

This instrument prepared by,
and after recording return to:
Charles L. Wood, Esq.
Altman, Kritzer & Levick, P.C.
6400 Powers Ferry Road, Suite 224
Atlanta, Georgia 30339

Inst # 2002-1

08/21/2002-13458
04:02 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
018 CH 65.00

RECIPROCAL EASEMENT AND OPERATION AGREEMENT

d.d. **THIS RECIPROCAL EASEMENT AND OPERATION AGREEMENT** (the "Agreement") is made and entered into as of the 8th day of March, 2002 ("Effective Date"), by and between **CONNIE ~~W.~~ STANDIFER** ("Landholder"), and **SOUTHMARK PROPERTIES, L.L.C. and INTERSTATE RESTAURANT INVESTORS, L.L.P.** collectively, d/b/a **Highway 52 T.I.C.** (collectively referred to as "SP").

Preliminary Statement

SP is the owner in fee of certain real property located in the City of Pelham, Shelby County, Alabama, more particularly described on **Exhibit A** attached hereto and made a part hereof by this reference (the "SP Parcel"). It is intended that a retail development, including certain parking and site facilities in the areas indicated on the Site Plan (as hereinafter defined), may be initially constructed on the SP Parcel.

Landholder is the owner in fee of certain real property located in the City of Pelham, Shelby County, Alabama, more particularly described in **Exhibit B** attached hereto and made a part hereof by this reference (the "Landholder Parcel").

Landholder Parcel and the SP Parcel, as more particularly shown on **Exhibit C** attached hereto and made a part hereof by this reference (the "Site Plan"), are herein collectively referred to as the "Parcels" or the "Center," and each individually as a "Parcel."

SP is also the owner in fee of certain real property located in the City of Pelham, Shelby County, Alabama, more particularly described on **Exhibit D** attached hereto and made a part hereof by this reference on which real property will be constructed a connector road which will be dedicated at a later time to the City of Pelham, Alabama ("Connector Road Parcel"), it being understood that the legal description of the Connector Road Parcel may vary slightly from the legal description on **Exhibit D**.

Landholder and SP recognize that for the most favorable development of the Center, it is necessary that they agree and cooperate with respect to the operation and maintenance of their Parcels and the common areas and facilities to be erected thereon as may be indicated in the Site Plan or maintained upon a Parcel from time to time, which common areas shall include curb cuts, roadways, driveways, aisles, landscaped areas and areas outside of buildings (the "Common Areas"). Common Areas shall not include loading docks or similar facilities or sidewalks that are adjacent to buildings and shall not include areas upon which buildings or similar structures are located. Landholder and SP therefore intend herein to grant to each other certain easements for pedestrian and vehicular ingress and egress over certain curb cuts, roadways, driveways, aisles, and walkways for access and for delivery. Landholder and SP also intend herein to provide for certain obligations and restrictions with respect to the operation and maintenance of their respective Parcels and the Common Areas and facilities constructed and to be constructed thereon. Such easements, obligations and restrictions shall run to the benefit of, and bind, the respective Parcels and the owners from time to time of the Center or any portion thereof. The terms "Landholder" and "SP" shall be deemed to refer to such parties and the respective heirs, successors, grantees and assigns of such parties, and any net lessee of any Parcel or part thereof who has assumed all of the obligations of the owning party (individually the "Owner", or collectively, the "Owners"). The Owner or Owners of a majority of the acreage of the SP Parcel is herein referred to as the "SP Approving Party" and the Owner or Owners of a majority of the acreage of Landholder Parcel is herein referred to as the "Landholder Approving Party" (collectively the SP Approving Party and the Landholder Approving Party are referred to as the

"Approving Parties").

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landholder and SP hereby grant, covenant and agree as follows:

ARTICLE I - GRANT OF EASEMENTS

Section 1.01. Access Easements.

(a) The Owners of the SP Parcel and Landholder Parcel hereby grant and convey each to the other, for the benefit of Landholder Parcel and the SP Parcel, respectively, a non-exclusive perpetual easement over, across and through and right to the use of those certain accessways and roadways that may from time to time exist on the SP Parcel and Landholder Parcel for purposes of ingress, egress, passage and delivery, by vehicles and pedestrians.

(b) The easements granted in this Section 1.01 shall be for the benefit of, but not restricted solely to, the Owners of the respective Parcels described in each such easement (subject to the limitations described herein) and each such Owner may grant the benefit of such easement to the tenants and other occupants of the Parcel owned by such Owner (subject to the limitations described herein) for the duration of such occupancy, and to the customers, employees, agents and business invitees thereof; but same is not intended nor shall it be construed as creating any rights in or for the benefit of the general public nor shall it affect or benefit any real property other than the specifically designated Parcel(s). The parties acknowledge that no parking easements have been granted hereunder and that each Owner shall be entitled to effectuate such reasonable measures as may be necessary to prevent the parking of vehicles by the Owner, tenants and occupants of one Parcel, and its and their customers, employees, agents and invitees, on the other Parcel.

(c) The Owner of either Parcel shall have the right to close off the portion of its Parcel encumbered by an access easement set forth above at such intervals and for such minimum period of time as may be (i) legally necessary, in the opinion of such Owner's counsel, to prevent the acquisition of prescriptive rights by any other party, or (ii) reasonably necessary for routine maintenance and repair of such portion of the Common Areas.

Section 1.02. Temporary Construction Easements. In connection with any construction work to be performed in the development of Landholder Parcel and the SP Parcel, the Owners of Landholder Parcel and the Owners of the SP Parcel each hereby grant to the other, temporary easements for incidental encroachments upon the other Party's Parcel which may occur as a result of construction, so long as such encroachments are kept within the reasonable requirements of construction work expeditiously pursued and so long as customary liability insurance is maintained protecting the other party from the risks involved.

Section 1.03. Restrictions. The easements granted by this Article I shall be subject to the covenants and restrictions set forth in Article III.

ARTICLE II - MAINTENANCE AND OPERATION

Section 2.01. Maintenance and Repair.

