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FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2006 JUL 17 12:33:05 PM
BK:5051 PG:2786-2805 FEE:\$68.00

INSTRUMENT # 2006040267

Drawn by and mail to:
Moore & Van Allen PLLC (S. Smith)
100 N. Tryon Street, Suite 4700
Charlotte, NC 28202-4003

Parcel No Pt of R07900-001-017-000 and R07905-004-001-000

EASEMENT AND RESTRICTIVE COVENANT AGREEMENT

THIS EASEMENT AND RESTRICTIVE COVENANT AGREEMENT (this "Agreement") is made as of the 14 day of July, 2006, by **BRM ASSOCIATES #1, LLC**, a North Carolina limited liability company (hereinafter referred to as the "BRM"), and **TOWNES AT MARKETPLACE, LLC**, a North Carolina limited liability company ("Marketplace"). BRM and Marketplace are sometimes hereinafter referred to as "Owner" or "Owners".

WITNESSETH THAT:

WHEREAS, BRM currently is the owner of Lots 2, 3 5 and 6 located in New Hanover County, North Carolina, as more particularly described on Exhibit A-1 attached hereto and incorporated herein by reference and as depicted on Exhibit A-3 (the "BRM Property"); and

WHEREAS, Marketplace is the owner of Lot 4 located in New Hanover County, North Carolina, and which is more particularly described on Exhibit A-2 attached hereto and incorporated herein by reference and as depicted on Exhibit A-3 (the "Marketplace Property"; and collectively with the BRM Property, the "Property"); and

WHEREAS, BRM intends to develop the BRM Property as a mixed use center and associated outparcels, to be known as "Beau Rivage Marketplace"; and

WHEREAS, Marketplace intends to develop the Marketplace Property for residential townhomes; and

WHEREAS, the Property is shown on that certain site plan for the BRM Property and the Marketplace Property, a complete copy of which is attached hereto as Exhibit B (the "Site Plan"); and

WHEREAS, the parties desires to establish and create certain covenants, conditions, easements, rights, obligations and restrictions to facilitate the mutually beneficial development and operation of the BRM Property and the Marketplace Property;

NOW THEREFORE, BRM and Marketplace, for themselves and their respective successors and assigns, hereby declare that the Property shall be held, occupied, used, rented, enjoyed, transferred,

conveyed, mortgaged or otherwise encumbered subject to the following covenants, conditions, easements, rights and restrictions:

**ARTICLE I
EASEMENTS FOR MARKETPLACE PROPERTY**

1. Access Easements for Marketplace Property across Common Area of BRM Property.

BRM hereby establishes and creates for the benefit of, and as an appurtenance to, the Marketplace Property and for the benefit of the Unit Owners and the HOA (as defined below) of the Marketplace Property from time to time and their respective Permittees (as defined below), perpetual non-exclusive rights, privileges and easements for the passage of vehicles and for the passage and accommodation of pedestrians over, across and through the roadways, driveways, curbcuts, aisles, walkways, and sidewalks located within the common area of the BRM Property, as the same may from time to time be constructed and maintained for such uses. Marketplace and its occupants shall use reasonable efforts to assure that construction traffic to and from the Marketplace Property shall not interfere with the use, occupancy and enjoyment of the BRM Property (or any part thereof). As used herein, "Permittee" shall mean all owners of any condominium units on the Marketplace Property ("Unit Owners"), occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, guests, invitees, licensees, tenants, subtenants, and concessionaires of occupants and other persons who have business with occupants in the Property insofar as their activities relate to the intended use of the Property.

2. Specific Access Easement for Marketplace Property for Driveway.

BRM hereby establishes and creates for the benefit of, and as an appurtenance to, the Marketplace Property and for the benefit of the Owners or occupants of the Marketplace Property from time to time and their respective Permittees, a perpetual non-exclusive right, privilege and easement for the passage of vehicles over, across and through the driveway marked as the "Access and Utility Easement for the Benefit of Lot 4" on the BRM Property and as shown on the Site Plan attached hereto (the "Main Marketplace Access Drive"), as the same may from time to time be constructed and maintained for such uses.

3. Utility Easement for Benefit of Marketplace Property.

BRM hereby establishes and creates for the benefit of, and as an appurtenance to, the Marketplace Property, a perpetual non-exclusive right, privilege and easement for (a) the purpose of installing utilities within the Main Marketplace Access Drive on the BRM Property (hereinafter referred to as the "Drive Utility Lines"), and (b) for the purposes of connecting and tying into only the water and sanitary sewer lines and facilities installed within the Main Marketplace Access Drive on the BRM Property and marked as "12" PVC Water Line" and "8" SS Line" on Exhibit C attached hereto and incorporated herein for the delivery of water and sanitary sewer utility services to the Marketplace Property and the improvements from time to time located thereon (collectively "Available Utility Lines"). Provided, however, such easement rights shall be subject to the following provisions:

(a) The location of the lines and facilities to be installed in connection with the Drive Utility Lines or used to connect to any Available Utility Lines shall be subject to the prior written approval of BRM in its sole discretion. The easement area related thereto shall be no larger than whatever is necessary to reasonably satisfy the utility company, as to a public utility, or five (5) feet on each side of the centerline of the utility facilities as actually installed as to a private line.

(b) Marketplace shall (i) provide at least forty-five (45) days prior written notice to BRM of its intention to do such work, (ii) pay all costs and expenses with respect to such work, (iii) cause all work in connection therewith (including general clean-up and surface and/or subsurface restoration) to be completed using first class materials and in a good and workmanlike manner as quickly as possible and in a manner so as to minimize interference with the use of and conduct and operation of the business of the owner whose tract is affected, (iv) not interrupt, diminish, or otherwise interfere with, or increase the cost of, the utility services to the other parties served by such Available Utility Lines or affect any other lines within the Main Marketplace Access Drive, (v) comply in all respects with all applicable governmental laws, regulations, and requirements, (vi) promptly, at its sole cost and expense, clean the area and restore the affected portion of the BRM Property to a condition equal to or better than the condition which existed prior to the commencement of such work and (vii) indemnify and hold BRM and any occupants thereof harmless from and against any claims, actions, demands, damages, losses, injuries or expenses, including, without limitation, reasonable attorneys' fees, which may result from any such work.

(c) BRM shall have the right at any time, and at its sole cost and expense, to relocate elsewhere within its tract any Drive Utility Lines or any Available Utility Lines serving the Marketplace Property, provided such relocation:

(i) shall not interrupt, diminish, or otherwise interfere with, or increase the cost of, the utility services to the parties served by such Drive Utility Lines or any Available Utility Lines;

(ii) shall not reduce or impair the usefulness or function of such Drive Utility Lines or any Available Utility Lines;

(iii) shall be performed without cost or expense to the parties served by such Drive Utility Lines or any Available Utility Lines;

(iv) shall be completed in a good and workmanlike manner using materials and design standards which equal or exceed those originally used; and

(v) shall not unreasonably interfere with the use of or the operation of the Marketplace Property.

