EASEMENT WITH COVENANTS AND RESTRICTIONS

THIS AGREEMENT is made as of the // day of d

WITNESSETH:

WHEREAS, Sam's is the owner of certain real property located in Bowling Green, Warren County, Kentucky, as more particularly described in <u>Exhibit A</u> attached hereto and made a part hereof (the "Sam's Property");

WHEREAS, Farmers is the owner of (a) certain real property located adjacent to the Sam's Property, the same being more particularly depicted and/or described in Exhibit B attached hereto and made a part hereof ("Adjacent Property"); (b) certain real property located near to but not adjacent to the Sam's Property, the same being more particularly depicted and/or described in Exhibit B attached hereto ("Remote Property"); and (c) certain real property located at the corner Scottsville Road and Alvaton Road, the same being more particularly depicted and/or described on Exhibit C attached hereto and made a part hereof ("Pylon Property");

WHEREAS, Sam's and Farmers desire that the Sam's Property, the Adjacent Property, the Remote Property, and the Pylon Property be subject to the easements and the covenants, conditions and restrictions hereinafter set forth;

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions, and encumbrances contained herein, the sufficiency of which is hereby acknowledged, Sam's and Farmers do hereby agree as follows:

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- 1. <u>Use.</u> For so long as Sam's, or any affiliate of Sam's, is the owner or lessee of the Sam's Property, no space in or portion of the Remote Property or the Adjacent Property shall be leased or occupied by or conveyed to any other party for use as a theatre, bowling alley, billiard parlor, nightclub or other place of recreation or amusement, or any business serving alcoholic beverages without the prior written consent of Sam's; provided, however, a restaurant which sells alcoholic beverages shall be permitted so long as the sale of alcoholic beverages does not exceed fifty percent (50%) of the gross sales of such restaurant. Notwithstanding anything to the contrary contained herein, it is expressly agreed that nothing contained in this Agreement shall be construed to contain a covenant, either express or implied, to either commence the operation of a business or thereafter continuously operate a business by Sam's on the Sam's Property. Farmers recognizes and agrees that Sam's may, at Sam's' sole discretion and at any time during the term of this Agreement, cease the operation of its business on the Sam's Property; and Farmers hereby waives any legal action for damages or for equitable relief which might be available to Farmers because of such cessation of business activity by Sam's.
- 2. Competing Business (Adjacent Property). Farmers covenants that as long as Sam's, or any affiliate of Sam's, is the owner or lessee of the Sam's Property, no space in or portion of the Adjacent Property shall be leased or occupied by or conveyed to any other party for use as (a) a grocery store or supermarket, as hereinafter defined below, (b) a wholesale club operation similar to that of a Sam's Club owned and operated by Sam's, (c) a discount department store or other discount store, as hereinafter defined, (d) a pharmacy, or (e) a gasoline service station or other business engaged in the retail sale of gasoline. In the event of a breach of this covenant, Sam's shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity, including, without limitation, the rights to injunctive relief. "Grocery store" and "supermarket", as those terms are used herein, shall mean a food store or a food department containing more than 10,000 square feet of gross leasable area, for the purpose of selling food for consumption off the premises, which shall include but not be limited to the sale of dry, refrigerated or frozen groceries, meat, seafood, poultry, produce, delicatessen or bakery products, refrigerated or frozen dairy products, or any grocery products

normally sold in such stores or departments, "Discount department store" and/or "discount store", as those terms are used herein, shall mean a discount department store or discount store containing more than 35,000 square feet of gross leasable area, for the purpose of selling a full line of hard goods and soft goods (e.g. clothing, cards, gifts, electronics, garden supplies, furniture, pharmacy, lawnmowers, toys, health and beauty aids, hardware items, bath accessories and auto accessories) at a discount in a retail operation similar to that of Wal-Mart. Notwithstanding the foregoing, the Adjacent Property, or a portion thereof, may be leased, occupied or conveyed for the operation of (i) a Kohl's store or other similar department store not exceeding 80,000 square feet whose primary lines of merchandise are men's, women's and children's clothing, jewelry, shoes and accessories, greeting cards, and housewares, or (ii) a linens and housewares store such as Bed Bath & Beyond or Linens 'n Things.