(a) Each Owner shall maintain, repair and replace all improved portions of the Common Areas located on its respective Parcel, so as to keep such areas at all times in a safe, sightly, good and functional condition to standards of comparable community shopping centers in the market area.

(b) Each Owner shall be responsible for keeping the Common Areas on its own Parcel clean and free from refuse and rubbish. Any landscaped areas on the respective Common Areas shall be mowed and otherwise tended to by the Owner thereof.

(c) Each Owner shall repave, re-stripe and replace markings on the surface of the parking areas and driveways in its Parcel from time to time as and when necessary so as to provide for the orderly parking of automobiles and shall place and maintain adequate exit and entrance and other traffic control signs to direct traffic in and out of said parking areas. Any striping and other markings shall be consistent with the Site Plan, and the lighting, paving and striping materials shall be consistent with that used on the SP Parcel.

(d) Each Owner shall pay, prior to any penalty attaching thereto, all real estate taxes, assessments and personal property taxes, if any, imposed upon the land and improvements and equipment located on its respective Parcel.

(e) Each Owner shall cause the Common Areas and all buildings and improvements located on its Parcel to comply with all applicable requirements of law and governmental regulation applicable thereto, provided however, that an Owner may contest any such law or regulation so long as such contest would not create any material danger of a loss of title to, or impairment in any way of the use of all or any portion of the Common Areas for their intended purposes.

(f) David "Spud" Bishop Contractor, Inc. ("Spud Bishop") will install exterior light fixtures mounted on the exterior of the building on the Landholder Parcel sufficient to light the parking areas of the Landholder Parcel that use high pressure sodium lamps. The Landholder will not make any changes related to the facilities and fixtures to be used in lighting unless the SP Approving Party otherwise approves in writing.

ARTICLE III - COVENANTS AND RESTRICTIONS

Section 3.01. Restrictions on Common Areas. The Center shall be subject to the following restrictions which shall be binding on each Owner and each of its tenants, occupants, employees, agents or invitees:

(a) Unless otherwise approved in writing by the SP Approving Party, no building or other structure of any kind shall be permitted in portions of Landholder Parcel except in the "Building Areas" designated on the Site Plan, and any such buildings or other structures on Landholder Parcel shall in no event exceed thirty-four (34') feet in height. Any exterior signage on Landholder Parcel shall be in compliance with all governmental requirements without variance, shall not affect the amount of signage available for the SP Parcel, and shall not materially interfere with the visibility of the buildings or exterior signage on the SP Parcel.

(b) Landholder shall maintain at all times on Landholder Parcel at least the number of parking spaces shown on the Site Plan and shall maintain the accessways and curbing on Landholder Parcel in the locations shown on the Site Plan. Landholder shall at all times maintain on Landholder Parcel, at a minimum, the amount of parking currently required under applicable governmental codes relating to B-2 (General Business District) zoning, without variance, or five (5) parking spaces per 1,000 square feet of building area on Landholder Parcel, whichever is greater. Subject to any applicable governmental requirements or action (including condemnation or the exercise of any power of eminent domain), the Owner of the SP Parcel agrees that any permanent alterations to the improvements on the SP Parcel made by the Owner of the SP Parcel shall not prohibit access to Landholder Parcel from the Connector Road, once constructed or the accessway immediately adjacent to Landholder Parcel.

(c) No portion of the Center shall be used for a business or use which creates strong, unusual or offensive odors, fumes, dust or vapors; is a public or private nuisance; emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness; or creates unusual fire, explosive or other hazards.

(d) Unless otherwise approved in writing by the SP Approving Party, no portion of the Center outside of the SP Parcel may be leased, used or occupied as a theatre; movie theatre; bowling alley; billiard parlor; funeral parlor; discotheque; skating rink; ~~any establishment serving alcohol for on premises or off premises consumption~~; any restaurant having more than

1,500 square feet; a restaurant having less than 1,500 square feet if its alcohol sales are more than an incidental part of its business; lounge serving alcohol; bingo or game parlor; an adult bookstore or establishment selling, exhibiting or distributing pornographic or obscene materials; massage parlors (as opposed to businesses which are operated as therapeutic massage establishments operated by licensed individuals); so-called "head shop"; amusement arcade or game room; body and fender shop; car wash; off-track betting parlor; junk yard; recycling facility or stockyard; motor vehicle or boat dealership; vehicle repair shop (including lubrication and/or service center); dance hall, or night club; dry cleaning or laundry plant (except as to an establishment which receives and dispenses items for laundering and/or dry cleaning but the processing of which such items is done elsewhere); industrial or manufacturing uses; or house of worship.

(e) Unless otherwise approved in writing by the SP Approving Party, no portion of the Center outside of the SP Parcel may be used for the lot sale of live (as opposed to artificial) Christmas trees, or for the operation of a business that sells as its major product lines (as opposed to incidental sales) items typically sold at home improvement centers including hardware, lumber and wall and floor coverings, such as or similar to businesses that currently operate under the trade names "Lowe's," "Menards," "Scotty's," "Ace Hardware," "Tru-Value," "Dekor," "Restoration Hardware," "Northern Tool," "Sherwin Williams," "Duron," "Color Tile" or "Carpet City" so long as Home Depot, or its successors in interest, are operating a home improvement center on the SP Parcel (exclusive of temporary closures for casualty loss, condemnation, remodeling or repairs).

(f): So long as the owner of the Landholder Parcel or her successors-in-interest operate a vitamin/herb or health food store on the Landholder Parcel like a Healthy Harveys (exclusive of temporary closures for casualty loss, condemnation, remodeling or repairs), no portion of the SP Parcel shall be used for a store which specializes in the sale of vitamins, herbs or health foods like a Healthy Harvey's.

Section 3.02. Construction. SP and Landholder acknowledge and agree that the construction of the building on Landholder Parcel shall be performed in accordance with the construction contract by and between Spud Bishop, SP, and Landholder executed simultaneously herewith ("Construction Contract") and shall be diligently and continuously performed to completion. Accordingly, as to such construction on Landholder Parcel: (i) such construction activities shall not materially interfere with the use, occupancy or enjoyment of the SP Parcel; (ii) any staging and/or storage shall be on Landholder Parcel; and (iii) Landholder or Spud Bishop, shall provide evidence of such insurance coverage as shall be reasonably required by the Owner of the SP Parcel.

