

WAKE COUNTY, NC 545
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
09/13/2013 AT 15:35:33

BOOK:015441 PAGE:01221 - 01233

Recording Requested By and
When Recorded Mail to:

Graybill & Lansche, LLC
2721 Devine Street
Columbia, SC 29205

(Space above this line for Recorder's Use)

STATE OF NORTH CAROLINA)
)
COUNTY OF WAKE)

DECLARATION OF ACCESS EASEMENTS

THIS DECLARATION OF ACCESS EASEMENTS (the "Declaration") is made and executed to be effective as of this 12 day of September, 2013 (the "Effective Date") by **JOROMI PROPERTIES, LLC**, a North Carolina limited liability company, having an address of 8112 Rolling Glenn Drive, Raleigh, North Carolina 27616 (the "Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of three (3) pieces, parcels or tracts of land, together with the improvements thereon, situate, lying and being on S. Main Street, in the Town of Rolesville, Wake County, North Carolina, described as Lot 1 ("Lot 1"), Lot 2 ("Lot 2"), and Lot 3 ("Lot 3") (each, a "Lot") on that certain "Subdivision For Sonic Drive In" recorded in the Office of the Register of Deeds for Wake County (the "Register") in Plat Book 2007, Page 00143, as modified by that certain "Recombination Survey for Sonic Drive In" recorded in the Register in Plat Book 2007, Page 00925 (the three subdivided lots sometimes being collectively referred to herein as the "Property"), copies of which are attached hereto and incorporated herewith as **Exhibit A** and **Exhibit A-1**, respectively; and

WHEREAS, Declarant desires to provide for the preservation of the value of the Property and to assure a uniform and consistent or harmonious development and improvement of the Property; and

WHEREAS, Declarant desires to declare certain nonexclusive easements to benefit the Property as set forth herein and as identified on the site plan attached hereto and incorporated herewith as **Exhibit B** (the "Site Plan"); and

WHEREAS, Lot 1, Lot 2, Lot 3, the Joint Driveway, and the Driveway Connection Points, all as defined in this Declaration, are shown and identified on the Site Plan.

NOW, THEREFORE, Declarant hereby covenants and declares, on behalf of itself and its successors and assigns, that the Property shall be held, conveyed, acquired and encumbered subject to the following easements, all of which shall run with the land and bind and inure to the benefit of all persons who may now or hereafter occupy or enter upon any portion thereof, subject to the right of Declarant (or its successors and assigns) to amend this Declaration as provided herein.

1. Grant of Reciprocal Access Easements. Declarant does hereby declare, grant, bargain, sell and convey reciprocal and mutual, non-exclusive, permanent, perpetual, irrevocable, transmissible and assignable easements for access, ingress and egress (but not parking) (i) on, over and across all roads, drives and walkways as may exist from time to time on Lot 1 for the benefit of Lot 2 and Lot 3, including but not limited to, the Joint Driveway (as defined below); (ii) on, over and across all roads, drives and walkways as may exist from time to time on Lot 2 for the benefit of Lot 1 and Lot 3, including but not limited to, the Joint Driveway, and (iii) on, over and across all roads, drives and walkways as may exist from time to time on Lot 3 for the benefit of Lot 1 and Lot 2 (collectively, the "Access Easements"). The Access Easements granted herein are non-exclusive and shall be used in a manner so as not to unreasonably interfere with the business operations conducted, in any case, on the respective burdened parcel. The Access Easements shall also include the right of reasonable ingress and egress with respect to the roads, drives and walkways as may be required to maintain, repair, and replace the same. Notwithstanding anything to the contrary contained in this Declaration, the Joint Driveway shall not be removed, relocated, modified, or obstructed. To have and to hold all and singular the easements and rights conveyed hereby for the collective benefit of the Property and Declarant, and its successors and assigns forever, subject to the terms and conditions set forth herein.

2. Construction and Maintenance Obligations.

(a) *General Maintenance*. The Property shall at all times be operated and maintained in good order, condition and repair. The owner of each Lot within the Property shall maintain all roadways, driveways, sidewalks, remove all papers, debris and other refuse from and periodically sweep all parking and road areas on their respective Lot to the extent necessary to maintain the same in a clean, safe and orderly condition, maintaining appropriate lighting fixtures for the parking areas and roadways, maintain marking, directional signs, lines and striping as needed, maintain landscaping, maintain signage in good condition and repair, and perform any and all such other duties as are necessary to maintain its parcel in a clean, safe and orderly condition.

