

PREPARED BY AND AFTER RECORDING RETURN TO:

Lee Law Firm PLLC
1427 Military Cutoff Road Suite 208
Wilmington, North Carolina 28403
Attn: Michael V. Lee, Esq.

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (the "Agreement") is made this 7 day of April, 2017, by BONNIE JEAN SULLIVAN AND KEVIN SULLIVAN, CO-TRUSTEES OF THE RICHARD RAY SULLIVAN TRUST DATED JULY 15, 2016 and HENRY ALLEN SULLIVAN ("Sullivan" or the "Declarant").

WITNESSETH

WHEREAS, Declarant is the owner of those certain tracts of real property shown as "Tract 1" consisting of +/- 1.106 acres, "Tract 2" consisting of +/- 1.188 acres, "Parcel A" consisting of +/- 0.927 acres, and "Tract 3" consisting of +/- 14.842 acres, on that certain plat titled "Exempt Plat for Henry Allen Sullivan et al" and recorded in Book of Maps 60, Page 74, in the office of the Register of Deeds of Pender County, North Carolina (the "Plat"), describing certain real property situated in the Town of Surf City, County of Pender, State of North Carolina (each of Parcel A, Tract 3, Tract 2 and Tract 1, a "Tract" and together, the "Tracts"); and

WHEREAS, certain utilities on the Tracts are intended to be developed in an integrated manner for the mutual benefit of all Tracts and this Agreement set forth certain easements and restrictions upon and subject to which all of the Tracts, or any part thereof, shall be improved, held, leased, sold and/or conveyed;

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Declarant hereby declares that the Tracts and all present and future owners and occupants of each Tract shall be and hereby are subject to the terms, covenants, easements, restrictions and conditions hereinafter set forth in this Agreement, so that said Tracts shall be

maintained, kept, conveyed and used in full compliance with and subject to this Agreement and, in connection therewith, the parties hereto on behalf of themselves and their respective successors and assigns covenant and agree as follows:

AGREEMENTS

1. **DEFINITIONS.** For purposes of this Agreement, the following definitions shall apply:

(a) **"Applicable Requirements"** means all laws, statutes, ordinances, rules, regulations, judgments, decrees, agreements or orders of any state, federal or local governmental agency, to the extent applicable to any one or more of the Owner(s) and/or the Tract(s) in connection with any exercise of rights or performance of obligations under this Agreement.

(b) **"Contribution Trigger Date"** means, with respect to any Obligated Owner of an Obligated Parcel within Tract 3, the earlier of (i) the date that such Obligated Owner first obtains a building permit (or its equivalent) for the construction of any building on any portion of the Obligated Parcel, or (ii) the date that Sullivan, as the original Owner of Tract 3, conveys title of all or any portion of the Tract 3 Commercial Area to a third party; **provided, that**, a contribution of Tract 3 into a limited liability company in which Sullivan retains more than 50% of the ownership interests (an **"Affiliate LLC"**), shall not be deemed a transfer causing a "Contribution Trigger Date" to occur; **provided, further, however, that**, (x) any subsequent transfer of title by said Affiliate LLC to a third party, or (y) any transfer of ownership interests within the Affiliate LLC that results in Sullivan holding 50% or less of the ownership interests therein, shall be deemed a transfer by Sullivan causing the "Contribution Trigger Date" to occur.

(c) **"Declarant"** shall mean Sullivan, as the original declarant under this Agreement; **provided**, that if, at any time, Sullivan shall no longer own a Tract, then the Owner of the Tract 3 shall be deemed the Declarant hereunder.

(d) **"Maintenance Turnover Date"** means the earlier of (i) the date that an Owner of all or any portion of the Tract 3 Commercial Area first obtains a building permit (or its equivalent) for the construction of any building on any portion of Tract 3 Commercial Area, or (ii) the date that an Owner of all or any portion of Tract 3 Commercial Area obtains a permit authorizing the owner to commence a Stormwater System Expansion.

(e) **"Obligated Commercial Owner"** means, as of the date hereof (i) the Owners of Tract 1 and Tract 2 (or any Owner of a subdivided Obligated Parcel therein), and, (ii) from and after the date of issuance of a building permit with respect to any Obligated Parcel within the Tract 3 Commercial Area, the Owner of such Obligated Parcel.

(f) **"Obligated Residential Owner"** means, from and after the date of issuance of a building permit therefor, any Owner of any Obligated Parcel within the Tract 3 Residential Area, **but only** to the extent that such Owner elects to tie into the Stormwater System in accordance with the terms of Section 3.2 of this Agreement.

(g) "Obligated Owner" means any Obligated Commercial Owner or Obligated Residential Owner.

(h) "Obligated Parcel" means, any Tract, or, if a Tract is subdivided into multiple parcels, then any subdivided portion thereof, that is occupied by an Obligated Commercial Owner or an Obligated Residential Owner.

(i) "Owner" or "Owners" shall mean the owner or owners of fee simple title to all or any portion of the Tracts covered hereby, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any deed of trust, mortgage, other lien or encumbrance on such Tracts.

(j) "Permittees" shall mean the tenant(s) or occupant(s) of a Tract, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Tract, and/or (ii) such tenant(s) or occupant(s).