ARTICLE IV - LIABILITY AND INDEMNIFICATION

Section 4.01. Liability; Indemnification. To the extent not covered by any insurance required to be maintained pursuant to this Agreement and subject to the provisions of Section 5.02 below, each Owner shall indemnify, defend and hold the other Owner(s) harmless (except for loss or damage resulting from the negligent or willful acts or omissions of such other Owner, or its agents, contractors or employees) from and against any damages, liability, actions, claims, and expenses (including attorneys' fees in a reasonable amount) in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon such Owner's Parcel, or occasioned wholly or in part by any act or omission of said Owner or its tenants, agents, contractors, employees or licensees.

Section 4.02. Liability Insurance. Each Owner shall maintain or cause to be maintained comprehensive general commercial liability insurance insuring against claims on account of loss of life, bodily injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Common Areas in the Center by the Owner and its tenants, agents, contractors, employees, licensees, customers and invitees, or the occupants of its Parcel. Such policies shall name the other Owners as additional insureds and shall have limits of not less than Three Million Dollars (\$3,000,000) combined single limit per occurrence/aggregate, with such coverage to be on an "occurrence" rather than a "claims made" basis. Such policies shall provide for severability of interests and shall provide that any act or omission of one of the

insureds or additional insureds that would void or otherwise reduce coverage shall not reduce or void the coverage as to the other insureds. Such insurance shall also include an endorsement providing for blanket contractual liability coverage, which coverage shall include the Owner's indemnity obligations as set forth in Section 4.01.

Section 4.03. General Insurance Provisions; Self-Insurance. All insurance required hereunder shall be carried by a reputable insurance company or companies qualified to do business in the State of Alabama with a financial rating of VIII or better and a policyholder's rating of A- or better in the latest edition of Best's Rating Guide on Property and Casualty Insurance Companies (or a comparable rating in any comparable international ratings guide) and such insurance shall provide that each insured and any additional insureds shall be given a minimum of ten (10) days' written notice prior to the cancellation, termination or alteration of the terms or limits of such coverage. Notwithstanding the foregoing, any Owner or party responsible to maintain any insurance required under this Agreement may "self insure" in whole or in part as to any such insurance if such Owner or party has a net worth in excess of One Hundred Million Dollars (\$100,000,000) as shown on its most recent audited financial statement (or if such Owner's or party's financial statements are consolidated with affiliated entities, then as certified by an officer thereof) and may provide for a deductible from said coverage related to the Parcel in a commercially reasonable amount (but in no event more than Twenty-Five Thousand Dollars as to any general commercial liability insurance covering Landholder Parcel) subject to the foregoing self-insurance provisions. Such insurance may be carried under a "blanket" policy or policies covering other properties of the party and its subsidiaries, controlling or affiliated corporations so long as the amount and coverage required hereunder is not diminished. Each Owner shall, upon written request from another Owner, furnish to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section (or evidence of a self-insurance capacity as herein provided, as the case may be), and evidencing the designation of the appropriate parties as additional insureds.

ARTICLE V - CASUALTY AND EMINENT DOMAIN

Section 5.01. Casualty.

(a) If any of the buildings located on any Parcel is damaged or destroyed by fire or other cause, the Owner of such building shall promptly cause either: (i) the repair, restorations, or rebuilding of the building so damaged or destroyed, or (ii) the razing of any damaged building, the filling of any excavation, and performance of any other work necessary to put such portion of the Center in a clean, sightly and safe condition.

(b) In the event any Common Area improvements are damaged or destroyed, the Owner of the Parcel to which such damage has occurred shall promptly cause the repair, restoration or rebuilding of the Common Area improvements to the extent necessary to restore such area to the extent necessary to avoid interference with the remaining Common Areas of the Center and to adhere to any required parking ratios required by law or as set forth herein.

Section 5.02. Casualty Insurance. In order to assure performance of their respective obligations under Section 5.01, the Owners of the respective Parcels shall cause to be carried fire and extended coverage insurance on all buildings and improvements on their respective Parcels in the amount of the replacement cost of such improvements, exclusive of footings and foundations, and in amounts at least sufficient to avoid the effect of any co-insurance provisions of such policies, except if the Owner of said Parcel, or party responsible for any required restorations, is permitted to "self insure" pursuant to 4.03. Each of the Owners hereby waive any rights that any such Owner may have against the other Owner(s) on account of any loss or damage occurring to an Owner or its respective property, either real or personal, arising from any risk generally covered by fire and extended coverage insurance and from any risk covered by property insurance then in effect. In addition, the Owners for themselves and on behalf of their respective insurance companies waive any right of subrogation that any insurance company may have against the Owners. All such insurance shall otherwise conform to the provisions with respect to insurance contained in Section 4.03.

Section 5.03. Eminent Domain. In the event the whole or any part of the Center shall

be taken by right of eminent domain or any similar authority of law (a "Taking"), the entire award for the value of the land and improvements so taken shall belong to the Owner of the property so taken or to such Owner's mortgagees or tenants, as their interest may appear, and no other Owner shall have a right to claim any portion of such award by virtue of any interest created by this Agreement. Any Owner of a Parcel which is not the subject of a taking may, however, file a collateral claim with the condemning authority over and above the value of the land being so taken to the extent of any damage suffered by such Owner resulting from the severance of the land or improvements so taken if such claim shall not operate to reduce the award allocable to the Parcel taken. In the event of a partial Taking, the Owner of the portion of the Center so taken shall restore the improvements located on the Common Areas of the Owner's Parcel as nearly as is reasonably possible to the condition existing prior to the Taking without contribution from any other Owner and any portion of any condemnation award necessary therefor shall be held in trust and applied for such purpose. On the Effective Date, neither party has any knowledge of any planned condemnation proceedings regarding any property within the Center.