(b) *Roadways, Driveways, Walkways, and Parking Spaces*. The owners of the each Lot within the Property shall be individually responsible for the construction of any roadways, driveways, walkways, and parking spaces on their respective Lot. Notwithstanding anything in this Declaration the owner of each Lot within the Property shall be responsible for the replacement, operation, maintenance and repair of the roadways, driveways, walkways, and parking spaces on its Lot at its sole cost and expense. The joint driveway located on Lot 1 and Lot 2 providing the Property with access to S. Main Street (the "Joint Driveway") has already been constructed by Declarant. In the event Lot 1 and/or Lot 3 are improved in the future, the owners of Lot 1 and/or Lot 3 agree to link any driveways constructed thereon at the driveway connection points shown on the Site Plan (the "Driveway Connection Points").

(c) *Self-Help (Joint Driveway for Lot 1 and Lot 2 Owners)*. In the event the owners of Lot 1 and Lot 2, as the case may be, do not maintain (or cause to be maintained) their respective portions of the Joint Driveway in the manner set forth in Section 2(a) above, the respective non-maintaining owner shall have the right to provide the respective maintaining owner, as the case may be, with written notice indicating the maintenance deficiencies. Except in the case of an emergency, in which event no notice shall be required (and the non-maintaining owner may commence with repair and maintenance activity immediately and be reimbursed as set forth below), the

owners of Lot 1 and Lot 2, as the case may be, shall have a reasonable amount of time from receipt of the notice to remedy the matters noted therein. In the event the owners of Lot 1 and Lot 2, as the case may be, fail to remedy the matters noted in the notice within a reasonable amount of time after receipt of the notice (but in no event later than thirty (30) days), the respective non-maintaining owner may take all reasonable actions to maintain that portion of the Joint Driveway not being properly maintained, and may submit an invoice to the respective maintaining owner, as the case may be, for the prompt payment of all expenses incurred.

(d) *Self-Help (Joint Driveway and Lot 2 Driveways for Lot 3 Owner)*. In the event the owners of Lot 1 and Lot 2, as the case may be, do not maintain (or cause to be maintained) their respective portions of the Joint Driveway in the manner set forth in Section 2(a) above, the owner of Lot 3 shall have the right to provide the respective maintaining owner, as the case may be, with written notice indicating the maintenance deficiencies. Except in the case of an emergency, in which event no notice shall be required (and the Lot 3 owner may commence with repair and maintenance activity immediately and be reimbursed as set forth below), the owners of Lot 1 and Lot 2, as the case may be, shall have a reasonable amount of time from receipt of the notice to remedy the matters noted therein. In the event the owners of Lot 1 and Lot 2, as the case may be, fail to remedy the matters noted in the notice within a reasonable amount of time after receipt of the notice (but in no event later than thirty (30) days), the Lot 3 owner may take all reasonable actions to maintain that portion of the Joint Driveway not being properly maintained, and may submit an invoice to the respective maintaining owner, as the case may be, for the prompt payment of all expenses incurred. In the event the owner of Lot 2 does not maintain (or cause to be maintained) the driveway(s) on Lot 2 in the manner set forth in Section 2(a) above, the owner of Lot 3 shall have the right to provide the Lot 2 owner with written notice indicating the maintenance deficiencies. Except in the case of an emergency, in which event no notice shall be required (and the Lot 3 owner may commence with repair and maintenance activity immediately and be reimbursed as set forth below), the owner of Lot 2 shall have a reasonable amount of time from receipt of the notice to remedy the matters noted therein. In the event the owner of Lot 2 fails to remedy the matters noted in the notice within a reasonable amount of time after receipt of the notice (but in no event later than thirty (30) days), the Lot 3 owner may take all reasonable actions to maintain the driveway(s) on Lot 2 not being properly maintained, and may submit an invoice to the Lot 2 owner, for the prompt payment of all expenses incurred.