(d) Marketplace shall be responsible for all connection charges, user fees, tap-on fees, and similar fees and charges imposed as a result of the connection of any such Available Utility Lines to the building(s) constructed upon the Marketplace Property.

(e) The easements hereinabove granted shall be used and enjoyed by each Owner and its Permittees in such an manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its parcel, including, without limitation, public access to and from said business, and the receipt or delivery of merchandise in connection therewith.

(f) Once the easements granted in subparagraph (a) hereof are established, and/or utility lines, systems and equipment are installed pursuant to the easements granted in subparagraph (a) hereof, no permanent building, structures or other improvements inconsistent with the use and enjoyment of such easements (excluding improvements typically found in common areas of shopping centers) shall be placed over or permitted to encroach upon such utility installations.

(g) During construction and installation, the location of the Available Utility Lines may be modified by BRM or Marketplace, as applicable, in accordance with governmental requirements. Additionally, the party constructing and installing such Available Utility Lines may dedicate all or a portion of the Available Utility Lines to the appropriate governmental authority as required by such authority.

(h) In the event that a party hereunder constructs the Available Utility Lines, such construction and installation shall be in accordance with all applicable governmental or other agency regulations and the plans approved by BRM, subject, however, to relocation as set forth in (g) above.

4. Easements in Detention Pond and for Storm Water Drainage.

(a) BRM hereby establishes and creates for the benefit of, and as an appurtenance to, the Marketplace Property, with respect to, and as a burden upon, the Lots 5 and 6 of the BRM Property, the following perpetual non-exclusive rights, privileges and easements:

(i) to drain storm water run-off from pipes, conduits and storm water drainage apparatus and facilities located on the Marketplace Property, into and through the storm water detention basin located on the Detention Pond Areas (as hereinafter defined) into which storm water from the Marketplace Property will be piped as depicted on Exhibit D, together with all related pipes, conduits and storm water drainage apparatus and facilities (the "Detention Ponds"), including the right to use and impound storm water within the Detention Ponds and Detention Pond Areas. As used herein, "Detention Pond Areas" shall mean the areas identified on Exhibit D as the "Cypress Pond";

(ii) to drain storm water from the Cypress Pond as identified on Exhibit D through pipes, conduits and storm water drainage apparatus and facilities located on the BRM Property and marked as "Storm Water Drainage Easement" and "50' Storm Water Drainage Easement on Exhibit D; and

(iii) to drain storm water run-off through pipes located on the Marketplace Property though the area identified as "24' Storm Water Drainage Easement" on Exhibit D and located on the Southeast edge of Lot 5 on the BRM Property, to the roadside ditch adjacent to U.S. Hwy. 421 (Carolina Beach Road);

provided, however, that any such drainage shall not cause any damage to the BRM Property across and upon which such storm water is being drained and/or impounded or any improvements thereon.

(b) All permitted runoff from the Marketplace Property shall be directed into the permitted stormwater control system. These connections to the stormwater control system shall be performed in a manner that maintains the integrity and performance of the system as permitted.

**ARTICLE II
MAINTENANCE AND REPAIR**

1. Utilities.

Marketplace shall maintain and repair, or cause to be maintained and repaired, at its sole cost and expense (except as otherwise provided below) any Drive Utility Lines or any lines or other facilities connecting to the Available Utility Lines, including storm water drainage lines and facilities, servicing the

Marketplace Property, unless the same are dedicated to and accepted for public maintenance purposes by a public utility company and/or governmental authority having jurisdiction. If the Drive Utility Lines or any lines or other facilities connecting to the Available Utility Lines are located on the BRM Property, any maintenance and repair hereunder of any such non-dedicated Drive Utility Lines or lines or other facilities connecting to the Available Utility Lines shall be performed only after thirty (30) days notice to BRM (except in an emergency the work may be initiated with reasonable notice under the circumstances) and shall be performed after normal business hours whenever possible and otherwise in such manner as to cause as little disturbance in the use of the BRM Property and the business or businesses operated thereon as is practicable under the circumstances.

2. General Maintenance.

Except as otherwise provided in Section 1 above relative to Drive Utility Lines or lines or other facilities connecting to the Available Utility Lines and except as otherwise expressly agreed to in writing by BRM, as the case may be, Marketplace shall at all times be maintain the Marketplace Property in a safe, clean, sightly, good and functional condition and state of repair, and in compliance with all applicable laws, rules, regulations, orders, and ordinances of governmental bodies and agencies exercising jurisdiction thereover and in compliance with the provisions of this Agreement.

3. Costs of the Main Marketplace Access Drive.

(a) Every six years, Marketplace shall reimburse BRM for costs and expenses incurred by BRM in connection with the use, operation, maintenance, repair and/or replacement of the Main Marketplace Access Drive (the "Drive Maintenance Contribution") as more particularly set forth in Section 3(b) below and subject to increases as set forth below.

(b) On or before the date which is six (6) years after the date of this Agreement, Marketplace shall pay to BRM the Drive Maintenance Contribution in the amount of \$23,880.00. On each and every subsequent six (6) year anniversary of the date of this Agreement, the Drive Maintenance Contribution shall increase by twenty percent (20%) over the immediately preceding Drive Maintenance Contribution. Following, for example only, is a partial schedule of the Drive Maintenance Contribution payments to be made to BRM by Marketplace:

<u>Anniversary Year</u>	<u>Drive Maintenance Contribution</u>
6	\$23,880.00
12	\$28,656.00
18	\$34,387.20
24	\$41,264.60
Subsequent anniv.	Previous D.M.C. multiplied by 1.20

**ARTICLE III
MARKETPLACE PROPERTY USE RESTRICTION**

Unless otherwise agreed to in writing by BRM, during the term of this Agreement, the Marketplace Property shall only be used for residential purposes and for no other use. No part of the Marketplace Property shall be used for anything other than purposes set forth in the conditional use permit, case No. Z-816 which set forth zoning of the Marketplace Property as CD(B-1) and neither Marketplace nor any of its Permittees, successors and assigns shall apply for a zoning variance or attempt to change the Conditional Use Permit or zoning of the Marketplace Property without the prior written consent of BRM. Additionally, nothing shall be done on the Marketplace Property which shall constitute

any of the following: a supermarket or grocery store, a private or public nuisance to the community; any use which creates vibrations or offensive odors, fumes, dust or vapors which are noticeable outside of any building, or any noise or sound which can be heard outside of any building and which is offensive due to intermittency, beat, frequency, shrillness or loudness; the storage of explosives or other unusually hazardous materials; any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance); any dumping, disposing, incineration, or reduction of garbage, waste, hazardous waste or hazardous substances; or any adult book store or establishment selling or exhibiting pornographic materials. As used herein, an "adult book store or establishment selling or exhibiting pornographic materials" shall include, without limitation, a store displaying for sale or exhibit books, magazines or other publications containing any combination of photographs, drawings, or sketches of a sexual nature which are not primarily scientific or educational, or a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which is pornographic.