3. <u>Competing Business (Remote Property)</u>. Farmers covenants that as long as Sam's, or any affiliate of S am's, is the owner or lessee of the S am's Property, no space in or portion of the Remote Property shall be leased or occupied by or conveyed to any other party for use as (a) a wholesale club operation similar to that of a Sam's Club owned and operated by Sam's or (b) a gasoline service station or other business engaged in the retail sale of gasoline. In the event of a breach of this covenant, Sam's shall have the right to terminate this Agreement and to seek any and all remedies afforded by either law or equity, including, without limitation, the rights to injunctive relief.

4. Pylon Sign.

(a) Construction. Farmers shall construct and install, at Farmers' expense, a pylon sign on the Pylon Property in a good and workmanlike manner and generally in accordance with the design shown on Exhibit D attached hereto and made a part hereof, which pylon sign shall be the maximum height and signage area permitted by applicable law, ordinance, rule, or regulation (the "Pylon Sign"). Farmers shall complete construction of the Pylon Sign no later than thirty (30) days prior to the opening for business of the Sam's Club store on the Sam's Property. Sam's shall provide Farmers with written notice of its anticipated opening date at least ninety (90) days prior to such opening date. Prior to locating the Sam's Sign (defined below) on the Pylon Sign, Sam's shall reimburse Farmers for a portion of the construction costs of the Pylon Sign, such portion to be

determined by multiplying the total construction costs of the Pylon Sign (excluding the cost of any individual sign panels to be located on the Pylon Sign) by a fraction, the numerator of which shall be the total square footage of the Sam's Sign and the denominator of which shall be the total square footage of signage that can be accommodated on the Pylon Sign ("Sam's Share"). Seller shall provide Sam's with reasonable documentation of the construction costs of the Pylon Sign.

(b) Grant of Easement. Farmer's hereby grants and conveys to Sam's for the benefit of the Sam's Property a perpetual easement to locate a sign panel in the top or first position on the Pylon Sign, which sign panel shall be Sam's prototypical sign advertising the business conducted on the Sam's Property (the "Sam's Sign"). Farmers also grants and conveys to Sam's for the benefit of the Sam's Property (i) a non-exclusive easement over, on, through and across the Pylon Property for the purpose of installing, maintaining, repairing, and replacing the Sam's Sign, and (ii) a temporary easement to access and utilize, from time to time, areas adjoining the Pylon Property if reasonably necessary to install, maintain, repair and replace the Sam's Sign, but only on the condition that Sam's use its commercially reasonable efforts to minimize the use of such additional area and that Sam's promptly repair any damage done by it to such adjoining areas. Farmers reserves the right, and to the extent necessary, Sam's grants Farmers the right, to add signage below the Sam's Sign on the Pylon Sign to advertise other businesses operating on the Adjacent Property and the Remote Property.

(c) Maintenance.

(i) Farmers shall operate, maintain, illuminate, repair, and replace, as reasonably necessary, the Pylon Sign, and shall provide Sam's with an itemization and reasonable documentation of such costs (the "Operating Costs") on an annual basis. Sam's shall reimburse Farmer's for Sam's pro rata share of such Operating Costs within thirty (30) days after receipt of such itemization and documentation. Sam's share of the Operating Costs shall be determined by multiplying the total amount of the Operating Costs by Sam's Share. In the event that Farmers fails to operate, maintain, illuminate, repair, and replace, as reasonably necessary, the Pylon Sign, then Sam's shall have the right, but not the obligation, upon ten (10) days written notice to Farmers, to undertake and complete all work necessary to maintain, repair, or replace the Pylon Sign, and shall be entitled to

reimbursement from F armers for all reasonable costs incurred in connection therewith within thirty (30) days after receipt by Farmers of reasonable documentation of such costs.