3. As-Built Location; Further Assurances; Dedication to Service Provider. The Site Plan shows the general location of certain access easements set forth in Section 1 above and the portion of the Property affected by the Access Easements. Declarant, for the benefit of the Lot owners owning a particular Lot, specifically reserves the right to adjust the location of all roads, drives and walkways and curb cuts as may be reasonably necessary to accommodate the construction of improvements on the Property; provided that any adjustment in location does not adversely affect, in a material fashion, the location of, the access to, or visibility of Lot 1, Lot 2, and Lot 3. Declarant and any subsequent owners of Lot 1, Lot 2, and Lot 3 agree to give further assurances by way of executing and providing for recordation such other and further instruments and documents as may be reasonably necessary to confirm the as-built locations of easement areas or matters generally affecting the Access Easements and to otherwise effectuate and carry out the intents and purposes of this Agreement. Declarant further reserves, for the benefit of the Lot owners owning a particular Lot, the right to specifically grant to the appropriate service providers such easements as are necessary to provide utility service to the Property, including without limitation, water, sewer, electricity, cable and telephone (a "Utility Service Facility"). In regards to the immediately preceding sentence, in the event any Utility Service Facility is contemplated over a Lot no longer owned by the Declarant, the consent of such Lot owner shall be required. Any party obtaining an interest in the Property agrees to execute such documentation as the service provider may reasonably require, including, without limitation, the standard easements and deeds substantially in the form generally used by such service provider, to complete the transfer of the utility facilities for dedication and maintenance by such service provider.

4. Liability Insurance. The owners of the Property hereby covenant to maintain or cause to be maintained commercial general liability insurance on the portion of the Property owned by each owner including contractual liability coverage in the minimum amounts of One Million and No/100 Dollars (\$1,000,000.00) per occurrence,

with an annual aggregate limit of Two Million and No/100 Dollars (\$2,000,000.00) for personal or bodily injury and damage to property.

5. Legal Effect. The Easements shall run with the Property and shall bind Declarant, its successors and assigns, and every other person now or hereafter acquiring an interest in or lien upon the Property, or any portion thereof. The rights of Access Easements declared hereby: (i) shall be an estate prior to any lien, deed, estate or encumbrance whatsoever; (ii) shall be perpetual and shall run with the land, be binding upon, and inure to the benefit of the parties hereto, their heirs, successors and assigns; (iii) shall be, and are, appurtenant to, and essentially necessary for the enjoyment and use of the Property; and (iv) are made in contemplation of commercial use, and are of commercial character. It is Declarant's express intent that the Access Easements shall not, at any time, merge by operation of law into the owner's title or interest in any parcel, but that the Easements shall remain separate and distinct rights and estates in land, unless the owner(s) of all affected parcels specifically evidence their intent by mutual agreement in writing to extinguish any such easement. It is further expressly provided that the acquisition hereafter by any other party (including, without limitation, a present or future mortgagee of any parcel or any portion thereof) of an ownership interest (in fee, leasehold, or otherwise) shall not operate, by merger or otherwise, to extinguish, diminish, impair, or otherwise affect any easement granted herein, which Access Easements shall remain separate and distinct and estates in land.

6. Declarant. The term "Declarant" as used herein shall initially refer to Joromi Properties, LLC and hereafter shall be deemed to be the owner (or owners, collectively, as the case may be) of Lot 2. In the event Lot 2 is subdivided, the "Declarant" shall be the party owning the largest portion of the current Lot 2.

7. Enforcement. This Declaration shall be enforceable by Declarant (as long as Declarant is the owner of a Lot) and its successors and assigns owning the Property (or a portion thereof, as the case may be), by any tenants on the Property (or a portion thereof, as the case may be) pursuant to the terms of any applicable leases, by any proceeding at law or in equity against any person or persons, owner, lessee, or other user of the Property or any portion thereof violating or attempting to violate or circumvent this Declaration either to restrain a violation or to recover damages. The failure by any party to enforce this Declaration contained herein for any period of time shall in no event be deemed a waiver of the right of any of the foregoing to enforce the same. This provision does not exclude other remedies available at law or equity, including monetary damages. In any such actions, the prevailing party shall be entitled to reasonable attorneys' fees and costs of the action.

8. Captions, Gender and Number. Captions contained in this Agreement are inserted only as a matter of convenience and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof. Whenever the context so requires, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

9. Waiver. Any consent to or waiver of any provision hereof shall not be deemed or construed to be a consent to or waiver of any other provision of this Agreement. Failure on the part of any owner to complain of any act or failure to act of any other owner, irrespective of the duration of such failure, shall not constitute a waiver or modification of rights hereunder. No waiver or modification hereunder shall be effective unless the same is in writing and signed by the owner against whom it is sought.