ARTICLE IV DEFAULT

1. If either BRM or Marketplace fail to comply or fail to cause its occupant to comply with any provision herein (as used herein, a "Defaulting Party"), including, without limitation, the payment of any sum of money or the performance of any other obligation pursuant to the terms of this Agreement, then the non-defaulting party at its option and with thirty (30) days prior written notice to the Defaulting Party, in addition to any other remedies it may have in law or equity, may proceed (or any designee of it may proceed, as the case may be) to perform such defaulted obligation on behalf of such Defaulting Party (and shall have a license to do so) by the payment of money or other action for the account of the Defaulting Party. The foregoing right to cure shall not be exercised if within the thirty (30) day notice period (i) the Defaulting Party cures the default, or (ii) if curable, the default cannot be reasonably cured within that time period but the Defaulting Party begins to cure such default within such time period and thereafter diligently and continuously pursues such action to completion. The thirty (30) day notice period shall not be required if an emergency exists; and in such event, the non-defaulting party shall give such notice (if any) to the Defaulting Party as is reasonable under the circumstances. Each Owner shall be responsible for causing the occupant(s), if any, of such Owner's parcel to comply with the terms of this Agreement.

2. Within ten (10) days of written demand therefor (including providing copies of invoices reflecting costs), the Defaulting Party shall reimburse the non-defaulting party for any sum reasonably expended by the non-defaulting party due to the default or in correcting the same and, if such reimbursement is not paid within said ten (10) days and collection is required, the non-defaulting party's reasonable costs of collection, including, without limitation, reasonable attorneys' fees.

3. In the event that an Owner shall institute any action or proceeding against the other Owner relating to the provisions of this Agreement or any default hereunder or to collect any amounts owing hereunder or in the event an arbitration proceeding is commenced hereunder by agreement of the parties to any dispute, then and in such event the unsuccessful litigant in such action or proceeding shall reimburse the successful litigant therein for such reasonable costs and expenses incurred in connection with any such action or proceeding and any appeals therefrom, including attorneys' fees and court costs, to the extent permitted by the terms of any final order, decree, or judgment.

4. Any remedies provided for above in this Article IV are cumulative and shall be deemed additional to any and all other remedies to which a party may be entitled in law or in equity and shall

include the right to restrain by injunction any violation or threatened violation by any party of any of the terms, covenants, or conditions of this Agreement and by decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for any breach of any such term, covenant, or condition is not adequate.

ARTICLE V TERM

This Agreement shall be effective as of the date first above written and shall continue in full force and effect for the lesser of (i) ninety-nine (99) years and (ii) the maximum period as may be permitted under the laws of the State of North Carolina. Provided, however, with respect to the easements which are created and described herein as being perpetual or as continuing beyond the term of this Agreement, such easements shall survive the termination of this Agreement as provided herein. Upon the termination of this Agreement, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this Agreement, except as contained in or otherwise relating to the easement provisions mentioned above, shall terminate and have no further force or effect; provided, however, the termination of this Agreement shall not limit or affect any remedy at law or in equity of any party against any other party with respect to any liability or obligation arising or to be performed under this Agreement prior to the date of such termination. In no event shall a breach or default under the provisions of this Agreement result in the termination hereof.

ARTICLE VI MISCELLANEOUS

1. Notices.

All notices, demands, statements, and requests required or permitted to be given under this Agreement must be in writing and given, delivered, or served, either by personal delivery, by recognized overnight courier service with receipt, or by certified or registered U.S. mail, return receipt requested. Notices shall be effective upon receipt; provided, however, inability to make delivery due to a changed address of which no notice was given or refusal to accept delivery shall constitute receipt for purposes hereof. In the event of a sale of any portion of Property, either the Owner selling such portion of property or the new Owner of such portion of property shall give written notice to the Owners of the other Property of the name and address of the new Owner. Until such time as any Owner shall receive such a notice of the address of a new Owner, the previous Owner shall be deemed to be the agent for any such new Owner for purposes of notices hereunder. For purposes hereof, until changed as hereinabove provided, all notices shall be given to the following addresses:

If to BRM: BRM Associates #1, LLC
 c/o Raley-Miller Properties, Inc.
 10700 Sikes Place, Suite 200
 Charlotte, North Carolina 28277
 Attention: G. Kenneth Orndorff

If to Marketplace: Townes at Marketplace, LLC
 6105 Oleander Drive, Suite 101
 Wilmington NC 28403
 Attention: Howard A. Penton, III

Each Owner shall have the right from time to time and at any time, upon at least ten (10) days prior written notice thereof in accordance with the provisions hereof, to change its respective address and to

specify any other address within the United States of America; provided, however, such address may not be a post office box.

2. Not a Public Dedication.

Nothing herein contained (including, without limitation, the attachment of the Site Plan and portions of the Site Plan as exhibits hereto) shall be deemed to be a gift or dedication of any portion of the Property (or portion thereof) to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of the owner of any portion of the Property shall inure to the benefit of any third-party person, nor shall any third-party person be deemed to be a beneficiary of any of the provisions contained herein.

3. Other.

This Agreement may be amended or modified by written agreement of the parties hereto, which amendment or modification shall be deemed effective when executed and recorded in the public real estate records in New Hanover County, North Carolina, by BRM; provided, however, BRM shall have the right to amend this Agreement to add any adjacent property to the BRM Property hereunder and, in such case, BRM (and the owner of such adjacent property) may subject such adjacent property to all or certain of the terms of this Agreement or any additional terms and/or modify the application of any terms hereof to such adjacent property. The captions preceding the text of each article and section herein are included for convenience of reference only. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement. Invalidation of any of the provisions contained in this Agreement or of the application thereof to any Person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other Person, and the same shall remain in full force and effect. It is expressly agreed that no breach of this Agreement shall entitle any party to cancel, rescind, or otherwise terminate this Agreement. However, such limitation shall not affect in any manner any other rights or remedies which a party may have hereunder by reason of any such breach. Time is of the essence respecting this Agreement. The failure of any party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that party may have hereunder or at law or equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. This Agreement shall be construed in accordance with the laws of the State of North Carolina. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Owners in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

4. Covenants Run with the Land; Enforcement.

The terms of this Agreement and all easements established by this Agreement shall constitute covenants running with, and shall be appurtenant to, the land affected. All terms of this Agreement and all easements established by this Agreement shall inure to the benefit of and be binding upon the parties which have an interest in the benefited or burdened land and their respective successors and assigns in title. In this regard, only BRM and Marketplace shall have the right, but not the obligation, to enforce the provisions of this Agreement. This Agreement is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