ARTICLE VI - REMEDIES

Section 6.01. Self-Help; Lien Rights; Disputes.

(a) If any Owner shall default in the performance of an obligation of such Owner (such Owner being herein called a "Defaulting Owner"), which default affects the Owner of another Parcel or any occupant thereof (an "Affected Party"), such Affected Party, in addition to all other remedies it may have at law or in equity, after ten (10) days' prior written notice to the Default Owner and any first Mortgagee or SL Lessor (as defined herein) (or in the event of an emergency after such notice as is practical under the circumstances), shall have the right to perform such obligation on behalf of the Defaulting Owner. In such event, the Defaulting Owner shall promptly reimburse the Affected Party the cost thereof, together with interest thereon from the date of outlay at a rate equal to the lesser of (i) two percent in excess of the prime rate as published from time to time by *The Wall Street Journal* or (ii) the highest rate permitted by applicable law (the "Interest Rate").

(b) Any such claim for reimbursement, together with interest thereon as aforesaid, shall be secured by a lien on the Parcel and improvements thereon owned by the Defaulting Owner, which lien shall be effective upon the recording of a notice thereof in the appropriate recording office of the county in which the Center is located. The lien shall be subordinate to any first mortgage or deed of trust now or hereafter affecting the subject Parcel (a "First Mortgage") which is of record prior to the date upon which notice of the lien is filed in said recording office and to the interest of any party who has purchased the Parcel and leased it back to the preceding Owner ("SL Lessor"), or its subsidiary or affiliate, on a net lease basis with the lessee assuming all obligations thereunder in what is commonly referred to as a "sale leaseback" transaction (a "SL Lease") under a SL Lease entered into prior to the date upon which notice of the lien is filed in the said Clerk's office; and any purchaser at any foreclosure or trustee's sale (as well as any grantee by deed in lieu of foreclosure or trustee's sale) under any such First Mortgage or assignee of such SL Lease shall take title subject only to liens thereafter accruing pursuant to this Section 6.01.

Section 6.02. Injunctive and Other Remedies. In the event of a breach by any Owner of any obligation of this Agreement, the other Owners shall be entitled to obtain an injunction specifically enforcing the performance of such obligation. The Owners hereby acknowledge the inadequacy of legal remedies and the irreparable harm which would be caused by any such breach; provided, however, that nothing set forth herein shall prohibit any Owner from pursuing any other available legal and equitable remedies. Any action taken or document executed in violation of this Agreement shall be void and may be set aside upon the petition of the other Owners of portions of the Center. Any costs and expenses of any such proceeding, including attorneys' fees in a reasonable amount, shall be paid by Defaulting Owner and shall constitute a lien against the Parcel or Parcels owned by the Defaulting Owner, and improvements thereon, or the interests therein, until paid.

Section 6.03. Non-Waiver. No delay or omission of any Owner in the exercise of any

right accruing upon any default of any other Owner shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Owner of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Owner shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. Except as otherwise specifically provided in this Agreement, (i) no remedy provided in this Agreement shall be exclusive but each shall be cumulative with all other remedies provided in this Agreement and (ii) all remedies at law or in equity shall be available.

Section 6.04. Non-Terminable Agreement. No breach of the provisions of this Agreement shall entitle any Owner or party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value covering any part of the Center, and any improvements thereon.

Section 6.05. Force Majeure. In the event any Owner or any other party shall be delayed or hindered in or prevented from the performance of any act required to be performed by such party by reason of Acts of God, strikes, lockouts, unavailability of materials, failure of power, prohibitive governmental laws or regulations, riots, insurrections, the act or failure to act of the other party, adverse weather conditions preventing the performance of work as certified to by an architect, war or other reason beyond such party's control, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond the control of such party.

ARTICLE VII - TERM

Section 7.01. Except as otherwise provided herein, this Agreement shall be for a term ending seventy (70) years from the date hereof, at which time this Agreement shall terminate; provided that notwithstanding the foregoing, any rights, liabilities or obligations arising or to be performed hereunder prior to the date of such termination shall survive such termination and further provided that the easements, and the rights, duties, obligations and liabilities with regard thereto as set forth in Article I and Article II shall be perpetual to the extent permitted by law.

ARTICLE VIII - EFFECT OF INSTRUMENT

Section 8.01. Mortgage Subordination. Any mortgage or deed of trust affecting any portion of the Center shall at all times be subject and subordinate to the terms of this Agreement, except to the extent otherwise expressly provided herein, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all of the terms and provisions of this Agreement, subject to Section 6.01 hereof. Each party hereto represents and warrants to the other parties that there is no presently existing mortgage or deed of trust lien on its Parcel, other than mortgage or deed of trust liens that are expressly subordinate to the lien of this Agreement.

Section 8.02. Binding Effect. Every agreement, covenant, promise, undertaking, condition, easement, right, privilege, option and restriction made, granted or assumed, as the case may be, by either party to this Agreement is made by such party not only personally for the benefit of the other party hereto but also as Owner of a portion of the Center, and shall constitute an equitable servitude on the portion of the Center owned by such party appurtenant to, running with the land, and for the benefit of the other portions of the Center. Any transferee of any part of the Center shall automatically be deemed, by acceptance of the title to any portion of the Center, to have assumed all obligations of this Agreement relating thereto to the extent of its interest in its Parcel, and to have agreed with the then Owner or Owners of all other portions of the Center to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Agreement. The transferor of any part of the Center shall, upon the completion of such transfer, be relieved of all liability and obligations of any kind or nature

under this Agreement except for any liability that remains unsatisfied with respect to matters that arose during its period of ownership of the portion of the Center so conveyed.

