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DATE <u>11-11-08</u>	TIME <u>1:02</u>
BOOK <u>24251</u>	PAGE <u>28</u>
STAMPS <u>—</u>	REC FEE <u>107<sup>00</sup></u>
JUDITH A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

Drawn by and mail to:  
Thomas B. Rallings, Jr.  
Rallings & Associates, PLLC  
ROD Box 62

Cross reference to:  
Declaration of Easement recorded in  
Book 24166, Page 25, Mecklenburg  
County, NC Register of Deeds

This easement burdens tax parcel ## 029-052-15, 029-052-16, 029-052-17, 029-371-66 and 029-371-98.

## FIRST AMENDMENT TO DECLARATION OF EASEMENT

THIS FIRST AMENDMENT TO DECLARATION OF EASEMENT (herein the "Amendment"), granted this 10 day of ~~October~~ <sup>November</sup>, 2008, by SOUTH ATLANTIC EQUIPMENT COMPANY, INC., a North Carolina corporation (herein "South Atlantic"), PARK REGENCY, LLC, a New York limited liability company (herein "Regency"), GATEWAY HOMES, LLC, a North Carolina limited liability company (herein "Gateway"), and D and D HOLDING CO., LLC a/k/a D&D Holdings, LLC, a North Carolina limited liability company (herein "D&D") (said parties including their successors in interest being sometimes together referred to herein as the "Parties").

## WITNESSETH

WHEREAS, the Parties have heretofore entered into that Declaration of Easement (the "Declaration"), dated as of the 29<sup>th</sup> day of September, 2008 and recorded in Book 24166 at Page 25 in the Office of the Register of Deeds for Mecklenburg County, North Carolina, wherein easements were granted by the Parties over the Parties' respective tracts of land with regard to the construction, use and maintenance of W. Pavilion Boulevard and Masterton Road, said Declaration

being incorporated herein by reference; and

WHEREAS, the Parties desire by this Amendment to grant, for the benefit of their respective tracts, the Regency/Gateway Tract, South Atlantic Tract, D&D Tract and Gateway Tract (hereinafter together referred to as the "Benefitted Tracts"), easements for the purpose of constructing, using and maintaining storm water drainage facilities, including water quality pond, and sanitary sewer lines upon said tracts; and

WHEREAS, attached hereto as Exhibit "A", containing two (2) pages, is that drawing captioned "Pavilion Blvd Retail Storm Drainage Easement (parts 1 and 2) drawn by The John R. McAdams Company, Inc., dated October 14, 2007 (herein the "Drainage Plan") reflecting thereon the drainage line denominated thereon as the "SD Line A" running generally from within the Gateway Tract (point A12) across W. Pavilion Boulevard to that catch basin at point A10, through the middle, more or less, of the South Atlantic Tract and D&D Tract to that catch basin at point A7, thence in a generally southeast direction to point A6 near the south easternmost point of the D&D Tract and thence in an easterly direction generally parallel to the southern border of the D&D Tract and Regency/Gateway Tract to point A2 and thence in a northeastern direction to a point within the Storm Water Management Pond as described on the Drainage Plan (said drainage line being herein described as "Storm Drain Line A"; and

WHEREAS, reflected upon said Drainage Plan is that drainage line located on the South Atlantic Tract and D&D Tract denominated thereon as the "SD Line J", commencing at that point J4 on the northern boundary of the South Atlantic Tract and running generally in a southerly direction near the common boundary of the South Atlantic Tract and the D&D Tract to that point J1 near the boundary of said tracts with North Tryon Street (said drainage line being herein described as "Storm Drain Line J"); and

WHEREAS, reflected upon said Drainage Plan is that drainage line located within the D&D Tract denominated thereon as the "SD Line A8", commencing at that catch basin located at point A38 on the northern side of Masterton Road and running in a southerly direction across Masterton Road to that catch basin located within Storm Drain Line A (said drainage line being herein described as "Storm Drain Line A8"); and

WHEREAS, reflected upon said Drainage Plan is that drainage line located at the intersection of W. Pavilion Boulevard and Highway 29 denominated thereon as the "SD Line I", commencing at point I1 near the southeastern corner of the Gateway Tract, and running in an easterly direction across W. Pavilion Boulevard to that catch basin located at point I3 at the southwestern corner of the South Atlantic Tract (said drainage line being herein described as "Storm Drain Line I"); and

WHEREAS, reflected upon said Drainage Plan, located within the Regency/Gateway Tract, is that drainage facility denominated thereon as the "Storm Water Management Pond" (herein the "Detention Pond") into which Storm Drain Line A drains at the southwestern corner of said Detention Pond; and

WHEREAS, each of Storm Drain Line A, Storm Drain Line J, Storm Drain Line A8 and Storm Drain Line I is centered upon a fifteen (15) foot wide area running the length of each such

drain line and denominated on the Drainage Plan as "15' Storm Drainage Easement", "Storm Drainage Easement and "15' S.D.E." (herein together the "Drainage Line Easement Area"; and

WHEREAS, that area surrounding the Detention Pond, and being sufficient of an area to allow for any necessary repairs and reconstruction thereof, is that area marked on the Drainage Plan as the "Storm Drain Easement Around Storm Water Management Pond (width varies)" (herein the "Detention Pond Easement Area"); and

WHEREAS, attached hereto as Exhibit "B" and incorporated herein by reference is a drawing (herein the "Sanitary Sewer Plan") setting forth thereon the general intended location of the sanitary sewer lines located upon and intended to serve the Gateway Tract, South Atlantic Tract and D&D Tract, and a portion of the Regency/Gateway Tract, said line being labeled upon said Sanitary Sewer Plan as the "Sanitary Sewer Line" and extending from "Sanitary Sewer manhole 14" on the Gateway Tract in an easterly direction across the South Atlantic Tract and D&D Tract, to the labeled "Sanitary Sewer manhole 9" on the Regency/Gateway Tract; and

WHEREAS, the Parties desire herein to grant for the benefit of the needed tracts an easement over that area which is seven and one-half (7 ½) feet on each side of the Sanitary Sewer Line and running its entire length from Sanitary Sewer manhole 14 to Sanitary Sewer manhole 9, and such area within the Regency/Gateway Tract as may be needed for the purpose of connecting the Sanitary Sewer Line to an existing Charlotte-Mecklenburg Utility Department maintained sanitary sewer line (herein the "Sanitary Sewer Easement Area") (the Drainage Line Easement Area, Detention Pond Easement Area and Sanitary Sewer Easement Area being herein together referred to as the "Easement Area"); and

WHEREAS, certain engineering plans have been drawn by The John R. McAdams Company, Inc. setting forth the specifications for construction of the drainage facilities and sanitary sewer lines upon the Benefitted Tracts, said plans having captions of "Pavilion Blvd Retail" and "Highway 29 Property- Phase I" (herein together referred to as the "Plans").