5. Assignment.

(a) *By BRM.*

All rights, powers, privileges, and reservations of BRM herein contained may be assigned to any person or entity (a "Person") (provided such Person must be an owner or Occupant of one or more tracts of land located within the Property) which will and does assume the duties and responsibilities of BRM pertaining to the particular BRM's rights, powers, privileges and reservations assigned; and upon any such Person evidencing its consent in writing to accept such assignment and assume such duties and responsibilities, he, she or it shall, to the extent of such assignment, have the same rights, powers, privileges and reservations and be subject to the same obligations and duties as are given to and apply to BRM herein. However, the mere sale, ground lease or other conveyance by BRM of any portion or phase of the BRM Property shall not constitute an assignment to the purchaser(s), lessee(s) or transferees thereof of the rights, powers and reservations of BRM hereunder unless expressly stated otherwise in any such instrument of sale, ground lease or conveyance. With respect to any rights, powers, privileges and reservations of BRM which are hereafter exclusively assigned to (and assumed by) any Person by BRM hereunder pursuant to the terms of this paragraph, such assignee shall thereafter be deemed to be BRM under this Agreement; and the Owners shall then look solely to such assignee in connection with the performance of any responsibilities and obligations of BRM encompassed by such rights, powers, privileges and reservations so assigned.

(b) *By Marketplace.*

All rights, powers, privileges, and reservations of Marketplace may only be assigned to the Owner's Association for Townes at Marketplace (the "HOA"), and to no other Unit Owner, person or entity. Upon assignment to the HOA, it will and does assume the duties and responsibilities of Marketplace pertaining to the particular Marketplace's rights, powers, privileges and reservations assigned; and upon the HOA evidencing its consent in writing to accept such assignment and assume such duties and responsibilities, the HOA shall, to the extent of such assignment, have the same rights, powers, privileges and reservations and be subject to the same obligations and duties as are given to and apply to Marketplace herein. The mere sale, ground lease or other conveyance by Marketplace of any portion or phase of the Marketplace Property shall not constitute an assignment to the purchaser(s), lessee(s) or transferees thereof of the rights, powers and reservations of Marketplace hereunder. With respect to any rights, powers, privileges and reservations of Marketplace which are hereafter exclusively assigned to (and assumed by) the HOA pursuant to the terms of this paragraph, such assignee shall thereafter be deemed to be Marketplace under this Agreement; and the Owners shall then look solely to such assignee in connection with the performance of any responsibilities and obligations of Marketplace encompassed by such rights, powers, privileges and reservations so assigned.

(c) Notice of any assignment under Section 5(a) hereinabove shall be given to Marketplace and notice of any assignment under Section 5(b) hereinabove shall be given to BRM. Any assignment or appointment made under this Section shall be in recordable form and shall be recorded in the public real estate records in New Hanover County, North Carolina.

(Remainder of Page Left Intentionally Blank.)

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

BRM:

BRM ASSOCIATES #1, LLC,
a North Carolina limited liability company

By: Raley-Miller Properties, Inc.,
its Manager

By: David S. Miller
David S. Miller, Chief Executive Officer

STATE OF NORTH CAROLINA
COUNTY OF Mecklenburg

I, Laurel Anne Fabian, a Notary Public of _____ County and State of North Carolina, do hereby certify that David S. Miller (the "Signatory"), Chief Executive Officer of Raley-Miller Properties, Inc, a North Carolina corporation and manager of **BRM ASSOCIATES #1, LLC**, a North Carolina limited liability company, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

I certify that the Signatory personally appeared before me this day, and
 ✓ (check one of the following)
 ✓ (I have personal knowledge of the identity of the Signatory); or
 (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 a driver's license or
 in the form of _____); or
 (a credible witness has sworn to the identity of the Signatory).

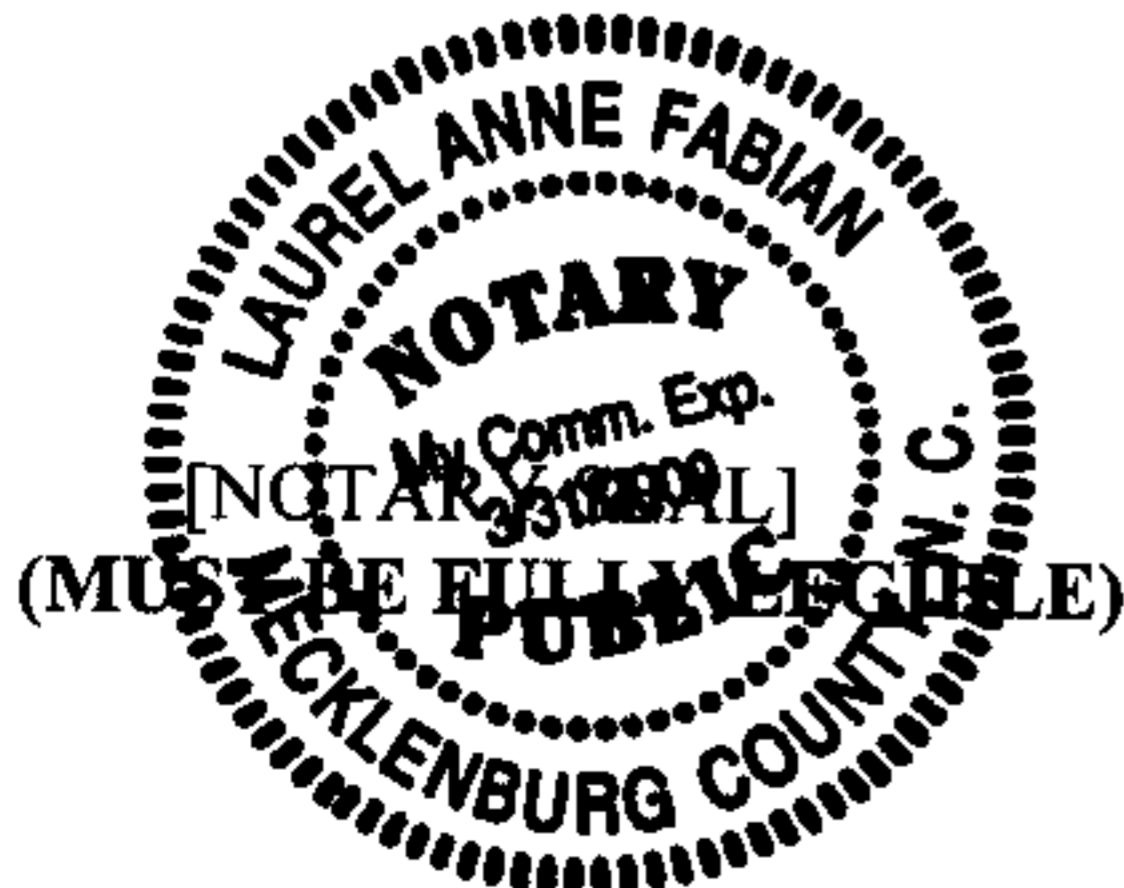
The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 18th day of July, 2006.