- (ii) Each party shall be responsible for the maintenance, repair, and replacement, as reasonably necessary, of its own sign panel(s) on the Pylon Sign. In the event that any party fails to maintain, repair, or replace, as reasonably necessary, its sign panel(s), then the other party shall have the right, but not the obligation, upon ten (10) days written notice to the responsible party, to undertake and complete all work necessary to maintain, repair, or replace such sign panel(s), and shall be entitled to reimbursement from the responsible party for all reasonable costs incurred in connection therewith within thirty (30) days after receipt by such responsible party of reasonable documentation of such costs.
- Property in any manner whatsoever so long as such use shall not interfere with the use and maintenance of the Pylon Sign and the easements and related rights granted herein. Farmers agrees that no other sign shall be constructed on the Pylon Property or the Remote Property that will interfere with the visibility of the Pylon Sign from any adjoining street or road.

5. Grading and Sloping Easement.

(a) Grant of Easement. Farmers hereby grants to Sam's, its successors and assigns, for the benefit of the Sam's Property, a temporary easement to grade and slope a portion of the Adjacent Property located northeast of the Sam's Property for the purpose of tying in the grades between the Sam's Property and the Adjacent Property to allow the construction of the driveway and curb cut described in Section 6 hereunder. Said grading easement area shall be an area approximately fifteen feet (15') by one hundred feet (100') at the southeast corner of such Adjacent Property as shown on Exhibit E and more particularly described on Exhibit F, both attached hereto and made a part hereof by this reference (the "Grading Easement Area"). Sam's shall complete the grading and sloping work permitted by this Agreement in a good and workmanlike manner in accordance with Sam's grading plan as reflected on Sheet C3.0 of the Site Grading Plan prepared by Site Incorporated dated July 2, 2004 (the "Grading Plan"). Any slope constructed upon the Grading Easement Area shall be

landscaped, sodded and/or otherwise mulched and seeded with grass by Sam's, all in accordance with the Grading Plan, in such a way so that it will hold the soil or other material so that it will not slide, wash or fill with gullies causing erosion.

- (b) <u>Temporary Construction Easement.</u> Farmers hereby grants to Sam's, its successors and assigns, a temporary construction easement over so much of the Adjacent Property as is reasonably necessary to allow Sam's to perform the grading work described in Subsection (a) above, which temporary easement shall expire upon completion of such work.
- 6. Cross-Access Easement. Farmers and Sam's each hereby grants to the other, for the benefit of the Sam's Property and that portion of the Adjacent Property located northeast of the Sam's Property (collectively, the "Cross-Access Parcels"), a non-exclusive permanent easement for motor vehicle ingress and egress (the "Cross-Access Easement") over and across the driveway(s) to be constructed on the Cross-Access Parcels extending from the proposed city street known as Ken Bale Boulevard to the curb cut to be constructed by Sam's in the northeast corner of the Sam's Property, as shown on the site plan attached hereto as Exhibit G and made a part hereof. This Cross-Access Easement shall become effective upon the development of the Adjacent Property for commercial use and the completion of construction of the driveway(s) on both Cross-Access Parcels. All vehicular traffic over the Cross-Access Easement shall be confined to the vehicular driveway areas so designated on the Cross-Access Parcels, and the parties shall a bide by all driveway safety signs and speed limits that may be posted on the Cross-Access Parcels. Upon ten (10) days prior notice to the other party (unless an emergency exists, in which event as much notice shall be given as is reasonably possible), Farmers and Sam's may from time to time close all or a portion of the driveway areas located on their respective tract for a time reasonably necessary to effect repairs or maintenance of such tract or for future development. In addition, each party reserves the right to modify or relocate the driveways located on its own tract from time to time provided such modification or relocation does not materially restrict or prevent ingress and egress to and from the other Cross-Access Parcel. The parties acknowledge that no cross-parking rights are granted hereunder.