(k) "Pylon Sign" shall be a pylon sign (or such other form of signage as may be reasonably agreed upon by the Owners), to be installed in the Sign Easement Area for the benefit of each of the Tracts, such that approximately one-half (1/2) of the signage area shall be available for Tract 3, on one hand, and one-half (1/2) of the signage area shall be available Tracts 1 and 2, on the other hand (with Tract 1 and Tract 2 to allocate the signage among themselves by mutual written agreement, or if no separate written agreement exists then pro rata based on the two Tracts' respective acreage), with the understanding that, unless otherwise agreed in writing by the Owners of Tract 3, Tract 2 and Tract 1, (i) the Tract 2 Owner and/or Tract 1 Owner (depending on the mutual written agreement of said Owners) shall have the right to the tenant panels located in the upper 25% of the Pylon Sign area, and, (ii) as to all other portions of the Pylon Sign, (x) national tenant Permittees of any size shall have priority as to location of sign panels, and, (y) as to regional or local tenant Permittees the position of individual Permittee panels within the signage area (subject to rights of then-existing Permittees), shall be relative to the building square footage occupied by said regional or local Permittees (i.e., subject to then-existing rights of others, the Permittee occupying the greatest square footage shall have the right to the top sign panel). Notwithstanding the foregoing or any other provision of this Agreement to the contrary, panel space on the Pylon Sign shall be available for commercial uses only. In the event that any Tract shall be zoned primarily for residential use(s), the rights to use a percentage of the Pylon Sign face otherwise attributable to such Tract shall be equitably apportioned among the Owners of the remaining commercial use Tracts.

(l) "Sign Easement Area" shall mean that certain area labeled as the "Sign Easement Area" on the Site Plan, upon which the Pylon Sign shall be located.

(m) "Site Plan" shall mean that site plan of the Tracts attached hereto as Exhibit A and by reference made a part hereof. Except as may be otherwise provided in this Agreement, the Site Plan is for purposes of identifying the locations of the easement areas contemplated in this Agreement only.

(n) **"Stormwater Easement Area"** shall mean those certain areas of (i) Parcel A in the areas hatched and denoted as "Easement "A" 60' Ingress Egress Regress Drainage & Utility Easement" and "Easement "B" 40' Ingress Egress Regress Drainage & Utility Easement" on the Site Plan and (ii) Tract 3 in the areas hatched and denoted as "Easement "D" 40' Ingress Egress Regress Drainage & Utility Easement" and "Stormwater Easement" on the Site Plan, upon which the Stormwater System shall be located.

(o) **"Stormwater Flow Units"** shall mean the flow of stormwater into the Stormwater System as expressed in the defined units of measure of the applicable permit(s) therefor.

(p) **"Stormwater System"** shall mean that certain storm water collection, detention and distribution facility, including the stormwater pond to be located on the Tract 3 (the **"Stormwater Pond"**), detention facilities and distribution lines, outfall facilities, sewer grates, storm drains, pipes and other improvements related thereto and/or used in connection therewith.

(q) **"Stormwater System Expansion"** shall mean any extension of, increase in size and/or expansion in capacity with respect to, the Stormwater System that: (i) is intended to benefit all or any portion of the Tract 3 Residential Area, and (ii) is undertaken after the date the Parcel A Owner's initial construction of the initial Stormwater System for the benefit of Parcel A, the Tract 3 Commercial Area, Tract 2 and Tract 1.

(r) **"Tract 3 Commercial Area"** shall mean that certain +/-4.54 acre portion of Tract 3 that is presently zoned for commercial use.

(s) **"Tract 3 Residential Area"** shall mean that certain +/- 10.302 acre portion of Tract 3 that is presently zoned for residential use.

(t) **"Utilities Easement Areas"** shall mean those certain areas labeled as the "Utilities Easement Area" on the Site Plan, upon which the Utilities shall be located.

2. EASEMENTS.

2.1 Grant of Reciprocal Easements. Subject to any express conditions, limitations or reservations contained herein, Declarant hereby grants, declares, establishes, covenants and agrees that the Tracts, and all Owners and Permittees of the Tracts, shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easements which are hereby imposed upon the applicable Tracts and all present and future Owners and Permittees of the Tracts:

(a) Stormwater Easement. An easement over, under and across the Stormwater Easement Area for the construction, installation, repair, replacement and use of the Stormwater System, for the purposes of diverting storm water and drainage run-off and discharge to, into and through the Stormwater System.

(b) Utilities Easement. An easement under and across Utility Easement Area, for the construction, installation, maintenance, repair and replacement of water mains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, fire suppression, Internet,

data, irrigation well, gas mains and other utility facilities (other than the Stormwater System contemplated in subsection (a) above) (collectively, the “**Utilities**”) reasonably necessary for the orderly development and operation of the Tracts and each building from time to time located within the Tracts.

(c) Signage Easement. An easement under and across the Sign Easement Area, for the construction, installation, maintenance, repair and replacement, and use and enjoyment of the Pylon Sign, electric lines and/or other related improvements, equipment and utility facilities.

2.2 Construction and Grading Easement. Declarant hereby grants, declares, establishes, covenants, grants and conveys for the benefit of all Owners and Permittees of Tract 2, and each of their successors and assigns, invitees, employees, agents, contractors, licensees and tenants, a non-exclusive easement on, over, and upon the portion of Tract 3 that is located within (i) any unimproved area that is within fifty (50) feet of the boundary line between Tract 3 and Parcel A, or (ii) any unimproved area of Tract 3, solely as to filling in certain existing wetlands ditches and creating new ditches along the rear of the Tracts, and connecting certain wetlands swales to the roadside swales, and work of a similar nature (the “**Grading and Construction Easement Area**”), for purposes of reasonable grading and filling within said Grading and Construction Easement Area and Parcel A, and for reasonable use in the undertaking of construction, installation and/or improvement activities in connection with Tract 1, Tract 2 and Parcel A Owners’ development of their Tracts. This easement shall be temporary in nature, and shall terminate without the requirement of further action by the Owners no later than the date that is twenty-four (24) months from the date of filing of this Agreement.