Section 8.03. Non-Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Center to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns and that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

ARTICLE IX - NOTICES

Section 9.01. Any notice, report or demand required, permitted or desired to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if it is mailed by registered or certified mail, return receipt requested, as the respective parties may from time to time designate by like notice, on the third business day following the date of such mailing:

| | |
|-------------------|--|
| If to Landholder: | Connie Standifer c/o Mitchell A. Spears, Esq. 804 Main Street Montevallo, Alabama Fax No.: (205) 665-7847 |
| If to SP: | Southmark Properties, L.L.C., and Interstate Restaurant Investors, L.L.P. 162 Cahaba Valley Road Pelham, Alabama 35124 Attention: Mr. John McGeever FAX No.: (205) 979-7533 |
| With a copy to: | Sirote & Permutt, P.C. 2311 Highland Avenue Birmingham, Alabama 35205 Attention: Steven A. Brickman, Esq. FAX No. (205) 930-5101 |

or to such other addresses as may be designated by either of the parties upon at least ten (10) days prior written notice to the other in accordance with the methods set forth above.

ARTICLE X - MISCELLANEOUS

Section 10.01.

(a) If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby. It shall not be deemed that any such invalid provision affects the consideration for this Agreement. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) This Agreement shall be construed in accordance with the laws of the State of Alabama.

(c) The Article headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof.

(d) Nothing in this Agreement shall be construed to make the parties hereto partners

or joint venturers or render either of said parties liable for the debts or obligations of the other.

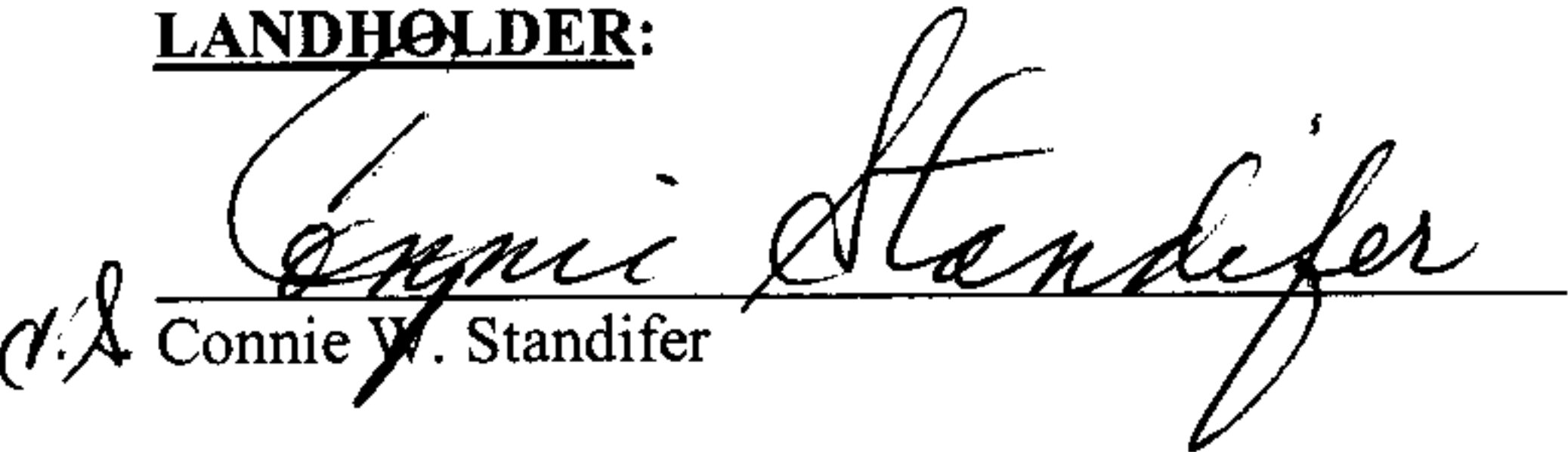
(e) This Agreement shall be binding upon and inure to the benefit of the successors, successors-in-title and assigns of the parties hereto.

(f) This Agreement may be amended, modified, or terminated at any time by a declaration in writing, executed and acknowledged by the SP Approving Party and the Landholder Approving Party.

(g) If there shall be more than one (1) individual or entity described or identified herein as a single party, then the obligations and liabilities of all of such individuals or entities shall be joint and several. Any description or identification herein of multiple individuals or entities as a single party is for purposes of convenience only.

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

LANDHOLDER:


C.W. Standifer

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that
d & Connie W. Standifer, a widow, whose name is signed to the foregoing instrument and who are
known to me, acknowledged before me on this day that, being informed of the contents of said
instrument, (s)he executed the same voluntarily on the day same bears date.

Given under my hand and official seal, this the 18th day of March, 2002.

S. Michele K. Damp
NOTARY PUBLIC
My commission expires: 5/17/03

SP:

**Southmark Properties, L.L.C. and Interstate
Restaurant Investors, L.L.P. collectively, d/b/a
Highway 52 T.I.C.**

Southmark Properties, L.L.C.

By: _____

James A. Bruno, Manager

Interstate Restaurant Investors, L.L.P.

By: _____

John McGeever, Partner

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that James A. Bruno, whose name as Manager of Southmark Properties, L.L.C., an Alabama limited liability company, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said company.

Given under my hand and official seal this 20th day of March, 2002.

NOTARY PUBLIC

My commission expires:

Bonnie McGeever
10-27-2003

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that John McGeever, whose name as Partner of Interstate Restaurant Investors, L.L.P., an Alabama limited liability partnership, 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 the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said partnership.

Given under my hand and official seal this 20th day of March, 2002.