The Cross-Access Easement may be used non-exclusively by Sam's and Farmers and their respective employees, agents, customers, tenants and all other permitees, invitees and licensees associated with any commercial operations to be located on the Cross-Access Parcels; provided, however, that neither party shall use any of the driveways located on the other party's tract for the movement of construction equipment or mobile homes or in support of a trucking business or truck terminal. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Cross-Access Parcels to the general public or for any public purpose whatsoever. Farmers and Sam's each reserves the right to restrict access over all or a portion of the driveway areas located on its tract for one (1) day each year if necessary to prevent a dedication by operation of law.

- 7. **Binding Elements.** Farmers shall not seek to amend or modify the Statement of Binding Elements adopted December 4, 2003, and recorded in Deed Book 876, page 492 in the Warren County Clerk's Office, without the prior written approval of Sam's.
- 8. <u>Indemnification</u>. Each party hereby indemnifies and holds harmless the other party from a ny and all claims, liability, damage, penalty, judgment, cost and expense, including, without limitation, reasonable attorneys' fees and expenses, arising from loss, damage or injury to person or property sustained by anyone as a result of the exercise by the indemnifying party of its rights pursuant to this Agreement, except as may result from an act, omission or negligence of the other party. To the extent that any owner(s) of the Sam's Property, the Adjacent Property, or any portion thereof, has a net worth of less than FIFTY MILLION DOLLARS (\$50,000,000.00), then in such event, such owner shall maintain and keep in force in its name, naming Sam's and the other owner(s) of the Adjacent Property as additional insureds, public liability insurance in the amounts of \$2,000,000.00 per person and \$5,000,000.00 per occurrence and \$1,000,000.00 for property damage, each in the standard form generally in use in the Commonwealth of Kentucky in a company or companies satisfactory to Sam's. Such insurance shall be subject to modification or cancellation only upon thirty (30) days notice to each certificate holder. Each year, not less than thirty (30) days prior to the expiration of any such policy, each such owner shall furnish to Sam's and the other owner(s) a certificate of insurance of such

coverage with a paid statement for the premium due, such certificate to be in a form acceptable to Sam's.

- 9. **Rights of Successors.** The easements, restrictions, benefits and obligations hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto, their respective heirs, representatives, lessees, successors and assigns. The singular number includes the plural and the masculine gender includes the feminine and neuter.
- 10. **Entire Agreement**. This document constitutes the entire agreement between Sam's and Farmers regarding the subject matter hereof and it shall not be amended, altered or changed except by a written agreement signed by Sam's and Farmers.
- 11. **Duration.** Unless otherwise canceled or terminated, all of the easements granted in this Agreement shall continue in perpetuity and all other rights and obligations hereof shall automatically terminate and be of no further force and effect after ninety-nine (99) years from the date hereof.
- 12. **Headings.** The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this document nor in any way affect the terms and provisions hereof.
- 13. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the Commonwealth of Kentucky.

Remainder of page is left blank intentionally. Signature pages follow. IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

FARMERS INVESTMENT COMPANY, INCORPORATED, a Kentucky corporation

Title: Availant

COUNTY OF WARREN

The foregoing instrument was acknowledged before me this \(\lambda \) day of \(\begin{align*} \omega \) AUGUST, 2004, by \(\begin{align*} \omega \) M BALE as \(\begin{align*} \omega \) BESIDENT of Farmers Investment Company, Incorporated, a Kentucky corporation, for and on behalf of such corporation.

MOTARY PUBLIC, State at Large My Commission Expires
My Commission expires
February 25, 2006

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

> ERIC ZORN, TRUSTEE, SAM'S REAL ESTATE BUSINESS TRUST,

a Delaware statutory trust

By:

Michael E. Gardner

Title: Assistant Vice President

Approved as to legal terms only

WAL-MART LEGAL DEPT.