2.3 Indemnification. Each Owner will indemnify, defend and hold each other Owner harmless from and against any and all claims, demands, losses, damages, costs and expenses including, but not limited to, court costs, penalties and reasonable attorneys’ fees (actually incurred at standard hourly rates without reference to any statutory presumption), judgments, liabilities and causes of action of any nature whatsoever, to the extent arising in any manner out of the negligent, intentional or willful acts or omissions of such Owner or its agents, employees, representatives, contractors or any other persons acting under their respective direction or control, in connection with the rights and obligations of such Owner under this Agreement.

2.4 Reasonable Use of Easements; Relocation.

(a) The easements granted in this Agreement shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business and/or other activities of any other Owner or its Permittees at any time conducted on its Tract.

(b) The Utilities other than the Stormwater System shall be installed and maintained below the ground level or surface of the Tracts (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers, access panels and hatches, manhole covers, electrical panels, and control panels, which shall be placed in such location as reasonably approved by the Owner of the affected Tract).

(c) Except in the event of an emergency, the right of any Owner to enter upon the Tract of another Owner for the exercise of any construction, installation, maintenance, replacement

and/or repair right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry.

(d) No permanent building or other improvements inconsistent with the use and enjoyment of such easements shall be placed over or permitted to encroach upon such Stormwater System or Utilities provided, however, that this restriction shall not prevent the installation of ancillary structures, sidewalks, dumpster corrals, roadways, parking areas and other improvements and landscaping that does not interfere with the use or function of the Stormwater System or Utilities within such easement areas. The Owner of the Tract served by the Stormwater System and/or other Utilities shall not unreasonably withhold its consent to the reasonable relocation of all or any portion of the Utilities or Stormwater System requested by the Owner of a Tract where such installations are located (and, if applicable, the relocation of the easement area relating thereto), at the requesting Owner's sole cost and expense, for so long as the proposed relocation shall not materially adversely affect such other Owner's use (or intended use) and enjoyment of its Tract, and/or unreasonably interrupt or interfere with the use of such Utilities or Stormwater System by the other Owner and its Permittees.

(e) Each granting Owner reserves and retains all other property rights in and to the easement areas located on its Tract, including without limitation the rights to use the easement areas located on such Owner's Tract for any purpose whatsoever, so long as that use complies with the Applicable Requirements and does not substantially and unreasonably interfere with a grantee Owner's rights hereunder.

3. STORMWATER SYSTEM CONSTRUCTION OBLIGATIONS.

3.1. Initial Stormwater System Installation. Tract 3 Owner has applied and obtained or shall apply for and obtain all governmental permits and approvals (the "Approvals") necessary or appropriate for Parcel A Owner's construction of the Stormwater Pond and other portions of the Stormwater System necessary or desirable to the development of Parcel A. Parcel A Owner shall be responsible for the design, construction, and installation of said portion of the initial Stormwater System, at the sole cost and expense of the Parcel A Owner; *provided, that*, Tract 3 Owner shall use all reasonable efforts to cooperate with Parcel A Owner, at no cost to Tract 3 Owner, in connection with the any application(s) for such approvals provided, further, however, that, Parcel A Owner may elect, at any time to undertake efforts to obtain the Approvals, and in such instance, the Owner of Tract 3 shall reasonably cooperate with such efforts. Without limitation, all construction and installation activities of Parcel A Owner under this provision shall be subject to the care and diligence standards set forth in Section 4.1 below, and the insurance requirements set forth in Section 4.4 below.

3.2 Stormwater System Expansion. In the event an Obligated Commercial Owner or an Obligated Residential Owner of an Obligated Parcel elects to install any Stormwater System Expansion that is necessary or reasonably desirable to the development of the applicable Obligated Parcel, the applicable Obligated Owner shall apply for and obtain all Approvals necessary or appropriate for the construction and installation thereof. The applicable Obligated Owner shall be responsible for the design, permitting, construction, and installation of said portion of the Stormwater System Expansion, at the sole cost and expense of the applicable Obligated Owner;

provided, that, Parcel A Owner shall use all reasonable efforts to cooperate with Obligated Owner, at no cost to Parcel A Owner, in connection with the any application(s) for such Approvals. Without limitation, all construction and installation activities of the Obligated Owner under this provision shall be subject to the care and diligence standards set forth in Section 4.1 below, and the insurance requirements set forth in Section 4.4 below. Prior to undertaking any Stormwater System Expansion, the Obligated Owner shall submit plans and specifications (including, without limitation, the estimated Stormwater Flow Units associated with the Obligated Owner's use) for the proposed Stormwater System Expansion to the Owners of the other Tracts, for reasonable review and approval. Said Owners shall not unreasonably withhold their consent to the proposed Stormwater System Expansion, for so long as the proposed installation and use of the Stormwater System Expansion does not (i) adversely affect any Tract Owner's use (or intended use) and enjoyment of the Stormwater System and/or its Tract, (ii) materially increase the Tract Owner's portion of the ongoing cost of maintenance and repair of the Stormwater System, and/or (iii) interrupt or interfere with the use of the existing Utilities and/or Stormwater System by the Tract Owner and its Permittees.