**NOW, THEREFORE,** in consideration of the mutual benefits to be realized by such joint use, the mutual covenants of the Parties as set forth herein and the mutual advantages created by the Parties' construction of storm water drainage improvements and sanitary sewer lines within the South Atlantic Tract, D&D Tract, Gateway Tract and Regency/Gateway Tract, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto do hereby agree as follows:

1. Any terms within this Amendment with an initial upper case letter and not otherwise defined herein shall have the same meaning ascribed thereto in the Declaration.

2. Regency/Gateway does hereby reserve to itself for the benefit of the Regency/Gateway Tract, and does hereby establish, give, grant, and convey to South Atlantic, Gateway and D&D, their respective successors, assigns, employees, agents and invitees, for the benefit of the South Atlantic Tract, Gateway Tract and D&D Tract, in common with others entitled to use the same, a non-exclusive perpetual easement over that portion of the Easement Area located within the Regency/Gateway Tract, and for ingress and egress thereto over the Regency/Gateway Tract, for the following purposes: (i) to construct, install, reconstruct, operate, use, maintain,

repair, replace and remove, storm water lines, sanitary sewer lines, manholes, mains, rip rap, boulders, wing walls, headwalls, catch basins, detention ponds and related improvements located upon the Easement Area, and (ii) to discharge storm water runoff originating from the Gateway Tract, South Atlantic Tract, D&D Tract and W. Pavilion Boulevard.

3. D&D does hereby reserve to itself for the benefit of the D&D Tract, and does hereby establish, give, grant, and convey to South Atlantic and Gateway, their respective successors, assigns, employees, agents and invitees, for the benefit of the South Atlantic Tract and Gateway Tract, in common with others entitled to use the same, a non-exclusive perpetual easement over that portion of the Easement Area located within the D&D Tract, and for ingress and egress thereto over the D&D Tract, for the following purposes: (i) to construct, install, reconstruct, operate, use, maintain, repair, replace and remove, storm water lines, sanitary sewer lines, manholes, mains, rip rap, boulders, wing walls, headwalls, catch basins, and related improvements located upon the Easement Area, and (ii) to use drainage lines located within the Easement Area for the passage of storm water runoff originating from the Gateway Tract, South Atlantic Tract and W. Pavilion Boulevard.

4. South Atlantic does hereby reserve to itself for the benefit of the D&D Tract, and does hereby establish, give, grant, and convey to Gateway, its respective successors, assigns, employees, agents and invitees, for the benefit of the Gateway Tract, in common with others entitled to use the same, a non-exclusive perpetual easement over that portion of the Easement Area located within the South Atlantic Tract, and for ingress and egress thereto over the South Atlantic Tract, for the following purposes: (i) to construct, install, reconstruct, operate, use, maintain, repair, replace and remove, storm water lines, sanitary sewer lines, manholes, mains, rip rap, boulders, wing walls, headwalls, catch basins, and related improvements located upon the Easement Area, and (ii) to use drainage lines located within the Easement Area for the passage of storm water runoff originating from the Gateway Tract and W. Pavilion Boulevard.

5. The owner(s) of each of the Benefitted Tracts shall be responsible for the construction of all storm water drainage facilities and sanitary sewer line facilities that are required for their tract (herein the "Improvements"). All Improvements shall be constructed in a good and workmanlike manner in accordance with the Plans and in compliance with all applicable governmental regulations. The Detention Pond shall be constructed by the owner(s) of the Regency/Gateway Tract and shall be constructed in such a manner to regulate and control all storm water runoff from the Benefitted Tracts. The construction of all Improvements shall be completed within eighteen (18) months of the recordation of this Amendment.

The owner(s) of the Regency/Gateway Tract shall be solely responsible for all costs and expenses associated with the construction of the (a) Detention Pond, (b) all other Improvements upon the Regency/Gateway Tract except as otherwise specifically provided herein, and (c) all Improvements required for the construction of Storm Drain Line I. The owner(s) of the Regency/Gateway Tract shall be responsible for one-half of all costs and expenses associated with the construction of (a) the remaining Improvements upon the Gateway Tract, South Atlantic Tract and D&D Tract, and (b) those Improvements required on the Regency/Gateway Tract on (i) Storm Drain Line A between the common boundary line of the D&D Tract and Regency/Gateway Tract and that junction box located at point A4 on Storm Drain Line A, and (ii) the Sanitary Sewer Line between the common boundary line of the D&D Tract and Regency/Gateway Tract and Sanitary

Sewer manhole 9.

During the course of construction of those Improvements for which Regency/Gateway is liable for one-half of the costs, the constructing party shall submit to Regency/Gateway on a monthly basis, an itemization of costs incurred for such work performed on the Improvements since the last such itemization. Included with such itemization shall be copies of all billings/invoices for such work, backup documentation that may be reasonably requested, and evidence of payment thereof by the constructing party (together the "Billing Submission"). Regency/Gateway shall have a period of fifteen (15) days following receipt in which to review the Billing Submission and to remit to the constructing party an amount equal to one-half (1/2) of the total of such costs.

6. All Improvements shall be maintained, repaired and reconstructed from time to time by the owner(s) of the tract upon which the Improvements are located, all such work to be in a first class condition in compliance with all applicable governmental regulations. In the event that the owner(s) of any tract fails, at any time, to satisfy its obligations hereunder, the owner of any affected tract that is granted an easement hereunder, including its employees, agents, contractors, licensees and invitees, may enter onto the Easement Area for the purpose of performing any such maintenance. Such owner(s) failing to maintain its Improvements shall be liable for all costs and expenses incurred in the maintaining of the Improvements and make payment therefore upon demand. Should such an owner fail to remit payment, the owner incurring such costs and expenses may recover on demand the amount due, together with all reasonable costs incurred, including, without limitation, attorneys fees, and, with respect to such recovery, in addition to pursuing all rights and remedies otherwise available at law or in equity, file a lien against the property of the defaulting owner and foreclose said lien in accordance with the procedures for foreclosure set forth in Chapter 44A of the General Statutes of North Carolina.

7. In consideration for the grant of the easements herein, the Parties covenant and agree to:

a. Construct and build the Improvements pursuant to the Plans and all applicable government regulations;

b. Return any disturbed portions of any other Benefitted Tract, and any supporting banks, to a condition equivalent to that existing before construction, stable, graded smooth and seeded;

c. Indemnify and hold any other party hereto harmless from any claims, actions, or suits which are due solely to liability based upon any adverse physical characteristic, design flaw, or unsafe condition existing in the Improvements constructed by such party.

d. Do no work pursuant to this Amendment which interferes with the rights of any private or public utility, or the general public, under existing easements.