COUNTY OF BENTON

STATE OF ARKANSAS

The foregoing instrument was acknowledged before me this 10th day of August, 2004, by Michael E. Gardner as Assistant Vice President of Eric Zorn, Trustee, Sam's Real Estate Business Trust, a Delaware statutory trust, for and on behalf of said statutory trust.

ROBIN M. LE MEUR **Benton County** My Commission Expires May 1, 2013

NOTARY PUBLIC, State at Large

My Commission expires 5-1-2013

THIS INSTRUMENT WAS PREPARED BY:

Richard M. Hopgood

Attorney-at-Law

771 Corporate Drive, Suite 640

P.O. Box 910416

Lexington, Kentucky 40591-0416

(859) 219-9455

EXHIBIT A

Sam's Property

A certain tract of land located in Bowling Green – Warren County, Kentucky, and being situated at the intersection of the North Right of Way of Alvaton Road – KY 872 formerly (Old Scottsville Road) and the West Right of Way of Interstate 65 (I-65). Said tract of land being all of Lot 1 on the Plat of record in Major Plat Book 36, pages 37 and 38 in the Warren County Clerk's Office. Said tract is more particularly described as follows:

The basis of the bearing referred to herein is Grid North. The survey in which this description is based is referenced to the Kentucky State Plane Coordinate System and the Kentucky Department of Transportation for Interstate 65 (I-65) along with monumentation established by Photo Science in November of 1997. Said monuments are based on the Kentucky HARN Control Network with the horizontal datum being NAD 1983 (1994). Also unless otherwise noted herein the 5/8" iron pin and aluminum cap (set) is a 5/8" x 24" rebar with a 2" aluminum cap stamped American Engineers, Inc., JD Pedigo LS 2933.

Beginning at a 5/8" iron pin and aluminum cap (set) in the East Right of Way (Right of Way width varies) of a proposed street connecting Scottsville Road (US 231) and Shive Lane, said corner being 43 feet right of proposed centerline station 20+24.00, a new corner to Farmers Investment Co., Inc. Deed Book 669 Page 555, thence along said Right of Way and a new line to said Farmers N27°03'53"E, 824.33 feet to 5/8" iron pin and aluminum cap (set), 43 feet right of said centerline station 28+48.33, also a new corner to said Farmers, thence leaving said Right of Way and along another new line to said Farmers Investment S62°56'07"E; 741.97 feet to a 5/8" iron pin and aluminum cap (set) in the West Right of Way of Interstate 65, (I-65 Right of Way width varies), Commonwealth of Kentucky, Department of Highway's Deed Book 383 Page 40, also a new corner. Thence along said I-65's West Right of Way, S19°27'13"W; 13.78 feet to a 5/8" iron pin and aluminum cap (set) in said Right of Way 130 feet left of I-65 centerline Station 488+30, thence continuing along said Right of Way S25°36'00"W; 934.15 feet to a 5/8" iron pin and aluminum cap (set) 130 feet left of said centerline, a corner in the North 50 foot Right of Way of said Alvaton Road, said corner being situated 7.3 feet Northeast of an existing Sanitary Sewer Manhole found near the Northeast end of said Alvaton Road, thence leaving said I-65's Right of Way and along said Alvaton Road's North Right of Way N72°06'57"W; 128.31feet to a 5/8" iron pin and aluminum cap (set), thence N76°18'19"W; 53.48 feet to a 5/8" iron pin and aluminum cap (set), 6.7 feet Northeast of an existing sanitary sewer manhole, thence continuing along said Alvaton Road's Right of Way N80°29'20"W; 50.80 feet to a 5/8" iron pin and aluminum cap (set), thence N82°26'03"W; 49.28 feet to a 5/8" iron pin and aluminum cap (set), thence continuing along said Alvaton Road's Right of Way N84°48'32"W; 82.53 feet to a 5/8" iron pin and aluminum cap (set), a new corner in said Right of Way, a new corner to said Farmers Investment Co., and being referenced S85°32'42"E; 369.02 feet from an iron pin with a 1-1/4" yellow plastic cap stamped James R. Adams, PLS 1891 (found), the Southwest corner of the Farmers Investment Parent Tract (Deed Book 669 Page 555), also being a corner in the East Right of Way (Right of Way width varies) of a proposed access road connecting Alvaton Road KY-872 (formerly Old Scottsville Road) to the proposed Scottsville Road/Shive Lane Connector, said corner is 30 feet left of said proposed centerline, thence leaving Alvaton Road's existing Right of Way and along said proposed Right of Way and an arc having a Delta Angle of 52°07'39''left, a radius of 465.00 feet, an arc length of 423.06 feet, and a chord bearing and distance of