3.3 Pylon Sign. Either Owner may elect by written notice to the other Owner, to install the initial Pylon Sign, and the electing Owner shall obtain all Approvals that are necessary or appropriate for the construction and installation thereof *provided, that*, the other Owner shall use all reasonable efforts to cooperate with the electing Owner, in connection with the any application(s) for such Approvals. The cost of design, permitting, construction, and installation of the Pylon Sign shall be allocated among the Owners as Shared Expenses. Without limitation, all construction and installation activities of the constructing Owner under this provision shall be subject to the care and diligence standards set forth in Section 4.1 below, and the insurance requirements set forth in Section 4.4 below. Prior to undertaking installation of the Pylon Sign, said Owner shall submit plans and specifications for the proposed Pylon Sign to the other Owner, for reasonable review and approval.

4. MAINTENANCE AND REPAIRS.

4.1 Care and Diligence (Generally). Once commenced, any maintenance, repair, construction or installation activity undertaken in reliance upon an easement granted under this Agreement shall be diligently prosecuted in a good and workmanlike manner to completion, in accordance with all Applicable Requirements and undertaken so as to minimize any interference with the business of any other Owner and its Permittees.

4.2 Repair and Maintenance (Utilities). Except to the extent of any indemnification obligations of another Owner under Section 2.3 above, each Owner shall at all times during the term hereof operate, maintain and repair (or cause to be operated and maintained) in good order, condition and repair, and in compliance with all Applicable Requirements, at its sole expense any Utilities serving the Tract of such Owner and from time to time existing on the Tract of another Owner pursuant to an easement described herein.

4.3 Repair and Maintenance (Stormwater System/Pylon Sign).

a. Except to the extent of any indemnification obligations of the Owners under

Section 2.3 above, the Owner of Parcel A shall at all times during the term hereof operate, maintain and repair (or cause to be operated and maintained) in good order, condition and repair, and in compliance with all Applicable Requirements, the Pylon Sign, subject to the performing Owner's right to reimbursement in accordance with subsection (c) below.

b. Except to the extent of any indemnification obligations of the Owners under Section 2.3 above, until the Maintenance Turnover Date, the Owner of Parcel A, and then after the Maintenance Turnover Date, the Owner(s) of the Tract 3 Commercial Area, shall at all times during the term hereof operate, maintain and repair (or cause to be operated and maintained) in good order, condition and repair, and in compliance with all Applicable Requirements, the Stormwater System, subject to the performing Owner's right to reimbursement in accordance with subsection (c) below.

c. With respect to each of subsections (a) and (b) above, the Obligated Owner of the other Obligated Parcel(s) will share in payment of the costs and expenses associated with installing, maintaining, and repairing the Stormwater System and Pylon Sign (such costs and expenses, "Shared Expenses"), in an amount (the "Contribution Amount") that is:

- (i) as to the Pylon Sign, one-half (1/2) of the Shared Expenses to Tract 3 and one-half of the Shared Expenses to the Owners of Tract 1 and Tract 2, to be allocated among said Owners by their separate mutual written agreement (or if no such separate agreement exists, then pro rata in accordance with the two Tracts' relative acreage); and
- (ii) as to the Stormwater System, based on the following formula, for purposes of calculating the applicable Shared Expenses:

Shared Expenses X $\frac{\text{Acreage of Obligated Commercial Owner's Tract}}{\text{Acreage of All Obligated Commercial Owners;}}$

- (iii) provided, however, that, notwithstanding the foregoing, in the event that an Owner of any portion of the Tract 3 Residential Area shall elect to tie into the Stormwater System as provided in Section 3.2 above (and thus become an Obligated Residential Owner), then, the Obligated Residential Owner shall pay as its Contribution Amount a portion of the Shared Expenses equal to:

Shared Expenses X $\frac{\text{Stormwater Flow Units of to the Obligated Residential Owner}}{\text{All Stormwater Flow Units to the Stormwater System;}}$

and the Obligated Commercial Owners' Shared Expenses calculable under item (ii) above shall be determined by, first, netting any Obligated Residential Owner's Contribution Amount for the Shared Expenses under this subsection (iii), and thereafter applying the formula under subsection (ii) to the remaining amount of Shared Expenses.

The obligated Owner shall pay and reimburse to the performing Owner its Contribution Amount within thirty (30) days from the date of presentation of an invoice (which invoice shall set forth

the applicable expenses in reasonable detail). Amounts not timely paid or reimbursed to the performing Owner within such period shall accrue interest thereon until paid in full at the rate of eight per cent (8%) per annum. **Notwithstanding the foregoing, the obligations of the Owner of each Obligated Parcel of Tract 3 to reimburse, pay and contribute its Contribution Amount of Shared Expenses, shall not be deemed to commence until the Contribution Trigger Date with respect to such Obligated Parcel.**

4.4 Insurance. Throughout the term of this Agreement, except in the event of an emergency, prior to entering onto another Owner's Tract for the performance of any work permitted under this Agreement, each Owner shall procure and maintain (or cause its applicable contractors to procure and maintain) contractor's/general and/or comprehensive public liability insurance against claims for personal injury, death, or property damage occurring upon such other Owner's Tract, in such amounts as deemed reasonable and customary, in such Owner's discretion, and naming the Owner of the affected Tract (provided the Owner obtaining such insurance has been supplied with the name of such other Owner in the event of a change thereof) as an additional insured.