10. Binding Effect. Except as otherwise provided herein, all provisions of this Agreement shall be binding upon, inure to the benefit of and be enforceable by and against Declarant and its successors and assigns.

11. Severability. If any covenant, restriction, or provision contained in this Declaration is to any extent declared by a court of competent jurisdiction to be invalid or unenforceable, the remaining covenants, restrictions, and provisions contained herein (or the application of such covenants, restrictions, and provisions to persons or circumstances other than those in respect of which the determination of invalidity or unenforceability was made)

will not be affected thereby and each covenant, restriction, and provision contained in this Declaration will be valid and enforceable to the fullest extent permitted by law.

12. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.

13. Term; Amendment. This Declaration and the covenants and restrictions set forth herein shall run with and bind all land within the Property, as applicable, for an initial term of twenty (20) years from the date this Declaration is filed for record in the real property records of Wake County, North Carolina. At the end of the initial term, this Declaration shall be automatically renewed without any action by the parties hereto or their respective successors or assigns for successive terms of twenty (20) years. This Declaration may not be amended, supplemented or terminated unless done so by a writing signed by all owners of the Property. Any such amendment, supplement or termination will be effective at such time as an instrument reflecting such amendment, supplement or termination, signed by Declarant, or its successors and assigns, and by such mortgagees is filed for record in the real property records of Wake County, North Carolina. The owner(s) of the Property shall not unreasonably withhold or delay consent to any amendment of this Declaration requested by the other owner(s) of the Property.

14. Notice of Sale or Transfer of Title; Establishment of Notice Address. Any Lot owner desiring to sell or otherwise transfer title to its parcel shall, within ten (10) days of a sale or transfer, provide the Declarant written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Declarant may reasonably require. The Lot transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the new Lot owner until the date upon which such notice is received by the Declarant, notwithstanding the transfer of title. Any transferee of a Lot may, at its option, file a notice in the Wake County ROD's office establishing the notice address of said Lot, which notice must also be mailed to the Declarant contemporaneously with such filing.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE TO FOLLOW

SUBORDINATION AND CONSENT OF LIENHOLDER TO
DECLARATION OF ACCESS EASEMENTS

RBRE Loan Portfolio, LLC ("Lender") holds a lien on Lot 1 and Lot 3 (the "Liened Property") by virtue of that certain Future Advance Deed of Trust by and between Declarant, as borrower, J. Cleve Barrett, as trustee (hereinafter "Trustee"), and Lender, recorded in Book 12363, page 2108 of the official records of Wake County, North Carolina. Lender and Trustee, for themselves and their respective successors and assigns, join herein to evidence their consent to the terms and provisions of the foregoing Declaration and to evidence their agreement that their lien shall be subordinate to the terms of the Declaration and that any foreclosure of the lien of Lender affecting all or any part of the Liened Property, whether such lien presently exists or is created in the future, or any conveyance in lieu of such foreclosure, shall not extinguish, terminate, cut off, alter or otherwise affect the easements and restrictions set forth in the Agreement, which shall continue unabated, in full force and effect.

[signatures follow]

LENDER SIGNATURE PAGE TO SUBORDINATION AND CONSENT OF LIENHOLDER TO DECLARATION OF ACCESS EASEMENTS

The undersigned has caused this Subordination and Consent of Lienholder to be executed as of the day and year first written above.

RBRE LOAN PORTFOLIO, LLC, a Delaware limited liability company

By: [Signature]
Name: Kevin R. McKenzie
Title: Authorized Signatory

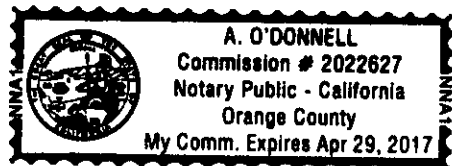
STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On September 12, 2013, before me, A. O'Donnell, Notary Public, personally appeared Kevin R. McKenzie, who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Signature] (SEAL)
Signature of Notary Public



TRUSTEE SIGNATURE PAGE TO SUBORDINATION AND CONSENT OF LIENHOLDER TO DECLARATION OF ACCESS EASEMENTS

The undersigned has caused this Subordination and Consent of Lienholder to be executed as of the day and year first written above.