N36°52'17"W; 408.62 feet to a 5/8" iron pin and aluminum cap (set) 30 feet left of the proposed centerline P.C. Station 10+93.44, thence continuing along said Right of Way N25°13'34"W; 63.76 feet to the Point of Beginning containing 713075.95 square feet or 16.370 acres more or less as surveyed by American Engineers, Inc. James D. Pedigo II, PLS No. 2933 on April 05, 2004.

BEING a portion of the real estate conveyed to Farmers Investment Co., Inc., by James K. Bale and wife, Nell O'Bryan Bale, by Deed dated June 1, 1993, recorded in Deed Book 669, page 555 in the Warren County Clerk's Office.

EXHIBIT B

[Attach Adjacent/Remote Property Diagram]

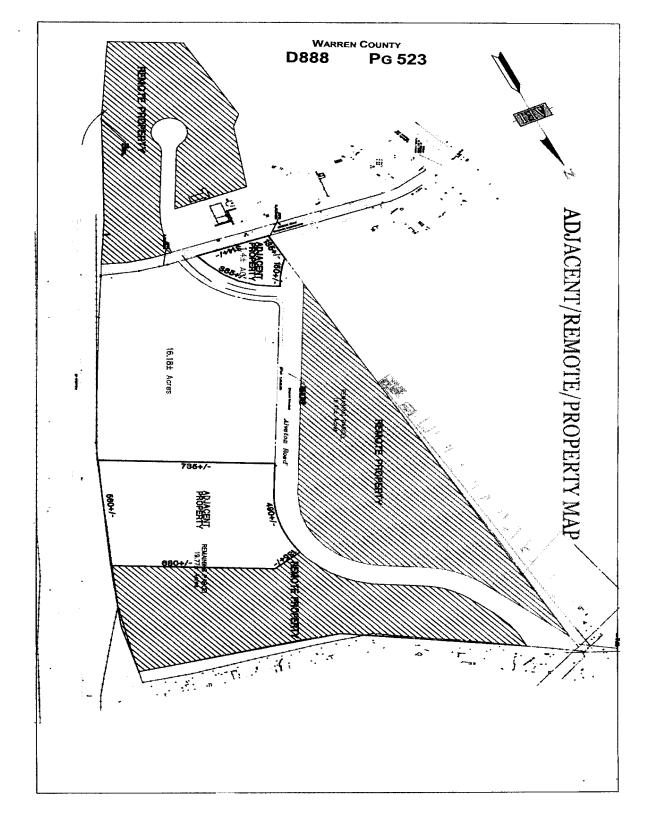


EXHIBIT C

[Attach description/plat of Pylon Property]