Bonnie McGeever
NOTARY PUBLIC
My commission expires: 10-27-2003

EXHIBIT A

The SP Parcel

Parcel I

A parcel of land located in the NW 1/4 of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the NW corner of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama; thence S 87 deg-46'-00" E a distance of 1669.02'; thence S 18 deg 40'-00" W a distance of 190.46'; thence S 11 deg-40'-00" W a distance of 369.40'; thence N 81 deg-15'-00" E a distance of 37.50'; thence S 14 deg-37'-00" W a distance of 75.00'; thence S 81 deg-15'-00" W a distance of 512.45' to the existing easterly right-of-way of U. S. Highway 31, said point being a point on a curve having a radius of 1650.00' and a central angle of 6 deg-55'-35" said curve subtended by a chord bearing S 0 deg-40'-14" E and a chord distance of 199.34 ; thence southerly along the arc and along said existing right-of-way a distance of 199.47'; thence S 73 deg-16'-36" E and leaving said existing right-of-way a distance of 8.07' to a point on the proposed easterly right-of-way of U. S Highway 31 and to the POINT OF BEGINNING; thence S 01 deg-46'-13" W along said proposed right-of-way a distance of 83.20' to its point of intersection with the existing easterly right-of-way of said U.S. Hwy. 31; thence continue on last described course 76.99'; thence S 07 deg-55'-06" W along said proposed right-of-way a distance of 297.59'; thence S 37 deg-48'-07" E along said proposed right-of-way a distance of 5.45' to the intersection of said proposed Highway 31 right-of-way and the existing northerly right-of-way of Shelby County Highway 52; thence S 37 deg-48'-07" E and leaving said proposed Highway 31 right-of-way and along said existing Highway 52 right-of-way a distance of 95.02' to a point of a curve to the left having a radius of 703.94' and a central angle of 08 deg-23'-52" said curve subtended by a chord bearing S 42 deg-00'-04" E and a chord distance of 103.09'; thence southeasterly along the arc and along said existing right-of-way a distance of 103.18' to the intersection of said existing right-of-way and the proposed Shelby County Highway 52 right-of-way; thence N 37 deg-50'-51" E along said proposed right-of-way and leaving existing Right-Of-Way a distance of 25.46' to the beginning of a curve to the left having a central angle of 3°26'06", a radius of 800.00' and subtended by a chord which bears S 55°35'36" E a chord distance of 47.96'; thence along said curve and along said proposed R.O.W. Line a distance of 47.96' to the point of intersection of said proposed R.O.W. Line and the existing Northerly R.O.W. Line of said Shelby County Road No. 52; thence leaving said proposed R.O.W. Line along said existing R.O.W. Line N 39°58'50" E a distance of 11.30' to the point of beginning of a curve to the left having a central angle of 8°17'39", a radius of 663.94' and subtended by a chord which bears S 54°09'59" E a chord distance of 96.03'; thence along said curve and along said existing R.O.W. Line a distance of 96.11' to the point of intersection of said existing R.O.W. Line and said proposed R.O.W. Line of Shelby County Road No. 52, said point also being the beginning of a curve to the left having a central angle of 14°51'13", a radius of 800.00' and subtended by a chord which bears S 71°43'30" E a chord distance of 206.81'; thence along said curve and along said proposed R.O.W. Line and leaving said existing R.O.W. Line a distance of 207.39' to the end of said curve; thence S 79°09'06" E and continuing along said proposed R.O.W. Line a distance of 66.05' to a point of curve to the left having a central angle of 82 deg-23'-52" and a radius of 25.00', said curve subtended by a chord bearing N 61 deg-23'-59" E and a chord distance of 32.93'; thence northeasterly along the arc and along said proposed right-of-way a distance of 35.95' to the intersection of said proposed right-of-way and the existing westerly right-of-way of Shelby County Highway 33 also a point of curve to the left having a radius of 791.34' and a central angle of 03 deg-14'-03", said curve subtended by a chord bearing N 18deg-35'-02" E and a chord distance of 44.66'; thence northerly along the arc and leaving said proposed Highway 52 right-of-way and along said existing Highway 33 right-of-way a distance of 44.67'; thence N 16 deg-43'-24" E along said existing right-of-way a distance of 667.69' to the intersection of said existing Highway 33 right-of-way and the southerly right-of-way of proposed City of Pelham Street said point also a point of curve to the left having a radius of 45.00' and a central angle of 90 deg-00'-00" said curve subtended by a chord bearing N 28 deg-16'-36" W and a chord distance of 63.64'; thence northwesterly along the arc and leaving said existing Highway 33 right-of-way and along said proposed right of way a distance of 70.69'; thence N 73 deg-16'-36" W along said proposed right-of-way a distance of 86.39' to a point of a curve to the left

having a radius of 450.00' and a central angle of 05 deg-45'-09" said curve subtended by a chord bearing N 76 deg-09'-10" W and a chord distance of 45.16'; thence westerly along the arc and along said proposed right-of-way a distance of 45.18'; thence N 79 deg-01'-44" W along said proposed right-of-way a distance of 405.96'; thence S 16 deg-43'-24" W and leaving said proposed right-of-way a distance of 163.83'; thence N 73 deg-16'-36" W a distance of 122.45' to the POINT OF BEGINNING. Containing 10.78 acres more or less.

Parcel II:

A parcel of land located in the NW ¼ of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama, and being more particularly described as follows:

Commence at the NW corner of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama; thence S 87 deg-46'-00" E a distance of 1669.02'; thence S 18 deg 40'-00" W a distance of 190.46'; thence S 11 deg-40'-00" W a distance of 369.40'; thence N 81 deg-15'-00" E a distance of 37.50'; thence S 14 deg-37'-00" W a distance of 75.00'; thence N 81 deg-15'-00" E a distance of 326.28' to a point, lying on the Westerly Right-of-Way Line of Shelby County Highway #33 (80' Right-of-Way); thence S 12 deg-43'-00" W, along said Right-of-Way Line a distance of 41.58'; thence S 14 deg-35'-24" W, along said Right-of-Way Line a distance of 136.71'; thence S 14 deg-26'-26" W, along said Right-of-Way Line a distance of 134.61'; thence S 16 deg-53'-24" W, along said Right-of-Way line a distance of 11.59'; thence S 16 deg-43'-24" W, along said Right-of-Way Line a distance of 732.86' to the beginning of a curve to the right having a radius of 791.34', a central angle of 03 deg-14'-03" being subtended by a chord which bears S 18 deg-35'-02" W, a chord distance of 44.66'; thence along the arc of said curve and along said Right-of-Way Line a distance of 44.67'; thence continue along arc of said curve through a central angle 7 deg-49'-05", a chord bearing S 24 deg-6'-35" W, a chord distance of 107.89', along said Right-Of-Way Line a distance of 107.98' to the intersection of said Right-of-Way Line and the northerly Right-of-Way Line of Shelby County Highway #52, N 73°8'32" W, along said Right-of-Way Line a distance of 66.81'; thence N 14-deg-32'-22" E, along said Right-of-Way Line a distance of 59.90'; thence N 73 deg-20'32" W, along said Right-of-Way Line a distance of 49.43' to the beginning of a curve to the right having a radius of 663.94', a central angle of 14 deg-15'-11", and subtended by a chord bearing N 65 deg-26'-24" W, a chord distance of 164.74'; thence along said Right-of-Way Line a distance of 165.16' to the Point of Beginning; thence continue along the arc of said curve through a central angle of 08 deg-17'-39", having a chord bearing of N 54deg-9'-59" W, a chord distance of 96.03'; thence along the arc of said curve and along said Right-of-Way Line a distance of 96.11'; thence S 39 deg-58'-50" W, along said Right-of-Way Line a distance of 11.30' to the beginning of a non tangent curve to the left having a radius of 800.00', a central angle of 6 deg-59'-14", and being subtended by a chord which bears S 60 deg-48'-16" E, a chord distance of 97.50'; thence along the arc of said curve a distance of 97.56' to the Point of Beginning. Containing 526 sq. ft. more or less.