Laurel Anne Fabian
Notary Public

Print Name: Laurel Anne Fabian
(Note: Notary Public must sign exactly as on notary seal)

My Commission Expires: March 31, 2009



MARKETPLACE:

TOWNES AT MARKETPLACE, LLC,
a North Carolina limited liability company

By: [Signature]
Name: HOWARD A. PERKINS
Title: member/manager

STATE OF NORTH CAROLINA
COUNTY OF New Hanover

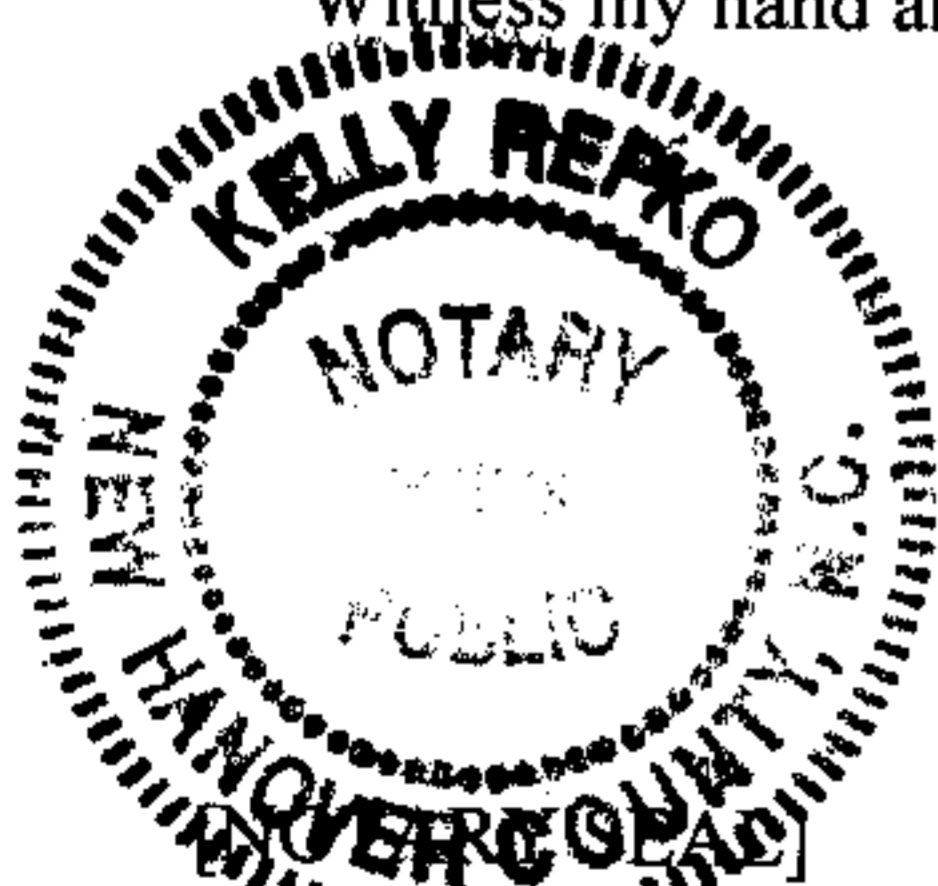
I, Kelly Repko, a Notary Public of New Hanover County and State of North Carolina, do hereby certify that Howard A. Perkins (the "Signatory"), of **TOWNES AT MARKETPLACE, LLC**, a North Carolina limited liability company, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 a driver's license or
 in the form of _____); or
- (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 14 day of July, 2006



(MUST BE FULLY LEGIBLE)

[Signature]
Notary Public

Print Name: Kelly Repko
(Note: Notary Public must sign exactly as on notary seal)

My Commission Expires: 5-5-2007

EXHIBIT A-1

Description of BRM Property

That certain tract or parcel of land situated, lying and being in the New Hanover County, North Carolina and being more particularly described as follows:

Lots 2, 3 5 and 6 as shown on the plat entitled "Recombination Plat for: BRM Associates #1" prepared by Johnny J. Williams Land Surveying, P.C., dated March 24, 2006 and recorded at Map Book 49, Page 379, New Hanover County Registry, reference to which is hereby made for a more particular description.