8. The easements, restrictions, and agreements provided for herein shall be effective upon execution of this Amendment by the Parties hereto. The easements provided for herein shall run with the land and shall constitute a use for reciprocal benefits to and burdens upon each such

tract as provided herein. The easements provided for herein shall inure to the benefit of and be binding upon the respective successors, assigns, heirs, and tenants of each party hereto and the customers, employees, and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership of the tracts herein affected, or by any change of use, demolition, reconstruction, expansion, or other circumstances, except as specified herein. The agreement and undertakings by each party hereto shall be enforceable by any action in law or equity.

9. This instrument does not dedicate the said easements contained herein to the general public unless otherwise stated herein, nor does this instrument restrict the use and development of any of the tracts affected hereby except as stated herein.

10. The exhibit letter identification for the last exhibit to the Declaration is modified to read as follows:

EXHIBIT "E"  
"Masterton Road Access Easement Area"

11. This Amendment contains the entire agreement and understanding among the Parties; there are no oral understandings, terms or conditions, and neither of the Parties has relied upon a representation, express or implied, not contained herein.

12. In the event of any conflict between the provisions of this Amendment and the Declaration, this Amendment shall control.

IN WITNESS HEREOF, the undersigned execute this Amendment the day and year first set forth above.

SOUTH ATLANTIC EQUIPMENT COMPANY, INC.  
a North Carolina corporation

By: \_\_\_\_\_

Name: John F. Joyner

Position: President

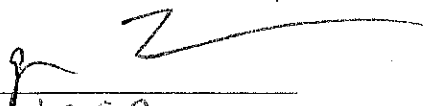
PARK REGENCY, LLC, a New York limited  
liability company

By: \_\_\_\_\_

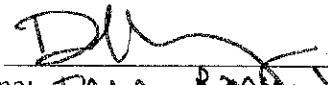
Name: Roger Gaines

Position: MGR MBL

GATEWAY HOMES, LLC, a North Carolina  
limited liability company

By:   
Name: Doug Levin  
Position: member manager

D AND D HOLDING CO., LLC a/k/a D&D Holdings, LLC,  
a North Carolina limited liability company

By:   
Name: Davis Ransbury  
Position: Member Manager

tract as provided herein. The easements provided for herein shall inure to the benefit of and be binding upon the respective successors, assigns, heirs, and tenants of each party hereto and the customers, employees, and invitees of such parties, and shall remain in full force and effect and shall be unaffected by any change in ownership of the tracts herein affected, or by any change of use, demolition, reconstruction, expansion, or other circumstances, except as specified herein. The agreement and undertakings by each party hereto shall be enforceable by any action in law or equity.

9. This instrument does not dedicate the said easements contained herein to the general public unless otherwise stated herein, nor does this instrument restrict the use and development of any of the tracts affected hereby except as stated herein.

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12. In the event of any conflict between the provisions of this Amendment and the Declaration, this Amendment shall control.

IN WITNESS HEREOF, the undersigned execute this Amendment the day and year first set forth above.

SOUTH ATLANTIC EQUIPMENT COMPANY, INC.  
a North Carolina corporation

By: Cindy P. Greene  
Name: John F. Joyner Cindy P. Greene  
Position: President Vice President

PARK REGENCY, LLC, a New York limited  
liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Position: \_\_\_\_\_



STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_, does hereby certify that John F. Joyner, the "Signatory", personally known to me, came before me this day and acknowledged that he is President of South Atlantic Equipment Company, Inc., a North Carolina corporation, that he as President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

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

Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public {OFFICIAL STAMP OR SEAL}  
(Notary must sign exactly as on notary seal)

\_\_\_\_\_  
Notary Name Typed or Printed

My commission expires:

\*\*\*\*\*

STATE OF North Carolina

COUNTY OF Mecklenburg

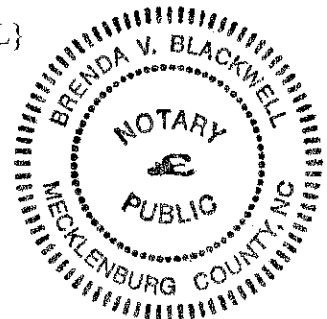
I, Brenda V. Blackwell, a Notary Public of the County and State aforesaid, certify that Roger Gaines, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), who is the Manager of Park Regency, LLC, a New York limited liability company, personally appeared before me this day and acknowledged that he is Manager of Park Regency, LLC and that as Manager being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal, this 3rd day of November, 2008.

Brenda V. Blackwell  
Notary Public {OFFICIAL STAMP OR SEAL}  
(Notary must sign exactly as on notary seal)

Brenda V. Blackwell  
Notary Name Typed or Printed

My commission expires: November 16, 2009  
STATE OF \_\_\_\_\_



STATE OF NORTH CAROLINA  
COUNTY OF Mecklenburg

I, Brenda V. Blackwell, a Notary Public of the County and State aforesaid, certify that Doug Levin, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), who is the Manager of Gateway Homes, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he is Manager of Gateway Homes, LLC and that as Manager being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal, this 4<sup>th</sup> day of November, 2008.

Brenda V. Blackwell  
Notary Public  
(Notary must sign exactly as on notary seal)

{OFFICIAL STAMP OR SEAL}

Brenda V. Blackwell  
Notary Name Typed or Printed

My commission expires: November 16, 2009

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STATE OF North Carolina  
COUNTY OF Mecklenburg

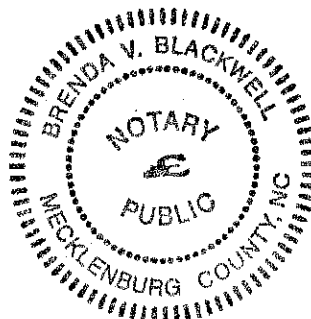
I, Brenda V. Blackwell, a Notary Public of the County and State aforesaid, certify that David Ransenberg, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), who is the Manager of D&D Holdings, LLC a/k/a D&D Holding Co., LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he is Manager of D&D Holdings, LLC a/k/a D&D Holding Co., LLC and that as Manager being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal, this 4<sup>th</sup> day of November, 2008.

Brenda V. Blackwell  
Notary Public  
(Notary must sign exactly as on notary seal)

{OFFICIAL STAMP OR SEAL}

Brenda V. Blackwell  
Notary Name Typed or Printed  
My commission expires:



State of North Carolina

County of Mecklenburg

I, Sonya H. Frye, a Notary Public for said County and State, certify that the following person, personally known to me, personally appeared before me this day and acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: David Ransenberg, Member-Manager of D and D Holding Co., LLC (a/k/a D&D Holdings, LLC), a North Carolina limited liability company.

This the 10 day of November, 2008.