WARREN COUNTY

D888 PG 525

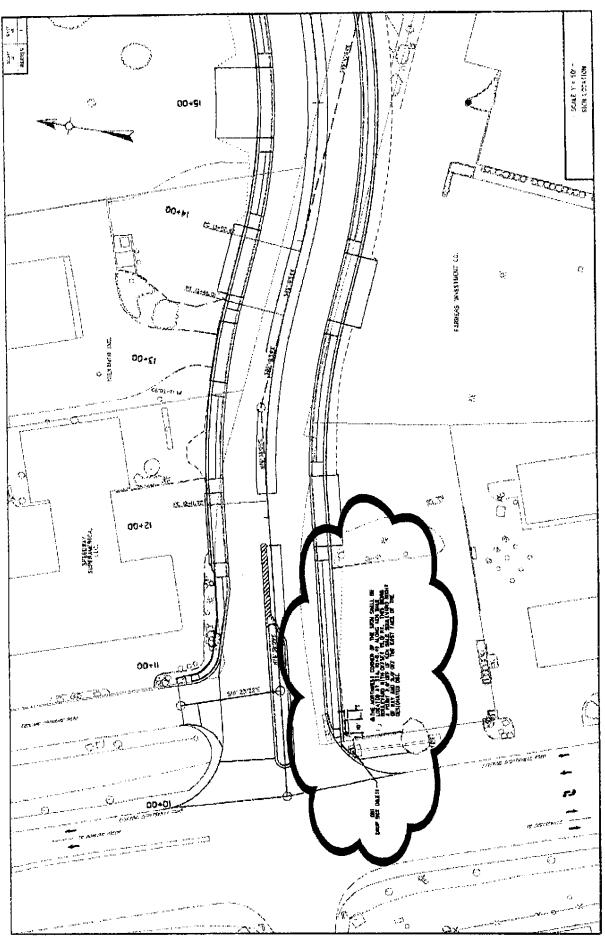
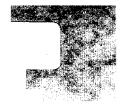


EXHIBIT D

[Attach diagram of pylon sign]