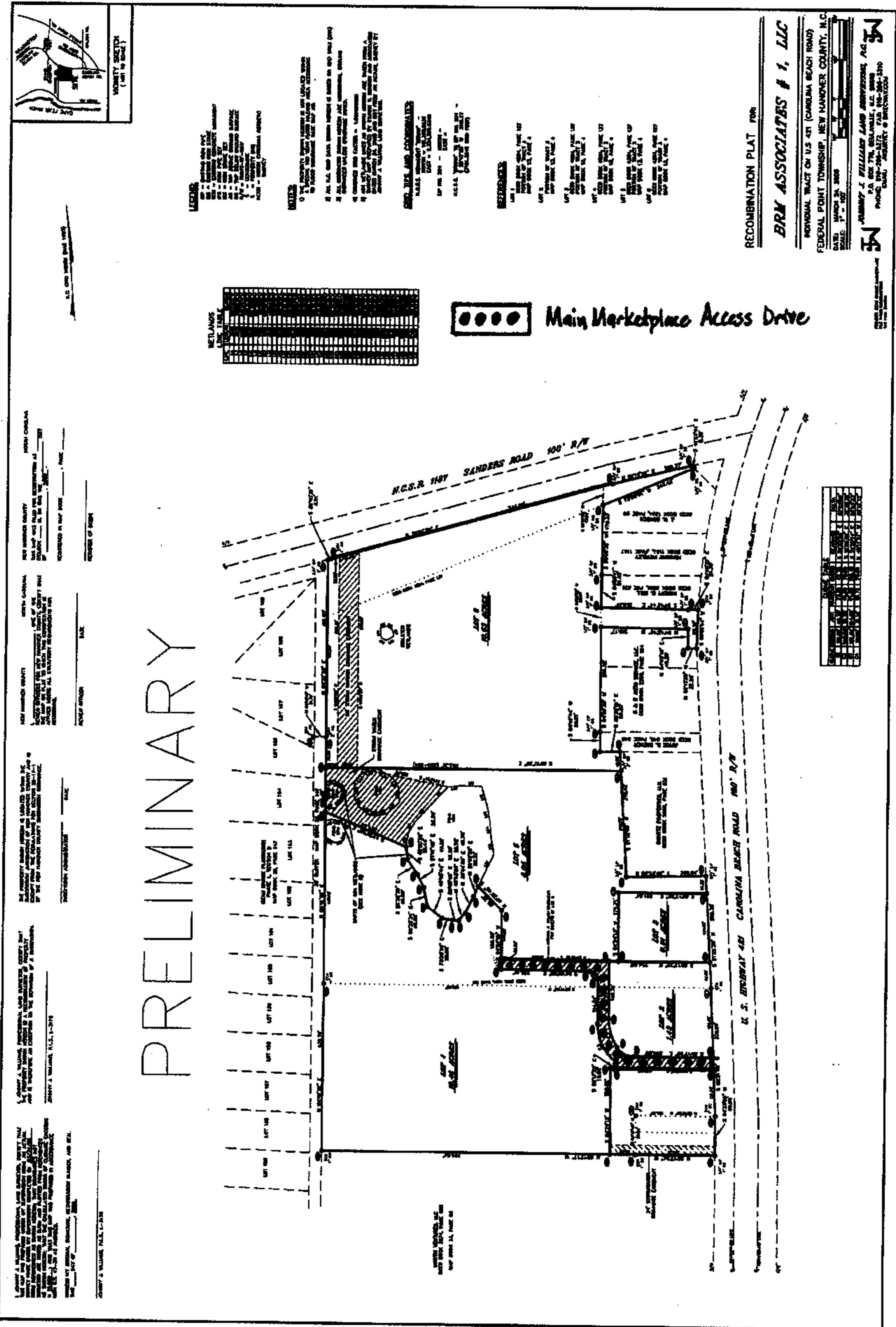
EXHIBIT A-2

Description of Marketplace Property

That certain tract or parcel of land situated, lying and being in the New Hanover County, North Carolina and being more particularly described as follows:

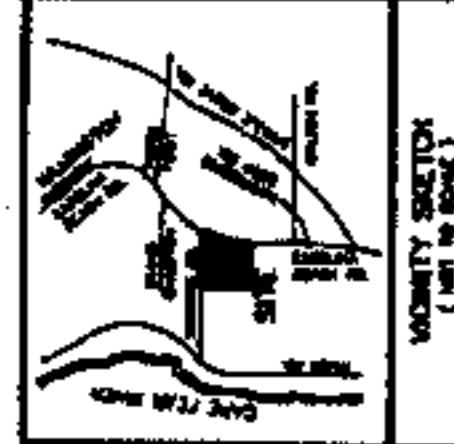
Lot 4 as shown on the plat entitled "Recombination Plat for: BRM Associates #1" prepared by Johnny J. Williams Land Surveying, P.C., dated March 24, 2006 and recorded at Map Book 49, Page 379, New Hanover County Registry, reference to which is hereby made for a more particular description.

EXHIBIT A-3



PRELIMINARY

●●●● Main Marketplace Access Drive

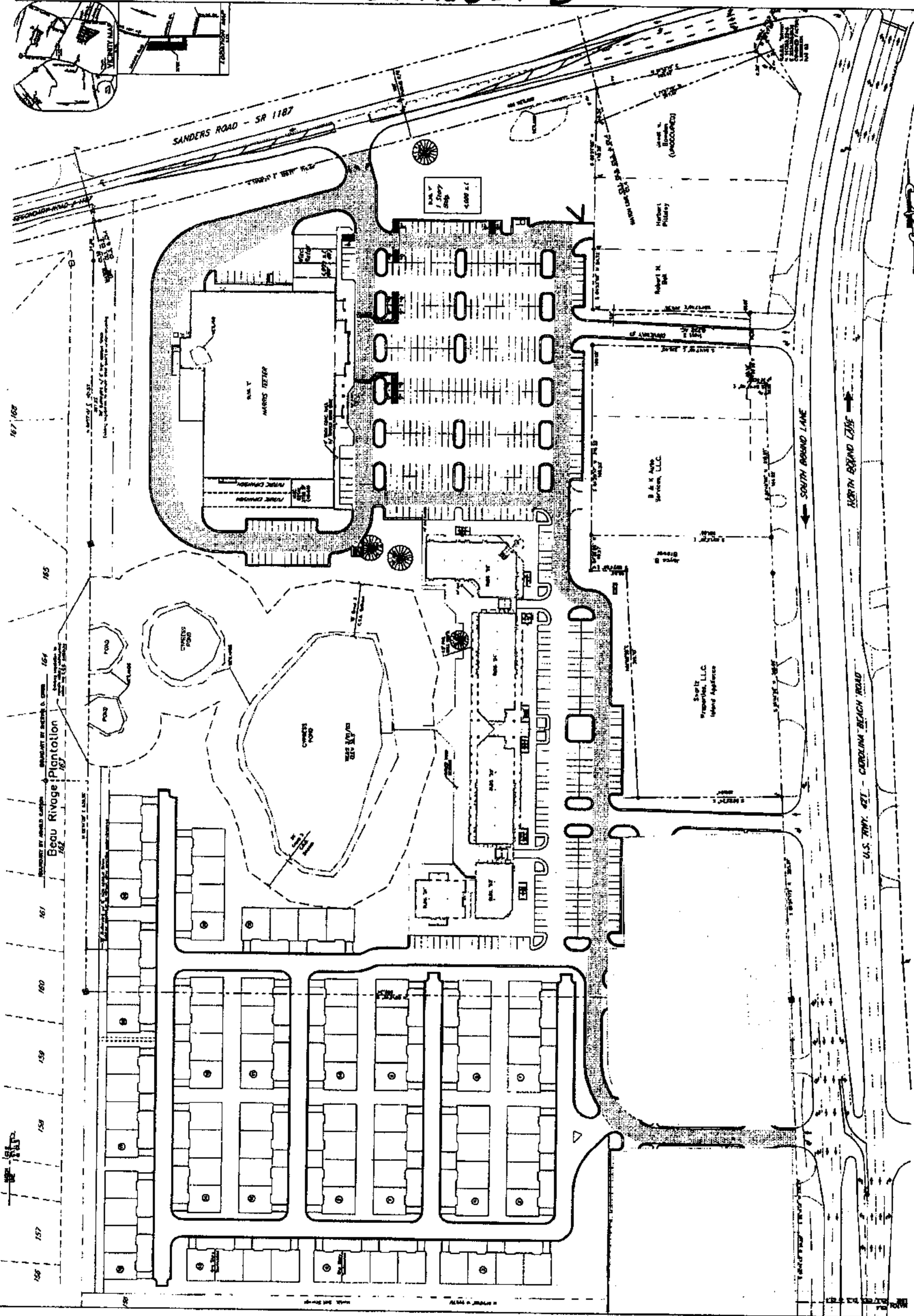


- LEGEND**
- 1. Easement
 - 2. Easement
 - 3. Easement
 - 4. Easement
 - 5. Easement
 - 6. Easement
 - 7. Easement
 - 8. Easement
 - 9. Easement
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RECOMBINATION PLAT FOR
BRM ASSOCIATES # 1, LLC
 FEDERAL TRACT ON U.S. 401 (CAROLINA BEACH ROAD)
 FEDERAL POINT TOWNSHIP, NEW HANOVER COUNTY, N.C.
 DATE: MARCH 24, 2008
 SCALE: 1" = 100'
 JENNIFER J. WILLIAMS LAND SURVEYING, P.A.
 P.O. BOX 776, WELLSVILLE, N.C. 28688
 PHONE: 919-299-2172 FAX: 919-299-2190
 EMAIL: JEN@JWILLIAMS-SURV.COM

THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

EXHIBIT B



THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



**BEAU RIVAGE MARKET PLACE
SITE LAYOUT PLAN**
CAROLINA BEACH ROAD
NORTH CAROLINA
NEW HANCOCK COUNTY

OWNER / DEVELOPER / CONTRACTOR
PALEY MILLER PROPERTIES
CORPORATE PLAZA, SUITE 200
COLUMBUS AVENUE, CHARLOTTE, NC 28202
PH: 704-331-1000 FX: 704-331-1000

DESIGNED BY
PALEY MILLER PROPERTIES



Scale: 1" = 100'

Project No. 111

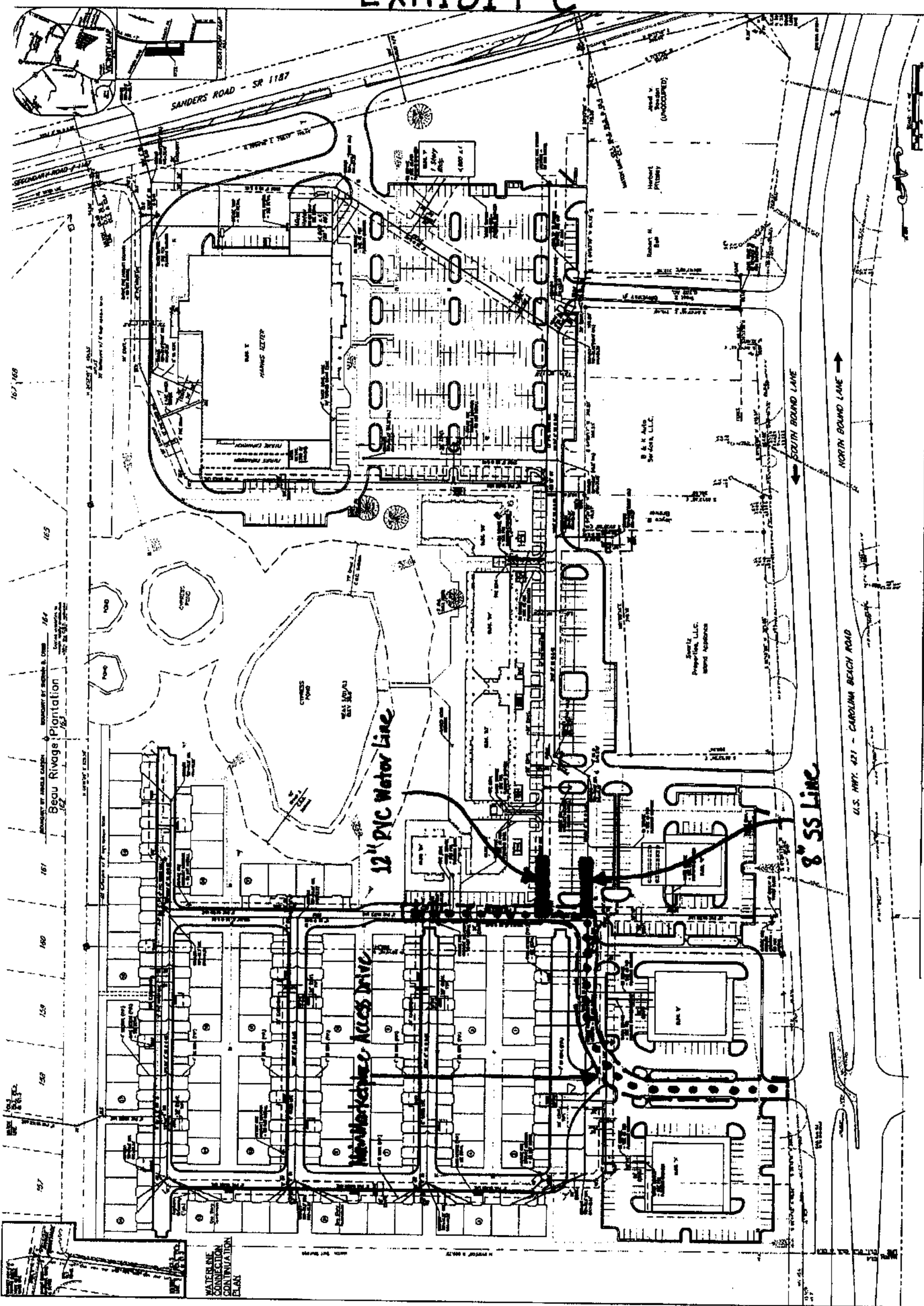
Sheet No. 1 of 1

Date: 10/15/11

Scale: 1" = 100'