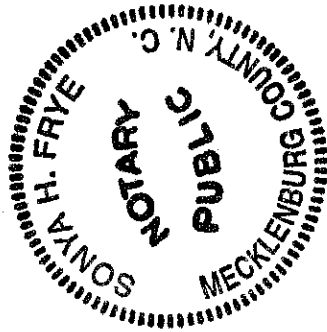
*Sonya H Frye*

Notary Public

Sonya H. Frye

Notary name printed or typed

My commission expires: 7/11/12



STATE OF NORTH CAROLINA

COUNTY OF Union

I, Stacey V. Koenke, a Notary Public of North Carolina, does hereby certify that John F. Joyner, the "Signatory", personally known to me, came before me this day and acknowledged that he is President of South Atlantic Equipment Company, Inc., a North Carolina corporation, that he as President, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

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

Witness my hand and official stamp or seal, this 10<sup>th</sup> day of November, 2008.

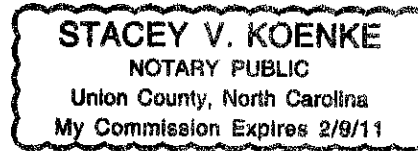
Stacey V. Koenke  
Notary Public

{OFFICIAL STAMP OR SEAL}

(Notary must sign exactly as on notary seal)

Stacey V. Koenke  
Notary Name Typed or Printed

My commission expires:



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STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), who is the Manager of Park Regency, LLC, a New York limited liability company, personally appeared before me this day and acknowledged that he is Manager of Park Regency, LLC and that as Manager being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

{OFFICIAL STAMP OR SEAL}

(Notary must sign exactly as on notary seal)

\_\_\_\_\_  
Notary Name Typed or Printed

My commission expires:

STATE OF \_\_\_\_\_

Bank of the Ozarks, an Arkansas state bank ("Lender"), owner and holder of a note secured by that Deed of Trust from Gateway Homes, LLC, a North Carolina limited liability company and Park Regency, LLC, a New York limited liability company, to Chicago Title Insurance Company, a Nebraska corporation, Trustee for the benefit of Lender, dated October 1, 2008 and recorded in Book 24172 at Page 657 in the Mecklenburg County Register of Deeds (the "Deed of Trust"), hereby consents to the execution, delivery and recording of the foregoing First Amendment to Declaration of Easement by and among South Atlantic Equipment Company, Inc., Park Regency, LLC, Gateway Homes, LLC and D and D Holding Co., LLC (the "Declaration") and agrees that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration and that the Deed of Trust, the lien created thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Deed of Trust are, and shall be, subject and subordinate to the Declaration and the provisions thereof; provided, nothing herein shall constitute a subordination by the undersigned to any liens filed and claimed pursuant to Paragraph 6 of the above Declaration.

IN WITNESS WHEREOF, the undersigned has duly executed these presents under due authority as of this the 6<sup>th</sup> day of ~~October~~, 2008.

*November*

LENDER:

BANK OF THE OZARKS, an Arkansas state bank

By: *C. V. Wolfe*

Name: *C. V. Wolfe*

Position: *Executive Vice President*

TRUSTEE:

CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation

By: \_\_\_\_\_

Name:

Position:

Bank of the Ozarks, an Arkansas state bank ("Lender"), owner and holder of a note secured by that Deed of Trust from Gateway Homes, LLC, a North Carolina limited liability company and Park Regency, LLC, a New York limited liability company, to Chicago Title Insurance Company, a Nebraska corporation, Trustee for the benefit of Lender, dated October 1, 2008 and recorded in Book 24172 at Page 657 in the Mecklenburg County Register of Deeds (the "Deed of Trust"), hereby consents to the execution, delivery and recording of the foregoing Amended Declaration of Easement by and among South Atlantic Equipment Company, Inc., Park Regency, LLC, Gateway Homes, LLC and D and D Holding Co., LLC (the "Declaration") and agrees that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration and that the Deed of Trust, the lien created thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Deed of Trust are, and shall be, subject and subordinate to the Declaration and the provisions thereof; provided, nothing herein shall constitute a subordination by the undersigned to any liens filed and claimed pursuant to Paragraph 6 of the above Declaration.

IN WITNESS WHEREOF, the undersigned has duly executed these presents under due authority as of this the \_\_\_\_\_ day of October, 2008.

LENDER:

BANK OF THE OZARKS, an Arkansas state bank

By: \_\_\_\_\_  
Name:  
Position:

TRUSTEE:

CHICAGO TITLE INSURANCE COMPANY, a Nebraska corporation

By: \_\_\_\_\_  
Name: Christopher C. Anderson  
Position: AVP

STATE OF North Carolina  
COUNTY OF Mecklenburg

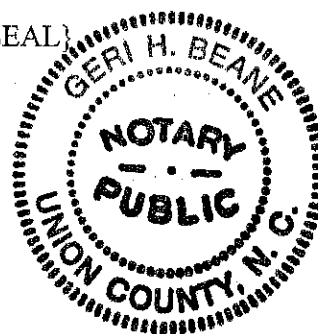
I, Geri H Beane, a Notary Public of Union County, does hereby certify that C.V. White, the "Signatory", personally known to me, came before me this day and acknowledged that he/she is Exec. V.P. of Bank of the Ozarks, an Arkansas state bank, and that he/she as Exec. V.P., being authorized to do so, executed the foregoing instrument on behalf of the corporation.

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 6th day of November, 2008.

Geri H Beane  
Notary Public  
(Notary must sign exactly as on notary seal)  
Geri H Beane  
Notary Name Typed or Printed

{OFFICIAL STAMP OR SEAL}



My commission expires: 3/8/2010

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_, does hereby certify that \_\_\_\_\_, the "Signatory", personally known to me, came before me this day and acknowledged that he/she is \_\_\_\_\_ of Chicago Title Insurance Company, a Nebraska corporation, and that he/she as \_\_\_\_\_, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

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 \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public  
(Notary must sign exactly as on notary seal)  
\_\_\_\_\_  
Notary Name Typed or Printed

{OFFICIAL STAMP OR SEAL}

My commission expires:

Douglas Wilkie and Elena Ibe, Neal Bergman and Nomi Bergman, John Fasciana and

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of \_\_\_\_\_, does hereby certify that \_\_\_\_\_, the "Signatory", personally known to me, came before me this day and acknowledged that he/she is \_\_\_\_\_ of Bank of the Ozarks, an Arkansas state bank, and that he/she as \_\_\_\_\_, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

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 \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public {OFFICIAL STAMP OR SEAL}  
(Notary must sign exactly as on notary seal)

\_\_\_\_\_  
Notary Name Typed or Printed

My commission expires:

STATE OF North Carolina

COUNTY OF Mecklenburg

I, Shannon A. Farrell, a Notary Public of Mecklenburg County, does hereby certify that Christopher C. Anderson the "Signatory", personally known to me, came before me this day and acknowledged that he/she is AVP of Chicago Title Insurance Company, a Nebraska corporation, and that he/she as AVP, being authorized to do so, executed the foregoing instrument on behalf of the corporation.