4.5 Obligation to Repair and Restore. In connection with any work performed on another Owner's Tract, whether under this Section 4, any of the other provisions of this Agreement, or otherwise, the Owner performing (or causing to be performed) the work shall, at its sole cost and expense, promptly and with due diligence repair, restore and rebuild such the affected portion of the other Owner's Tract to substantially the same or better condition as existed prior to the damage or destruction occasioned by such work.

5. **TAXES AND ASSESSMENTS**. Each Owner shall pay all taxes, assessments, or charges of any type levied or made by any governmental body or agency with respect to its Tract.

6. **NO RIGHTS IN PUBLIC; NO IMPLIED EASEMENTS**. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Tracts. No easements except those expressly set forth in this Agreement shall be deemed to be granted or implied by this Agreement.

7. **REMEDIES AND ENFORCEMENT**.

7.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

7.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure its breach of this Agreement within thirty (30) days following written notice thereof by another Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences such cure within such 30-day period and thereafter diligently prosecutes such cure to completion), any Owner shall have the right to perform such obligation contained in this Agreement on behalf

of such defaulting Owner and be reimbursed by such defaulting Owner upon demand for the reasonable costs thereof. Notwithstanding the foregoing, in the event of (i) an emergency, or (ii) blockage or material impairment of the easement rights, an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable third party costs and expenses thereof.

7.3 Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Agreement shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "Assessment Lien") against the Tract of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Office of the Register of Deeds of Pender County, North Carolina; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Office of the Register of Deeds of Pender County, North Carolina prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. In addition, the Assessment Lien shall be subordinate to the lien of any third party mortgage or deed of trust (hereinafter collectively referenced as a "Mortgage") on any Tract. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

7.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

7.5 No Termination For Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Tract made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of such Tract covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

7.6 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of this Agreement, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owner and/or its Permittees to suffer irreparable harm and such nondefaulting Owner and its Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of this Agreement, the nondefaulting Owner, in addition to all remedies available at law or otherwise under this Agreement, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof of this Agreement.

7.7 Limitation on Liability. Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons or corporations who constitute a respective Owner hereunder, including, but not limited to, officers, directors, employees or agents thereof, with respect to any of the terms, covenants, conditions and provisions of this Agreement. In the event of a default of a respective Owner hereunder, the Owner who seeks recovery from such Owner shall look solely to the interest of such Owner in such Owner's Tract for the satisfaction of

each and every remedy of the non-defaulting Owner; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Owner (i) to pursue equitable relief in connection with any restriction of this Agreement, including a proceeding for a temporary restraining order, preliminary injunction, permanent injunction or specific performance; and (ii) to recover from such Owner all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, an Owner's breach of its obligation to carry insurance hereunder, or to fund its self-insurance obligation, if applicable.

8. **TERM.** The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Register of Deeds of Pender County, North Carolina, and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of the Owners in accordance with Section 9.2 hereof.

9. **MISCELLANEOUS.**

9.1 Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

9.2 Amendment. This Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of the Owners, evidenced by a document that has been fully executed and acknowledged by all Owners and recorded in the official records of the Register of Deeds of Pender County, North Carolina.

9.3 Consents. Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Any request for consent or approval shall: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to make an informed decision thereon. The consent of an Owner under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

9.4 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.

9.5 No Agency. Nothing in this Agreement shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the parties.

9.6 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of and be binding upon the respective parties and their successors, assigns, heirs, and personal representatives.

9.7 Grantee's Acceptance. The grantee of any Tract or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent Owner of such Tract, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the property so acquired by such grantee.

9.8 Severability. Each provision of this Agreement and the application thereof to the Tracts are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of both Tracts by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

9.9 Time of Essence. Time is of the essence in this Agreement.

9.10 Entire Agreement. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

9.11 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time their respective address for notice by like notice to the other party.

9.12 Governing Law. The laws of the State of North Carolina shall govern the interpretation, validity, performance, and enforcement of this Agreement.

9.13 Estoppel Certificates. Each Owner, within thirty (30) days of its receipt of a written request from the other Owner(s), shall from time to time provide the requesting Owner, a certificate binding upon such Owner stating: (a) to the best of such Owner's knowledge, whether any party to this Agreement is in default or violation of this Agreement and if so identifying such default or violation; and (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

9.14 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Tract, the parties agree that this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

9.15 Multiple Owners of Tracts. In the event that there is ever more than one Owner with respect to a Tract (i.e., if Tract 3, Tract 2 or Tract 1 is now or hereafter legally subdivided into multiple parcels), then (x) each Owner of a parcel comprising a portion within said Tract shall enjoy all of the rights and remedies available to the Owner of the initial Tract, (y) the Owner of the largest developed parcel within the applicable Tract shall be deemed the obligated Owner with respect to performance of the maintenance and repair obligations under Section 4.3, provided, that, the Owners of parcels with the Tract may agree in writing (with notice of such designation provided to all Owners within the other Tract) to designate such Obligations to the Owner of a smaller developed parcel within that Tract, and (z) the numerator for each parcel Owner's Contribution Amount within a Tract will be the acreage of its own parcel, and the aggregate acreage of all Owners within a Tract shall be equal to the acreage of said Tract as of the date of this Agreement.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

DECLARANT:

**THE RICHARD RAY SULLIVAN TRUST
DATED JULY 15, 2016**

Bonnie Jean Sullivan

**BONNIE JEAN SULLIVAN, CO-TRUSTEE OF
THE RICHARD RAY SULLIVAN TRUST
DATED JULY 15, 2016**

STATE OF Virginia
COUNTY OF Newport News
CITY

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Bonnie Jean Sullivan.