Project No. 111

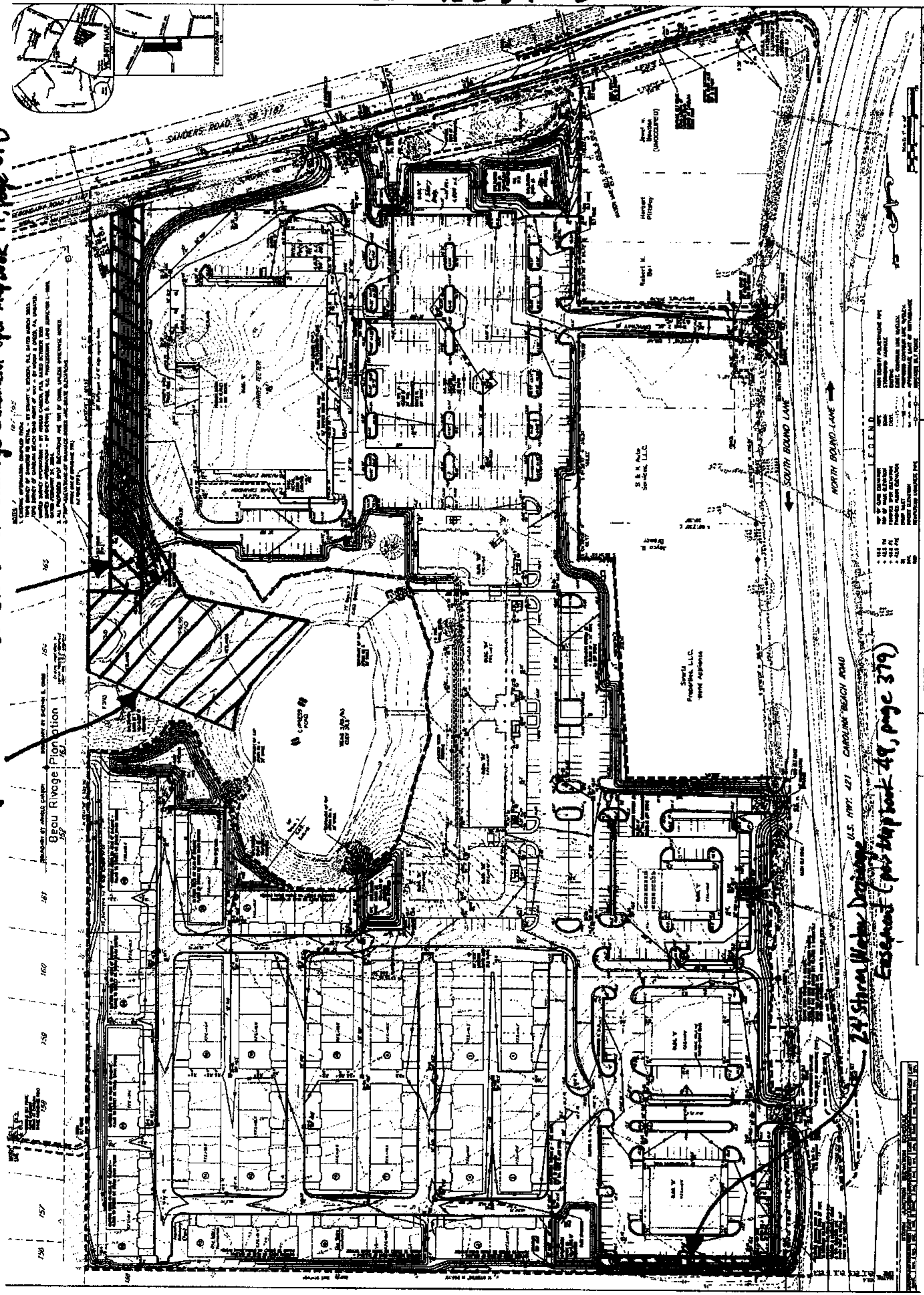
EXHIBIT C



 <p>APRIL 20, 2016 C13</p>	<p>OWNER / DEVELOPER / APPLICANT RALEY MILLER PROPERTIES</p> <p>ADDRESS: 10100 BEAU RIVAGE MARKET PLACE, SUITE 200 CAROLINA BEACH, NC 28511 TEL: 754-251-1000 FAX: 754-251-1000</p>	<p>PROJECT: BEAU RIVAGE MARKET PLACE UTILITY PLAN</p> <p>ADDRESS: 10100 BEAU RIVAGE MARKET PLACE, SUITE 200 CAROLINA BEACH, NC 28511 TEL: 754-251-1000 FAX: 754-251-1000</p>	<p>DESIGNED BY: CRIBER TRAUTMAN TAYLOR</p>	<p>THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.</p>
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EXHIBIT D

Storm Water Drainage Easement (per Mapbook 49, page 379)



24 Storm Water Drainage Easement (per Mapbook 49, page 379)

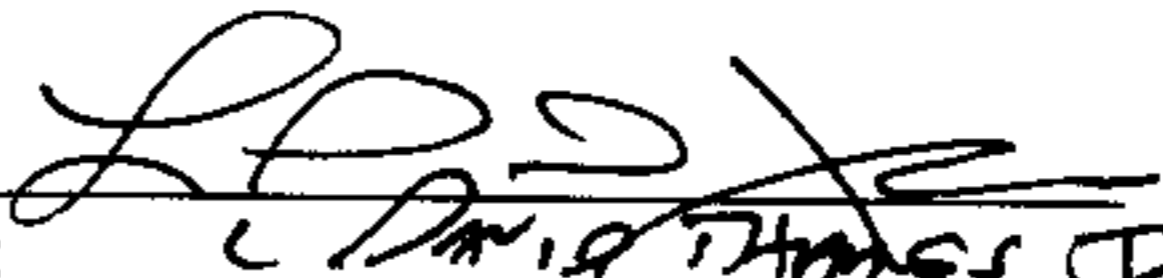
<p>APRIL 11, 2006 G12</p>	<p>OWNER / DEVELOPER / APPLICANT RALEY MILLER PROPERTIES ADDRESS: 1825 W. 10TH ST., SUITE 200, DENVER, CO 80202 TEL: 303.733.1000 FAX: 303.733.1000</p>	<p>PROJECT BEAU RIVAGE MARKET PLACE STORMWATER, EROSION CONTROL, AND GRADING PLAN</p> <p>ADDRESS: 1825 W. 10TH ST., SUITE 200, DENVER, CO 80202 TEL: 303.733.1000 FAX: 303.733.1000</p>	<p>DESIGNER CRIBBS TROUTMAN TARRER</p>	<p>THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.</p>
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CONSENT AND SUBORDINATION OF DEED OF TRUST

WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association ("Bank"), being the beneficiary under that certain Deed of Trust and Security Agreement from BRM Associates #1, LLC ("Borrower"), recorded in the Office of New Hanover County, North Carolina, on December 29, 2005, in Book 4958, Page 1638 (the 'Deed of Trust'), does hereby consent to the recordation of the foregoing Easement and Restrictive Covenant Agreement (the "Easement Agreement") and to the terms and provisions thereof; and Bank does hereby consent to the subordination of the lien of the Deed of Trust to the provisions of the Easement Agreement. The execution of this Consent and Subordination of Deed of Trust by Bank shall not be deemed or construed to have the effect of creating between Borrower and Bank the relationship of partnership or of joint venture nor shall anything contained hereunder be deemed to impose upon Bank any of the liabilities, duties or obligations of Borrower under the Easement Agreement. Bank executes this Consent and Subordination of Deed of Trust solely for the purposes set forth herein.

BANK:

WACHOVIA BANK, NATIONAL ASSOCIATION,
a national banking association

By: 
Name: C. David Thomas Jr.
Title: Vice President

[notary on next page]

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Maym. Dawson, a Notary Public of Mecklenburg County and State of North Carolina, do hereby certify that L. David Thames (the "Signatory"), Vice-President of WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of the national banking association.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 a driver's license or
 in the form of _____); or
- (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 11th day of July, 2006.

Maym. Dawson

Notary Public

Print Name: May M. Dawson
(Note: Notary Public must sign exactly as on notary seal)

My Commission Expires: December 7, 2010





REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 07/17/2006 12:33:05 PM
Book: RE 5051 Page: 2786-2805
Document No.: 2006040267
ESMNT 20 PGS \$68.00
Recorder: NELSON, JACQUELINE

State of North Carolina, County of New Hanover

**YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.**

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