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

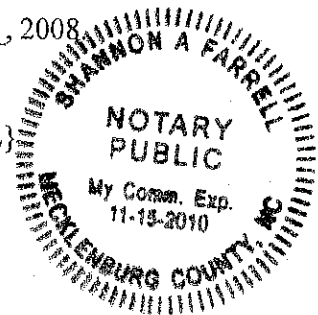
Witness my hand and official stamp or seal, this 7<sup>th</sup> day of October, 2008.

\_\_\_\_\_  
Notary Public {OFFICIAL STAMP OR SEAL}  
(Notary must sign exactly as on notary seal)

Shannon A. Farrell  
Notary Name Typed or Printed

My commission expires: 11-15-2010

Douglas Wilkie and Elena Ibe, Neal Bergman and Nomi Bergman, John Fasciana and




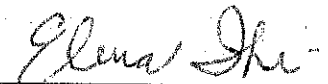


Michele Fasciana, Martin Wasser, Christopher Pillay, Clifford Gaines, Albert Nalibotsky and Cadillac Properties (together "Lender"), owner and holder of a note secured by that Deed of Trust from Gateway Homes, LLC, a North Carolina limited liability company and Park Regency, LLC, a New York limited liability company, to Lisa A. Page, Attorney, Trustee for the benefit of Lender, dated October 1, 2008 and recorded in Book 24172 at Page 716 in the Mecklenburg County Register of Deeds (the "Deed of Trust"), hereby consents to the execution, delivery and recording of the foregoing Amended Declaration of Easement by and among South Atlantic Equipment Company, Inc., Park Regency, LLC, Gateway Homes, LLC and D and D Holding Co., LLC (the "Declaration") and agrees that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration and that the Deed of Trust, the lien created thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Deed of Trust are, and shall be, subject and subordinate to the Declaration and the provisions thereof.

IN WITNESS WHEREOF, the undersigned has duly executed these presents under due authority as of this the \_\_\_\_\_ day of October, 2008.

LENDER:

 (SEAL)  
Douglas Wilkie

 (SEAL)  
Elena Ibe

\_\_\_\_ (SEAL)  
Neal Bergman

\_\_\_\_ (SEAL)  
Nomi Bergman

\_\_\_\_ (SEAL)  
John Fasciana

\_\_\_\_ (SEAL)  
Michele Fasciana

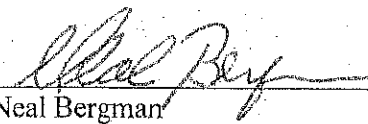
Michele Fasciana, Martin Wasser, Christopher Pillay, Clifford Gaines, Albert Nalibotsky and Cadillac Properties (together "Lender"), owner and holder of a note secured by that Deed of Trust from Gateway Homes, LLC, a North Carolina limited liability company and Park Regency, LLC, a New York limited liability company, to Lisa A. Page, Attorney, Trustee for the benefit of Lender, dated October 1, 2008 and recorded in Book 24172 at Page 716 in the Mecklenburg County Register of Deeds (the "Deed of Trust"), hereby consents to the execution, delivery and recording of the foregoing Amended Declaration of Easement by and among South Atlantic Equipment Company, Inc., Park Regency, LLC, Gateway Homes, LLC and D and D Holding Co., LLC (the "Declaration") and agrees that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration and that the Deed of Trust, the lien created thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Deed of Trust are, and shall be, subject and subordinate to the Declaration and the provisions thereof.

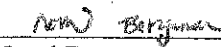
IN WITNESS WHEREOF, the undersigned has duly executed these presents under due authority as of this the \_\_\_\_\_ day of October, 2008.

LENDER:

\_\_\_\_\_(SEAL)  
Douglas Wilkie

\_\_\_\_\_(SEAL)  
Elena Ibe

\_\_\_\_\_(SEAL)  
Neal Bergman

\_\_\_\_\_(SEAL)  
Nomi Bergman

\_\_\_\_\_(SEAL)  
John Fasciana

\_\_\_\_\_(SEAL)  
Michele Fasciana

Michele Fasciana, Martin Wasser, Christopher Pillay, Clifford Gaines, Albert Nalibotsky and Cadillac Properties (together "Lender"), owner and holder of a note secured by that Deed of Trust from Gateway Homes, LLC, a North Carolina limited liability company and Park Regency, LLC, a New York limited liability company, to Lisa A. Page, Attorney, Trustee for the benefit of Lender, dated October 1, 2008 and recorded in Book 24172 at Page 716 in the Mecklenburg County Register of Deeds (the "Deed of Trust"), hereby consents to the execution, delivery and recording of the foregoing Amended Declaration of Easement by and among South Atlantic Equipment Company, Inc., Park Regency, LLC, Gateway Homes, LLC and D and D Holding Co., LLC (the "Declaration") and agrees that any subsequent foreclosure of the Deed of Trust shall not extinguish the Declaration and that the Deed of Trust, the lien created thereby, and Lender's and Trustee's interest in the property described therein by virtue of the Deed of Trust are, and shall be, subject and subordinate to the Declaration and the provisions thereof.

IN WITNESS WHEREOF, the undersigned has duly executed these presents under due authority as of this the \_\_\_\_\_ day of October, 2008.

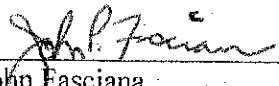
LENDER:

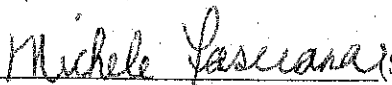
\_\_\_\_\_(SEAL)  
Douglas Wilkie

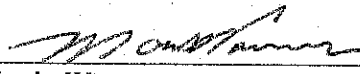
\_\_\_\_\_(SEAL)  
Elena Ibe

\_\_\_\_\_(SEAL)  
Neal Bergman

\_\_\_\_\_(SEAL)  
Nomi Bergman

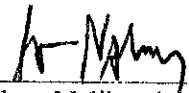
\_\_\_\_\_(SEAL)  
John Fasciana

\_\_\_\_\_(SEAL)  
Michele Fasciana

 (SEAL)  
Martin Wasser

 (SEAL)  
Christopher Pillay

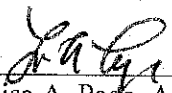
\_\_\_\_ (SEAL)  
Clifford Gaines

 (SEAL)  
Albert Nalibotsky

Cadillac Properties, LLC, a \_\_\_\_\_ limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Position: \_\_\_\_\_

TRUSTEE:

 (SEAL)  
Lisa A. Page, Attorney

\_\_\_\_\_(SEAL)  
Martin Wasser

\_\_\_\_\_(SEAL)  
Christopher Pillay

Clifford Gaines (SEAL)  
Clifford Gaines

\_\_\_\_\_(SEAL)  
Albert Nalibotsky

Cadillac Properties, LLC, a N. Carolina limited liability company

By: Philip Solomon  
Name: Philip Solomon  
Position: ~~Partner President~~ Manager  
RR

TRUSTEE:

\_\_\_\_\_(SEAL)  
Lisa A. Page, Attorney

STATE OF North Carolina

COUNTY OF Mecklenburg

I, a Notary Public of the County and State aforesaid, certify that Douglas Wilkie personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3<sup>rd</sup> day of November, 2008.