Date: 3-29-2017

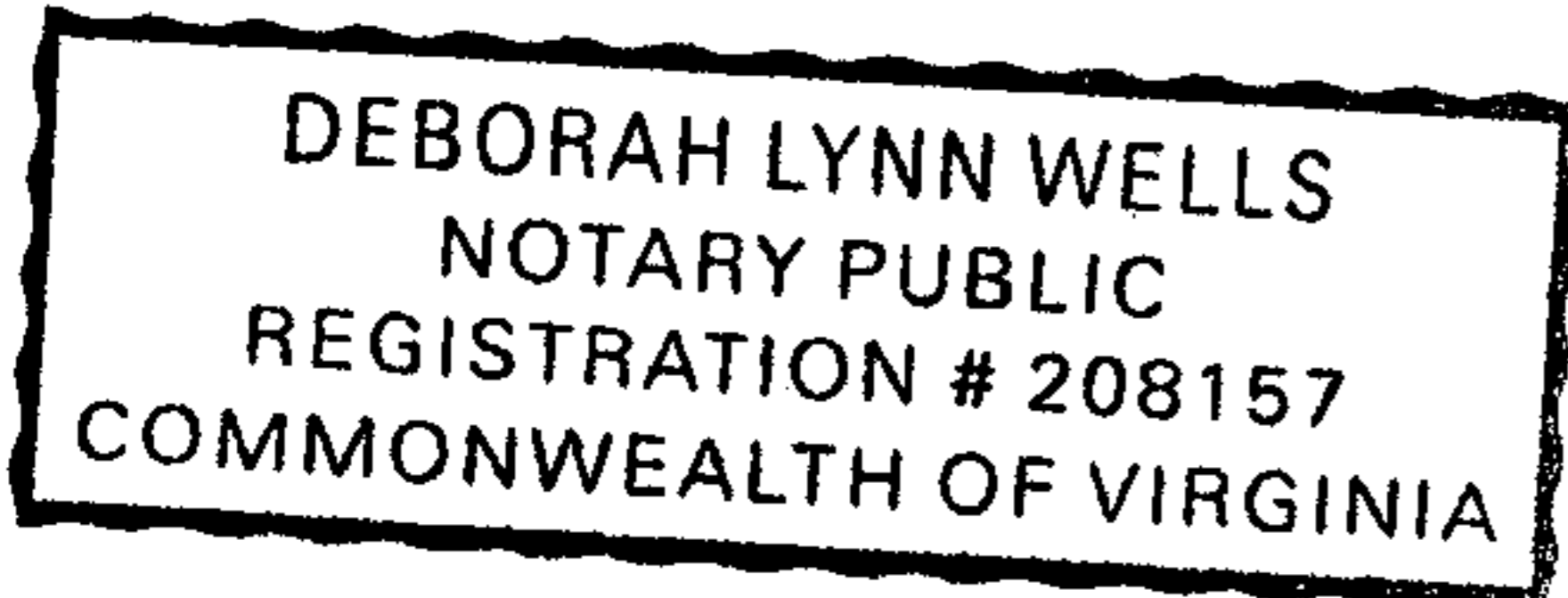
Deborah Lynn Wells
Official Signature of Notary

Deborah Lynn Wells, Notary Public
Notary's Printed or Typed Name

My Commission Expires: 07-31-2018

(Official Seal)

[SIGNATURE PAGES CONTINUE ON NEXT PAGE]



DECLARANT (CONT.):

**THE RICHARD RAY SULLIVAN TRUST
DATED JULY 15, 2016**

Kevin Sullivan

**KEVIN SULLIVAN, CO-TRUSTEE OF THE
RICHARD RAY SULLIVAN TRUST DATED
JULY 15, 2016**

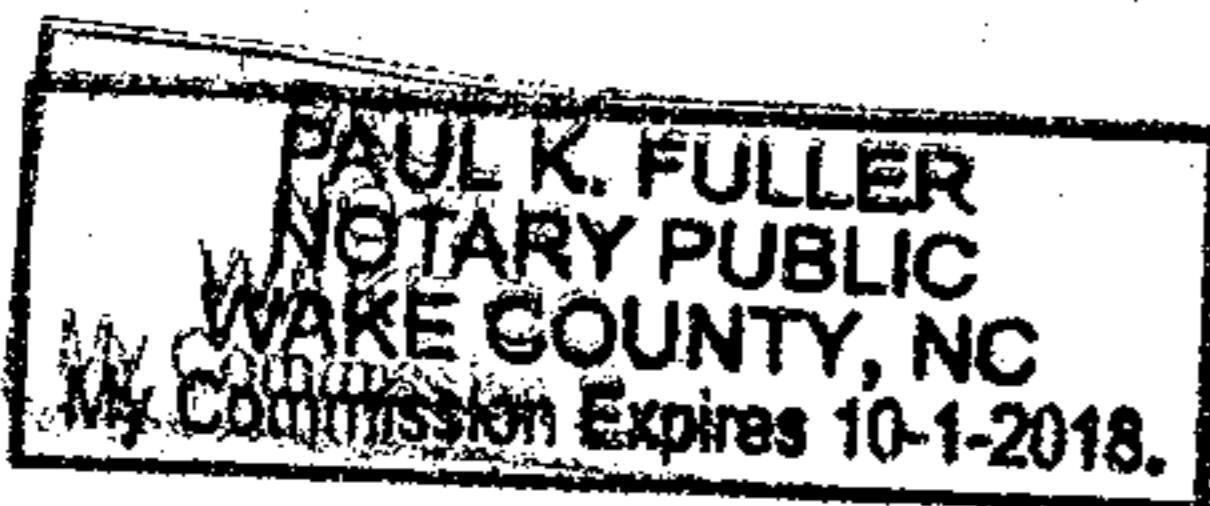
STATE OF North Carolina
COUNTY OF Wake

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Kevin Sullivan.