EXHIBIT D



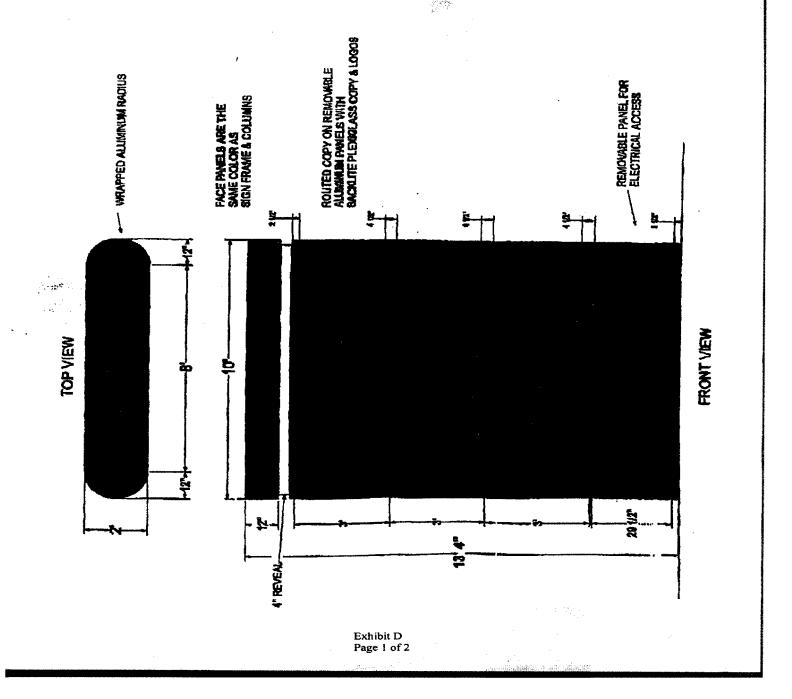


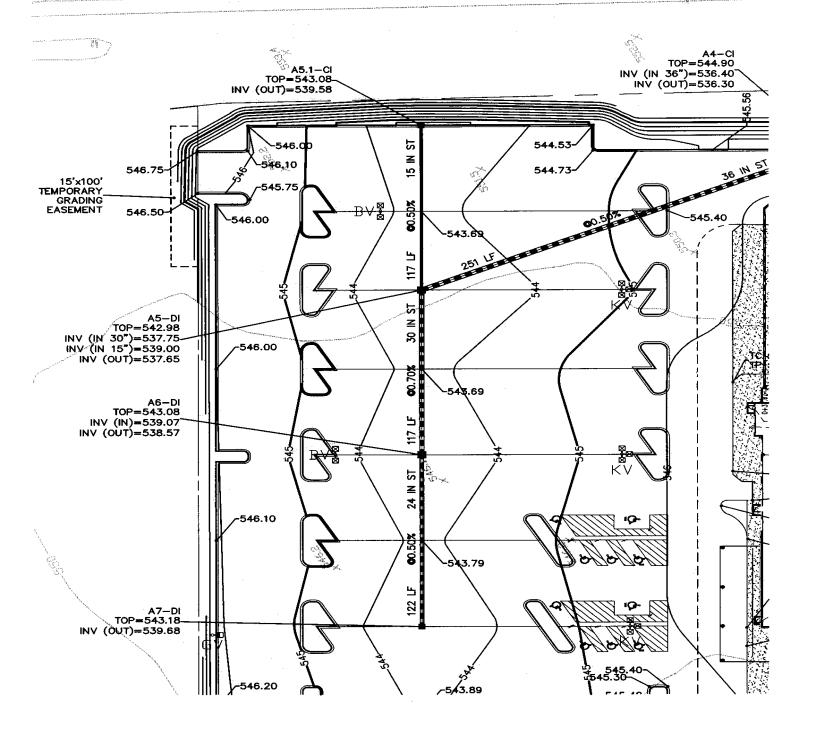


Exhibit D Page 2 of 2

EXHIBIT E

[Attach diagram of Grading Easement Area]

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EXHIBIT F

Grading Easement Area

A certain tract of land located in Bowling Green – Warren County, Kentucky, and being situated at the intersection of the North Right of Way of Alvaton Road – KY 872 formerly (Old Scottsville Road) and the West Right of Way of Interstate 65 (1-65). Said tract of land being a portion of Farmers Investment Company, Inc. Deed Book 669 Page 555 of record in the office of the Warren County Court Clerk. Said tract is more particularly described as follows:

The basis of the bearing referred to herein is Grid North. The survey in which this description is based is referenced to the Kentucky State Plane Coordinate System and the Kentucky Department of Transportation for Interstate 65 (I-65) along with monumentation established by Photo Science in November of 1997. Said monuments are based on the Kentucky HARN Control Network with the horizontal datum being NAD 1983 (1994). Also unless otherwise noted herein the 5/8" iron pin and aluminum cap (set) is a 5/8" x 24" rebar with a 2" aluminum cap stamped American Engineers, Inc., JD Pedigo LS 2933.

Commencing at a 5/8" iron pin and aluminum cap (set) in the East Right of Way (Right of Way width varies) of a proposed road connecting Scottsville Road and Shive Lane, said corner being 43 feet right of proposed centerline station 20+24.00, a new corner to Farmers Investment Co., Inc. Deed Book 669 Page 555, thence along said Right of Way and a new line to said Farmers N 27°03'53" E; 824.33 feet to a 5/8" iron pin and aluminum cap (set), 43 feet right of said centerline station 28+48.33, also a new corner to said Farmers, thence leaving said Right of Way and along a new line to said Farmers S 62°56'07" E; 627.83 feet to a point, The Point of Beginning, thence continuing along said line S 62°56'07" E; 100.00 feet to a point, thence leaving said line N 27°03'53" E; 15.00 feet to a point, thence N 62°56'07" W; 100.00 feet to a point, thence S 27°03'53" W; 15.00 feet to The Point of Beginning containing 1500 square feet or 0.034 acres more or less as surveyed by American Engineers, Inc., Jeff Arnold PLS No. 2934 on April 05, 2004.

EXHIBIT G

[Attach Site Plan]