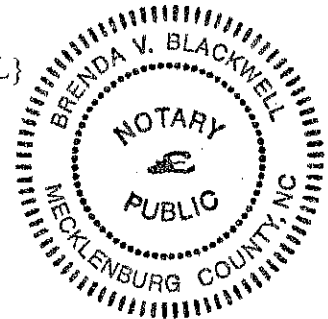
Brenda V. Blackwell  
Notary Public

{OFFICIAL STAMP OR SEAL}

(Notary must sign exactly as on notary seal)

Brenda V. Blackwell  
Notary Name Typed or Printed

My commission expires: November 16, 2009



STATE OF North Carolina

COUNTY OF Mecklenburg

I, a Notary Public of the County and State aforesaid, certify that Elena Ibe personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3<sup>rd</sup> day of November, 2008.

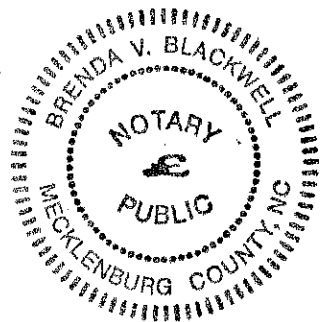
Brenda V. Blackwell  
Notary Public

{OFFICIAL STAMP OR SEAL}

(Notary must sign exactly as on notary seal)

Brenda V. Blackwell  
Notary Name Typed or Printed

My commission expires: November 16, 2009



STATE OF North Carolina

COUNTY OF Mecklenburg

I, a Notary Public of the County and State aforesaid, certify that Neal Bergman personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3<sup>RD</sup> day of November, 2008.

Brenda V. Blackwell

Notary Public

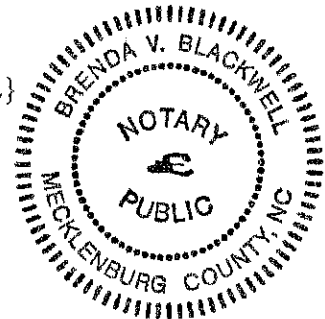
{OFFICIAL STAMP OR SEAL}

(Notary must sign exactly as on notary seal)

Brenda V. Blackwell

Notary Name Typed or Printed

My commission expires: November 16, 2009



STATE OF North Carolina

COUNTY OF Mecklenburg

I, a Notary Public of the County and State aforesaid, certify that Nomi Bergman personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3<sup>RD</sup> day of November, 2008.

Brenda V. Blackwell

Notary Public

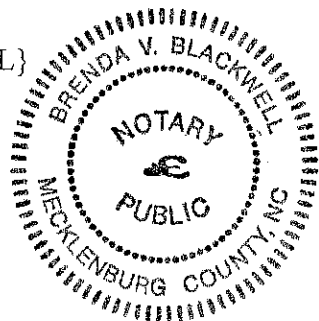
{OFFICIAL STAMP OR SEAL}

(Notary must sign exactly as on notary seal)

Brenda V. Blackwell

Notary Name Typed or Printed

My commission expires: November 16, 2009



STATE OF North Carolina

COUNTY OF Mecklenburg

I, a Notary Public of the County and State aforesaid, certify that John Fasciana personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3<sup>rd</sup> day of November, 2008.

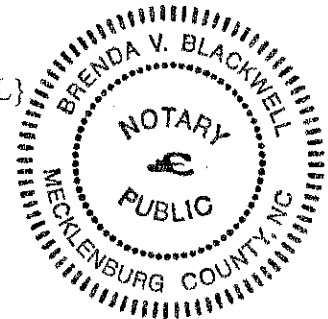
Brenda V. Blackwell  
Notary Public

{OFFICIAL STAMP OR SEAL}

(Notary must sign exactly as on notary seal)

Brenda V. Blackwell  
Notary Name Typed or Printed

My commission expires: November 16, 2009



STATE OF North Carolina

COUNTY OF Mecklenburg

I, a Notary Public of the County and State aforesaid, certify that Michele Fasciana personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3<sup>rd</sup> day of November, 2008.

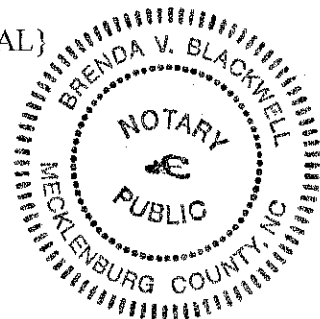
Brenda V. Blackwell  
Notary Public

{OFFICIAL STAMP OR SEAL}

(Notary must sign exactly as on notary seal)

Brenda V. Blackwell  
Notary Name Typed or Printed

My commission expires: November 16, 2009





STATE OF North Carolina

COUNTY OF Mecklenburg

I, a Notary Public of the County and State aforesaid, certify that Martin Wasser personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3<sup>rd</sup> day of November, 2008.

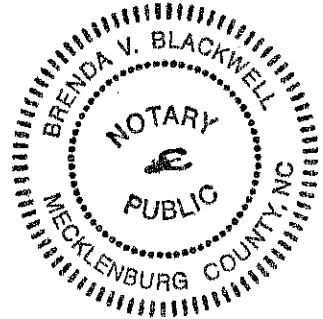
Brenda V. Blackwell  
Notary Public

{OFFICIAL STAMP OR SEAL}

(Notary must sign exactly as on notary seal)

Brenda V. Blackwell  
Notary Name Typed or Printed

My commission expires: November 16, 2009



STATE OF North Carolina

COUNTY OF Mecklenburg

I, a Notary Public of the County and State aforesaid, certify that Christopher Pillay personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3<sup>rd</sup> day of November, 2008.

