more or less.

EXHIBIT "D1"  
INGRESS/EGRESS EASEMENT

Commence at the Southeast corner of the Southeast quarter of the Southeast quarter of Section 31, Township 18 South, Range 01 West and run westerly along said quarter-quarter line a distance of 200.00 feet; thence turn a deflection angle of 90 degrees 53 minutes 48 seconds to the right and run in a northeasterly direction for a distance of 764.25 feet to the POINT OF BEGINNING; thence turn a deflection angle left 90 degrees 00 minutes 00 seconds and run in a Westerly direction for a distance of 33.71 feet; thence turn a deflection angle right 89 degrees 44 minutes 30 seconds and run in a Northerly direction for a distance of 86.90 feet to the point of commencement of a curve to the left; said curve having a radius of 50.00 feet, a central angle of 86 degrees 53 minutes 41 seconds, a deflection left 45 degrees 00 minutes 21 seconds to chord for a chord distance of 68.77 feet; thence run along arc of said curve for a distance of 75.83 feet; thence turn a deflection angle left 45 degrees 02 minutes 07 seconds from chord and run in a Westerly direction for a distance of 78.05 feet; thence turn a deflection angle right 90 degrees 30 minutes 10 seconds and run in a Northerly direction for a distance of 273.26 feet to the Southern most right of way line of Old U.S. Highway 280; thence turn a deflection angle right 93 degrees 56 minutes 49 seconds and run in an Easterly direction along said Southern most right of way line for a distance of 8.12 feet; thence turn a deflection angle right 05 degrees 34 minutes 33 seconds and run in a Southeasterly direction along said Southern most right of way line for a distance of 40.46 feet; thence turn a deflection angle right 80 degrees 28 minutes 38 seconds and run in a Southerly direction for a distance of 225.42 feet to the point of commencement of a curve to the left; said curve having a radius of 15.00 feet, a central angle of 89 degrees 58 minutes 19 seconds, a deflection angle left 45 degrees 13 minutes 03 seconds to chord for a chord distance of 21.21 feet; thence run along arc of said curve for a distance of 23.55 feet; thence turn a deflection angle left 44 degrees 59 minutes 10 seconds and run in an Easterly direction for a distance of 87.85 feet; thence turn a deflection angle right 89 degrees 44 minutes 30 seconds and run in a Southerly direction for a distance of 31.54 feet; thence turn a deflection angle right 00 degrees 25 minutes 57 seconds and run in an Southerly direction for a distance of 84.96 feet to the point of commencement of a curve to the left; said curve having a radius of 15.00 feet, a central angle of 91 degrees 53 minutes 25 seconds, a deflection angle left 45 degrees 56 minutes 42 seconds to chord for a chord distance of 21.56 feet; thence run along arc of said curve for a distance of 24.06 feet; thence turn a deflection angle left 45 degrees 56 minutes 42 seconds from chord and run in an Easterly direction for a distance of 5.67 feet; thence turn a deflection angle left 90 degrees 00 minutes 00 seconds and run in a Northerly direction for a distance of 10.00 feet; thence turn a deflection angle right 89 degrees 06 minutes 12 seconds and run in an Easterly direction for a distance of 45.01 feet; thence turn a deflection angle right 90 degrees 53 minutes 48 seconds and run in a Southerly direction for a distance of 39.66 feet; thence turn a deflection angle right 90 degrees 00 minutes 00 seconds and run in a Westerly direction for a distance of 56.00 feet to the POINT OF BEGINNING. Said easement contains 21,775 square feet, or 0.50 acres more or less.

Inst # 2001-56219

12/21/2001-56219  
12:00 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
010 MEL 41.50