Date: MAR-30-2017

Paul K Fuller

Official Signature of Notary



Paul K Fuller, Notary Public

Notary's Printed or Typed Name

My Commission Expires: 10-1-2018

(Official Seal)

[SIGNATURE PAGES CONTINUE ON NEXT PAGE]

Henry Allen Sullivan
HENRY ALLEN SULLIVAN

STATE OF North Carolina
COUNTY OF Johnston

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Henry Allen Sullivan

Date: 03/29/2017

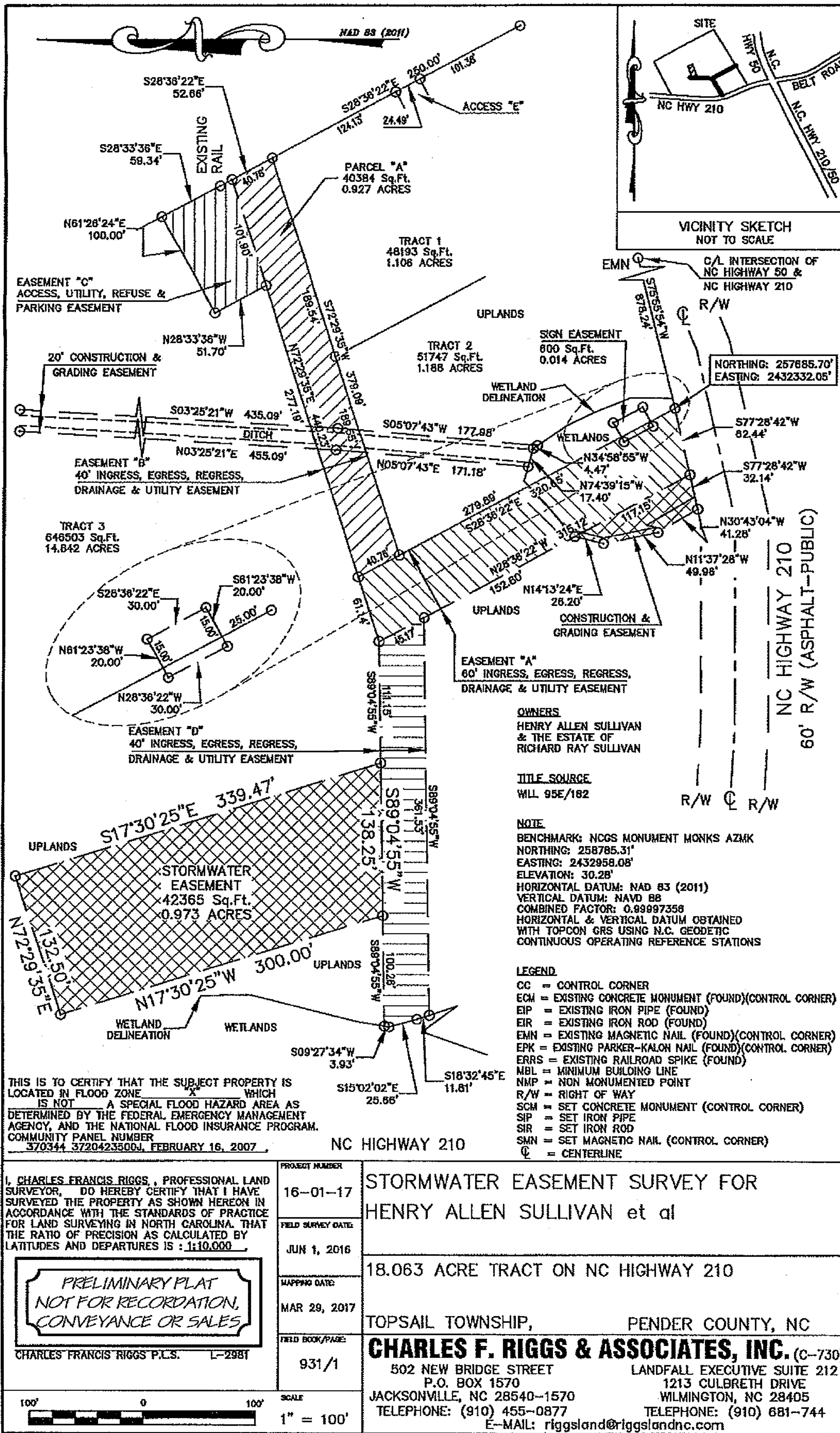
Melinda M. Guzman
Official Signature of Notary