EXHIBIT B

Landholder Parcel

Commence at the NW corner of Section 24, Township 20 South, Range 3 West, Shelby County, Alabama; thence S 87 deg-46'-00" E a distance of 1669.02'; thence S 18 deg-40'-00" W a distance of 190.46'; thence S 11 deg-40'-00" W a distance of 369.40'; thence N 81 deg-15'-00" E a distance of 37.50'; thence S 14 deg-37'-00" W a distance of 75.00'; thence S 81 deg-15'-00" W a distance of 512.45' to the existing easterly right-of-way of U. S. Highway 31 said point also being a point on a curve to the right having a radius of 1650.00' and a central angle of 6 deg-55'-35", said curve subtended by a chord bearing S 0 deg-40'-15" E and a chord distance of 199.34'; thence southerly along the arc and along said existing right-of-way a distance of 199.47'; thence S 73 deg-16'-36" E and leaving said existing right-of-way a distance of 8.07' to a point on the proposed easterly right-of-way of U. S. Highway 31 and to the POINT OF BEGINNING; thence S 73 deg-16'-36" E and leaving said proposed right-of-way a distance of 122.45'; thence N 16 deg-43'-24" E a distance 163.83' to the southerly right-of-way of a proposed City of Pelham street; thence N 79 deg-01'-44" W and along said proposed right-of-way a distance of 104.60' to a point of curve to the left having a radius of 250.00' and a central angle of 03 deg-00'-29" said curve subtended by a chord bearing N 80 deg-31'-59" W and a chord distance of 13.12'; thence northwesterly along the arc and along said proposed right-of-way a distance of 13.12' to a point of compound curve to the left having a central angle of 96 deg-11'-34" and a radius of 40.00' said curve subtended by a chord bearing S 49 deg-51'-00" W and a chord distance of 59.54'; thence southwesterly along the arc and along said proposed right-of-way a distance of 67.16' to the intersection of said proposed right-of-way and the proposed easterly right-of-way of U. S. Highway 31; thence S 01 deg-46'-13" W and leaving said proposed City of Pelham right-of-way and along said proposed Highway 31 right-of-way a distance of 105.40' to the Point of Beginning. Containing 21,780 sq ft or 0.50 acres more or less.

The improvements shown on the HD Parcel are an approximation of the initially proposed improvements and not a representation as to the location or maintenance of any actual improvements.

CONNECTOR
ROAD PARCEL

LANDHOLDER PARCEL

HOME DEPOT PARCEL

LOCATION MAP

EXHIBIT "C"

Exhibit "C"

"Landholder Parcel"

This drawing is solely designed to depict the approximate location of the improvements on the Landholder Parcel and is not designed to depict and may not be relied upon for any items not located on the Landholder Parcel.