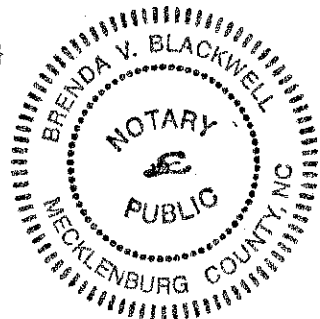
Brenda V. Blackwell  
Notary Public

{OFFICIAL STAMP OR SEAL}

(Notary must sign exactly as on notary seal)

Brenda V. Blackwell  
Notary Name Typed or Printed

My commission expires: November 16, 2009



STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), who is the Manager of Cadillac Properties, LLC, a \_\_\_\_\_ limited liability company, personally appeared before me this day and acknowledged that he is Manager of Cadillac Properties, LLC and that as Manager being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal, this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public {OFFICIAL STAMP OR SEAL}  
(Notary must sign exactly as on notary seal)

\_\_\_\_\_  
Notary Name Typed or Printed

My commission expires:

STATE OF NC

COUNTY OF Mecklenburg

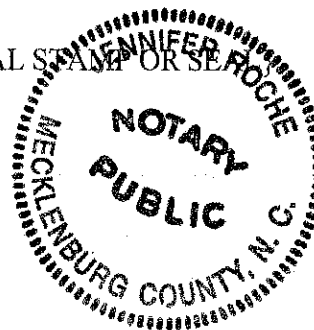
I, a Notary Public of the County and State aforesaid, certify that Lisa A. Page, Attorney, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 4 day of Nov., 2008.

Jennifer Roche  
Notary Public

(Notary must sign exactly as on notary seal)

Jennifer Roche  
Notary Name Typed or Printed

My commission expires: 7/5/2009



STATE OF North Carolina

COUNTY OF Mecklenburg

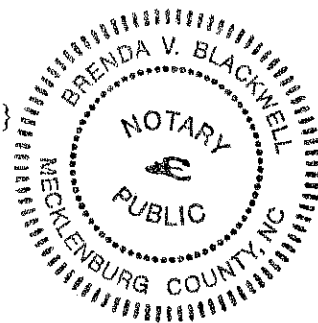
I, a Notary Public of the County and State aforesaid, certify that Clifford Gaines personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3<sup>rd</sup> day of November, 2008.

Brenda V. Blackwell  
Notary Public

(Notary must sign exactly as on notary seal)

Brenda V. Blackwell  
Notary Name Typed or Printed

{OFFICIAL STAMP OR SEAL}



My commission expires: November 16, 2009

STATE OF North Carolina

COUNTY OF mecklenburg

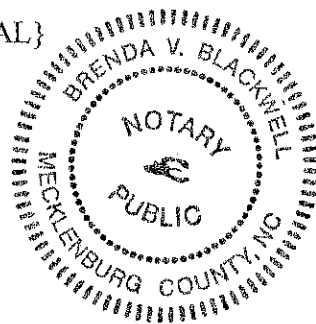
I, a Notary Public of the County and State aforesaid, certify that Albert Nalibotsky personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3<sup>rd</sup> day of November, 2008.

Brenda V. Blackwell  
Notary Public

(Notary must sign exactly as on notary seal)

Brenda V. Blackwell  
Notary Name Typed or Printed

{OFFICIAL STAMP OR SEAL}



My commission expires: November 16, 2009

STATE OF North Carolina

COUNTY OF Mecklenburg

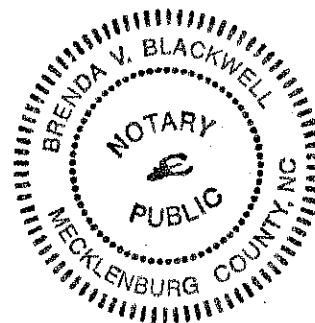
I, Brenda V. Blackwell, a Notary Public of the County and State aforesaid, certify that Philip Solomon, either being personally known to me or proven by satisfactory evidence (said evidence being \_\_\_\_\_), who is the Manager of Cadillac Properties, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he is Manager of Cadillac Properties, LLC and that as Manager being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said company for the purposes stated therein.

WITNESS my hand and notarial seal, this 30 day of November, 2008.

Brenda V. Blackwell  
Notary Public  
(Notary must sign exactly as on notary seal)

{OFFICIAL STAMP OR SEAL}

Brenda V. Blackwell  
Notary Name Typed or Printed



My commission expires: November 16, 2009

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

I, a Notary Public of the County and State aforesaid, certify that Lisa A. Page, Attorney, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public  
(Notary must sign exactly as on notary seal)

{OFFICIAL STAMP OR SEAL}

\_\_\_\_\_  
Notary Name Typed or Printed

My commission expires:

EXHIBIT "A"  
"Drainage Plan"

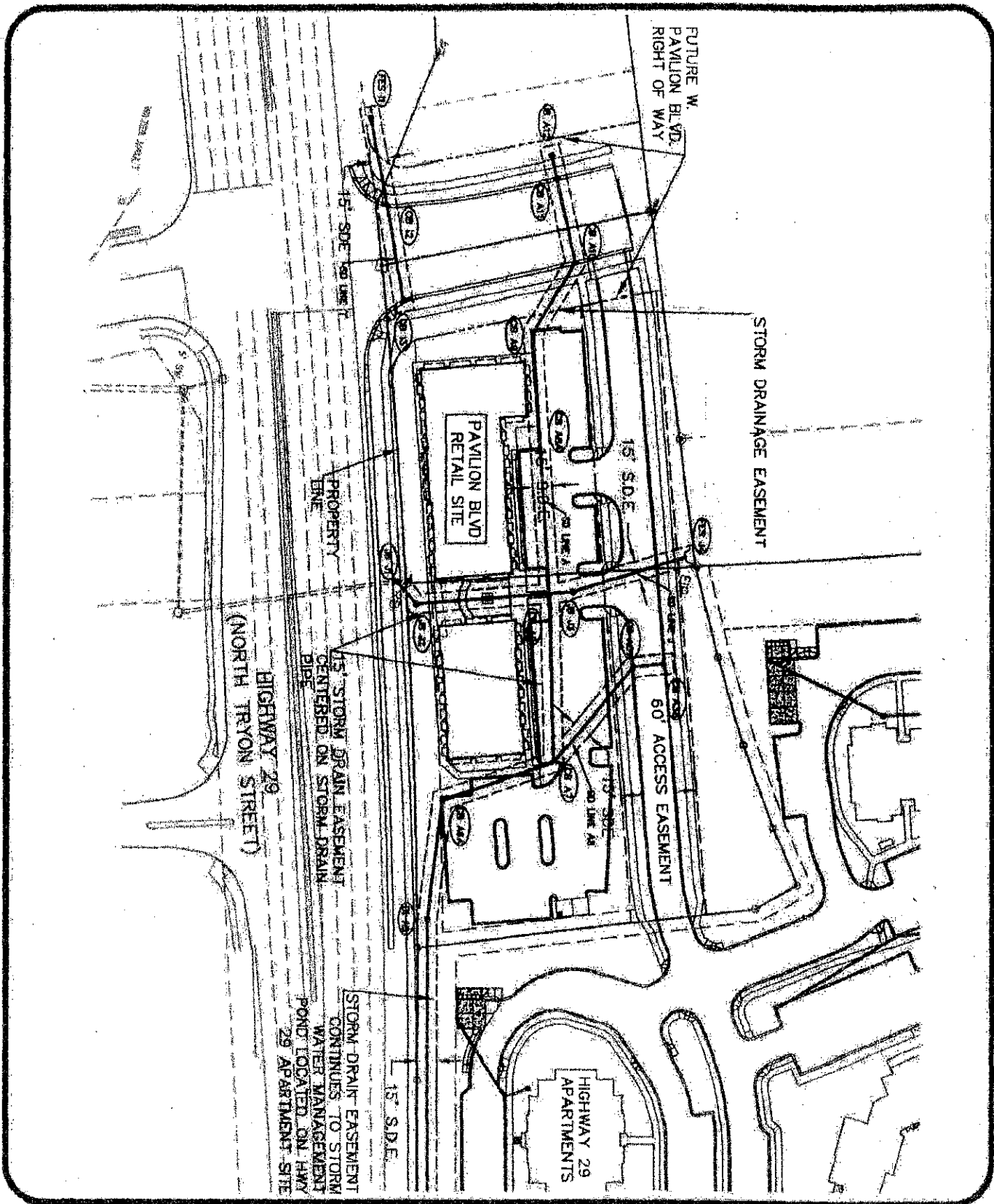
See following two pages entitled:

Pavilion Blvd Retail  
Storm Drainage Easement Exhibit (1)  
Charlotte, NC

and

Pavilion Blvd Retail  
Storm Drainage Easement Exhibit (2)  
Charlotte, NC

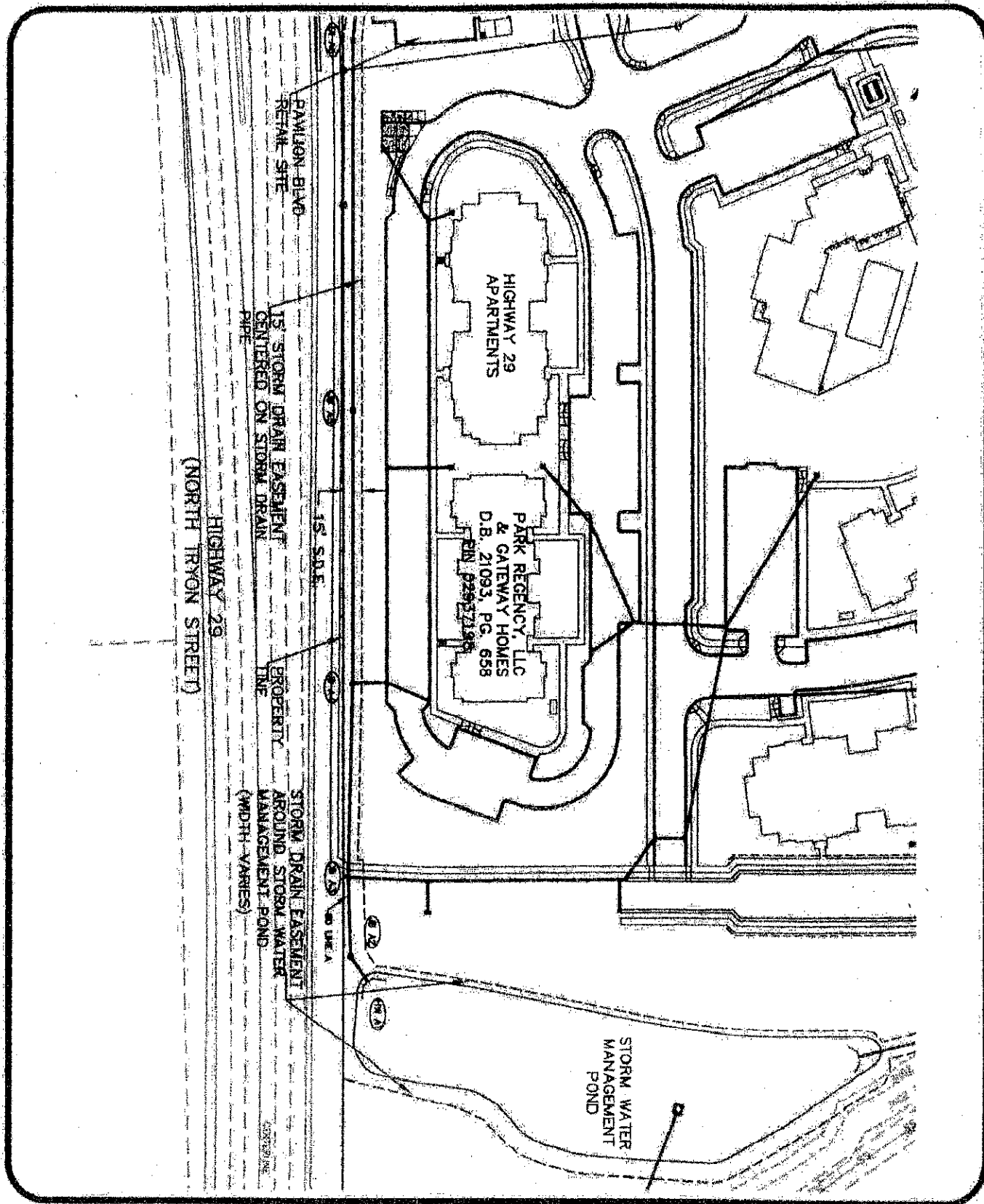
NOTE: THE FOLLOWING TWO PAGES ARE NOT CERTIFIED SURVEYS AND HAVE NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.



PROJECT NO: DIC-8000  
 FILENAME: EXHIBITS.DWG  
 SCALE: 1"=100'  
 DATE: 10-14-08

# **PAVILION BLVD RETAIL** **STORM DRAINAGE EASEMENT EXHIBIT (1)** **CHARLOTTE, NC**

**THE JOHN R. McADAMS**  
**COMPANY, INC.**  
 ENGINEERS/PLANNERS/SURVEYORS  
 5701 CARMEL ROAD, SUITE 205  
 CHARLOTTE, NORTH CAROLINA 28226  
 (704) 527-0860 WWW.JOHNRMCADAMS.COM



PROJECT NO. DIC-8000  
 FILENAME: EXHIBITS.DWG  
 SCALE: 1"=100'  
 DATE: 10-14-08

# PAVILION BLVD RETAIL STORM DRAINAGE EASEMENT EXHIBIT (2) CHARLOTTE, NC

**THE JOHN R. McADAMS  
 COMPANY, INC.**  
 ENGINEERS/PLANNERS/SURVEYORS  
 6701 CARMEL ROAD, SUITE 200  
 CHARLOTTE, NORTH CAROLINA 28226  
 (704) 527-0800 WWW.JOHNRMCADAMS.COM

Exhibit "B"  
"Sanitary Sewer Plan"

Note: This drawing is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.

Regency/Gateway Tract

Sanitary Sewer manhole 9

Sanitary Sewer Line

Sanitary Sewer Line

Sanitary Sewer manhole 14

West Pavilion Boulevard