Melinda M Guzman Notary Public
Notary's Printed or Typed Name

My Commission Expires: 02-26-2022

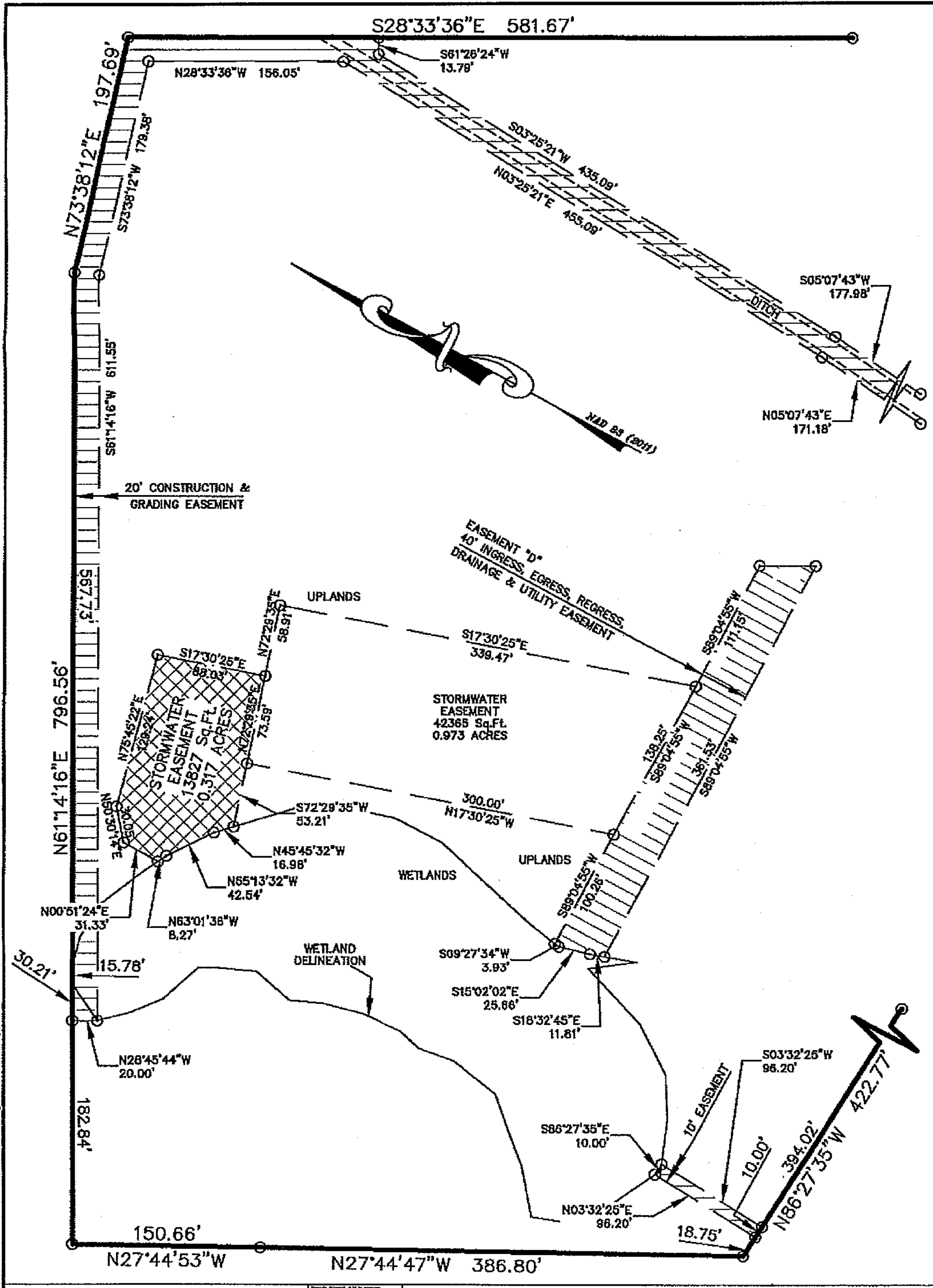


EXHIBIT "A"



S:\2016\16-01-17 EASEMENT SW 2_recover.dwg - Wednesday, March 29, 2017 2:39:04 PM

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.



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.

S:\2016\18-01-17 Sullivan\CAD\Drawings\16-01-17 EASEMENT SH 2_recover.dwg - Wednesday, March 29, 2017 2:39:04 PM

I, CHARLES FRANCIS RIGGS, PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT I HAVE SURVEYED THE PROPERTY AS SHOWN HEREON IN ACCORDANCE WITH THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA. THAT THE RATIO OF PRECISION AS CALCULATED BY LATITUDES AND DEPARTURES IS 1:10,000.

**PRELIMINARY PLAT
NOT FOR RECORDATION,
CONVEYANCE OR SALES**

CHARLES FRANCIS RIGGS P.L.S. L-2981



PROJECT NUMBER	16-01-17
FIELD SURVEY DATE	JUN 1, 2016
MAPPING DATE	MAR 29, 2017
FIELD BOOK/PAGE	931/1
SCALE	1" = 100'

STORMWATER EASEMENT SURVEY FOR HENRY ALLEN SULLIVAN et al

18.063 ACRE TRACT ON NC HIGHWAY 210

TOPSAIL TOWNSHIP, PENDER COUNTY, NC

CHARLES F. RIGGS & ASSOCIATES, INC. (C-730)
 502 NEW BRIDGE STREET LANDFALL EXECUTIVE SUITE 212
 P.O. BOX 1570 1213 CULBRETH DRIVE
 JACKSONVILLE, NC 28540-1570 WILMINGTON, NC 28405
 TELEPHONE: (910) 455-0877 TELEPHONE: (910) 681-744
 E-MAIL: riggsland@riggslandnc.com