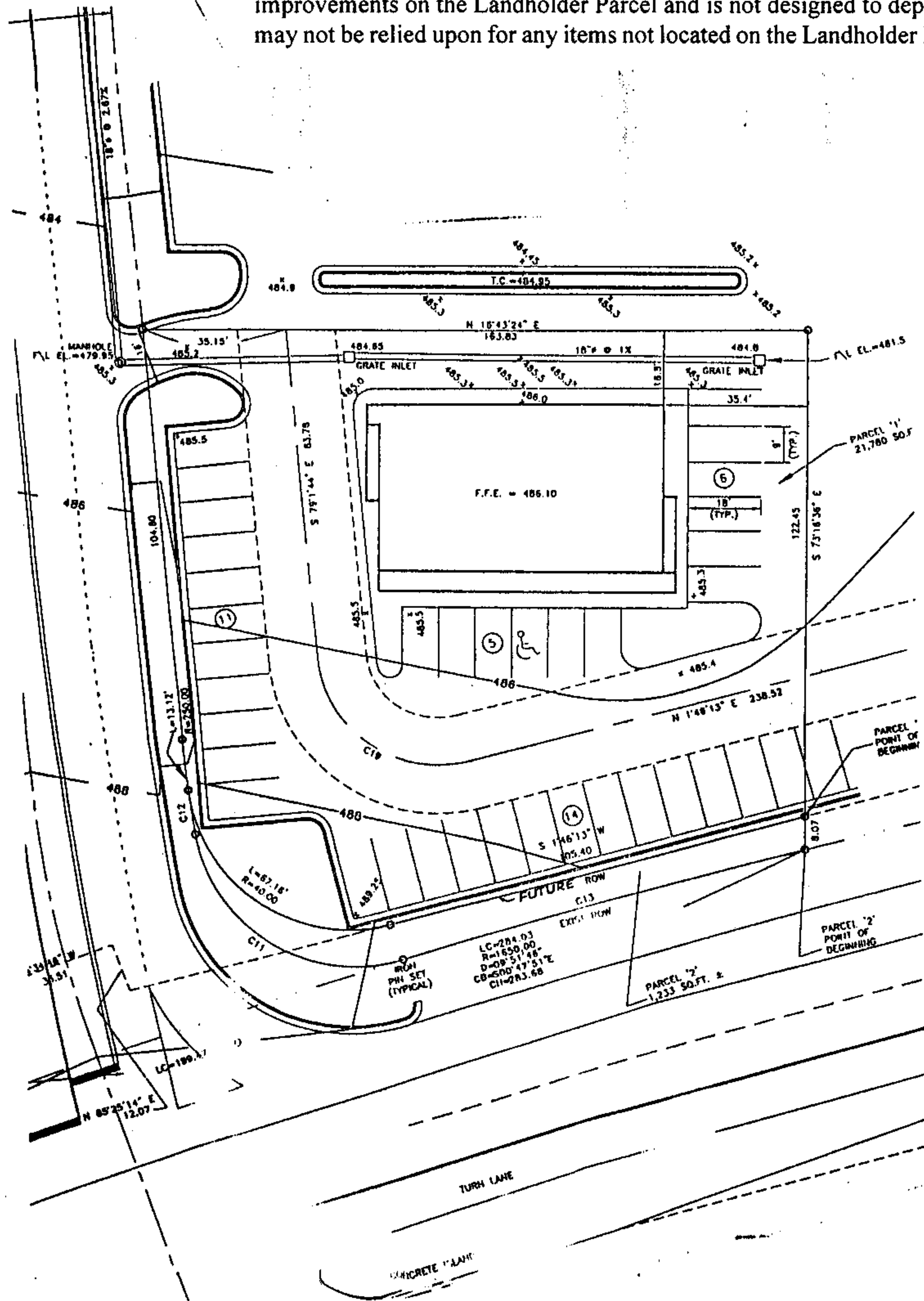


EXHIBIT D

Commence at the NW corner of Section 24, Township 20 South Range 3 West, Shelby County, Alabama; thence S 87 deg-46'-00" E, a distance of 1669.02'; thence S 18 deg-40'-00" W, a distance of 190.46'; thence S 11 deg-40'-00" W, a distance of 369.40'; thence N 81 deg-15'-00" E, a distance of 37.50'; thence S 14 deg-37'-00" W, a distance of 75.00'; thence S 81 deg-15'-00" W, a distance of 350.40'; thence continue along the last described course, a distance of 137.04' to the point of intersection of the easterly proposed and the easterly existing rights-of-way of U. S. Hwy. 31 and the POINT OF BEGINNING; thence continue along the last described course and leaving said proposed R.O.W. Line along said existing R.O.W. Line a distance of 25.06' to the beginning of a curve to the right having a central angle of 3°22'04", a radius of 1,650.00' and subtended by a chord which bears S 2°27'00" E a chord distance of 96.97'; thence along said curve and continuing along said R.O.W. Line a distance of 96.99' to the point of beginning of a curve to the right having a central angle of 42°12'12", a radius of 40.00' and subtended by a chord which bears N 20°20'08" E a chord distance of 28.80'; thence along said curve and leaving said R.O.W. Line a distance of 29.46' to a point lying on the proposed Easterly R.O.W. Line of U.S. Hwy. 31, said point also being a point of compound curve to the right having a central angle of 54°01'17", a radius of 40.00' and subtended by a chord which bears N 68°26'12" E a chord distance of 36.31'; thence along said curve a distance of 37.71' to the point of beginning of a curve to the right having a central angle of 2°30'53", a radius of 250.00' and subtended by a chord which bears S 83°17'42" E a chord distance of 10.97'; thence along said curve a distance of 10.97' to a point of compound curve to the right having a radius of 250.00' and a central angle of 03 deg-00'-29", said curve subtended by a chord bearing S 80 deg-31'-59" E and a chord distance of 13.12'; thence easterly along the arc, a distance of 13.13'; thence S 79 deg-01'-44" E a distance of 510.56' to a point of a curve to the right having a radius of 450.00' and a central angle of 05 deg-45'-09", said curve subtended by a chord bearing S 76 deg-09'-10" E and a chord distance of 45.16'; thence easterly along the arc a distance of 45.18'; thence S 73 deg-16'-36" E, a distance of 86.39' to a point of a curve to the right having a radius of 45.00' and a central angle of 90 deg-00'-00", said curve subtended by a chord bearing S 28 deg-16'-36" E and a chord distance of 63.64'; thence southeasterly along the arc a distance of 70.69' to the westerly right-of-way of Shelby County Hwy 33; thence N 16-deg-44'-55" E along said right-of-way, a distance of 77.60'; thence N 14 deg-26'-26" E along said right-of-way a distance of 115.13' to a point of a curve to the right having a central angle of 92 deg-16'-58" and a radius of 45.00', said curve subtended by a chord bearing S 60 deg-33'-03" W and a chord distance of 64.89'; thence southwesterly along the arc and leaving said right-of-way, a distance of 72.48'; thence N 73 deg-16'-36" W, a distance of 81.87' to a point of a curve to the left having a radius of 550.00' and a central angle of 05 deg-45'-09" said curve subtended by a chord bearing N 76 deg-09'-10" W and a chord distance of 55.20'; thence westerly along the arc a distance of 55.22'; thence N 79 deg-01'-44" W, a distance 510.55' to a point of a curve to the left having a central angle of 06 deg-05'-47" and radius of 350.00', said curve subtended by a chord bearing N 82 deg-04'-38" W and a chord distance of 37.22'; thence northwesterly along the arc, a distance of 37.24' to a point of reverse curve having a central angle of 78 deg- 50'-28" and a radius of 40.00', said curve subtended by a chord bearing N 45 deg-42'-17" W and a chord distance of 50.80'; thence along the arc, a distance of 55.04' to the existing easterly right-of-way of U. S. Highway 31 and also a point of curve to the right having a central angle of 01 deg-42'-17" and a radius of 2528.74', said curve subtended by a chord bearing S 05 deg-25'-55" E and a chord distance of 75.24'; thence along the arc and along said existing right-of-way a distance of 75.24' to the POINT OF BEGINNING.

Containing 1.78 acres, more or less.

Inst # 2002-13458

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04:02 PM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
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