By: _____
Name: _____
Title: _____

STATE OF _____)
COUNTY OF _____)

SS. *see attached*

Before me, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, personally known to me to be a _____ of _____, whose name is subscribed to the within instrument, appeared before me this day in person and acknowledged that he/she signed and delivered said instrument of writing as such officer, as his/her free and voluntary act and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this ____ day of _____, 2013.

Notary Public

My Commission Expires:
[AFFIX SEAL OR STAMP]

EXHIBIT A

Subdivision For Sonic Drive In

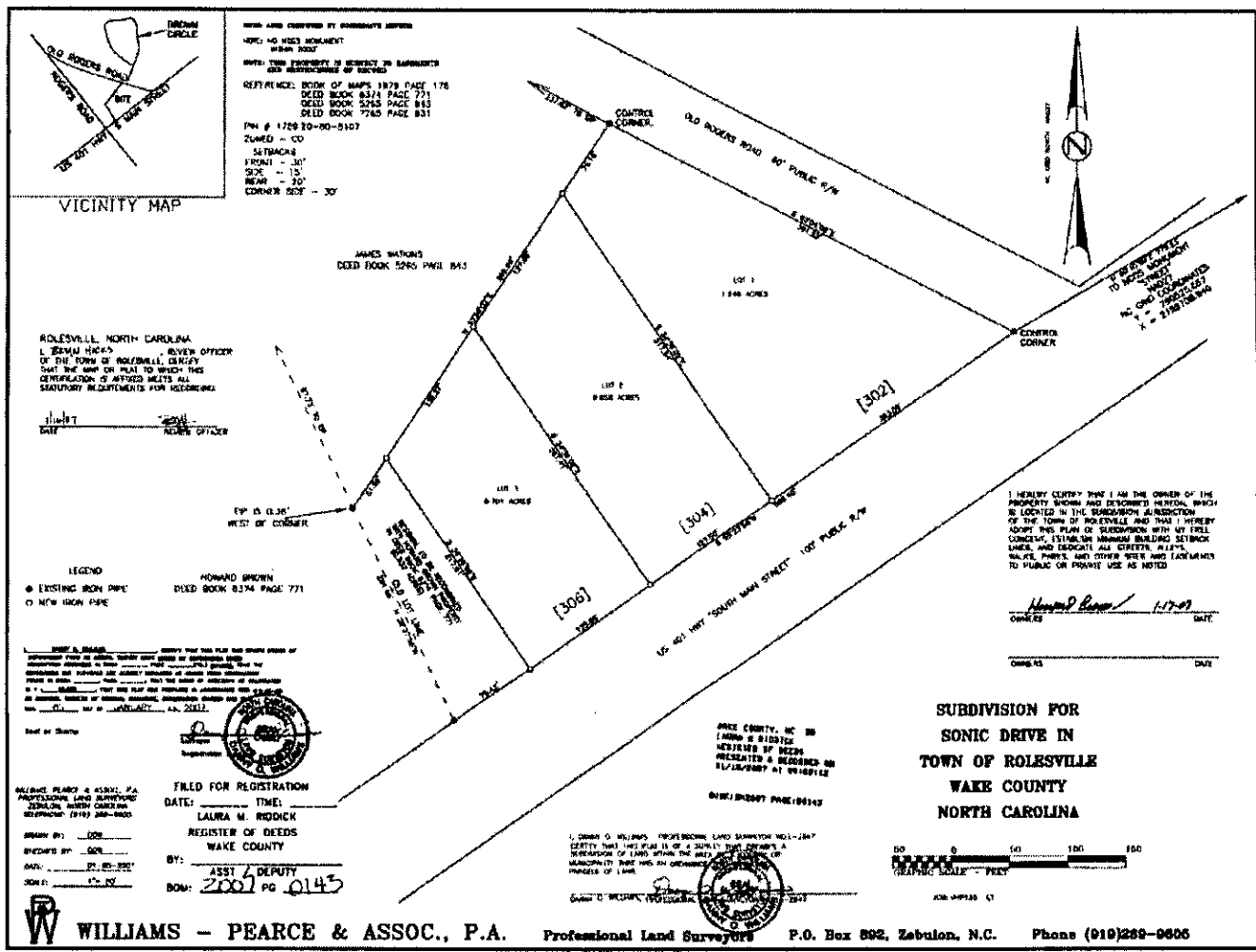
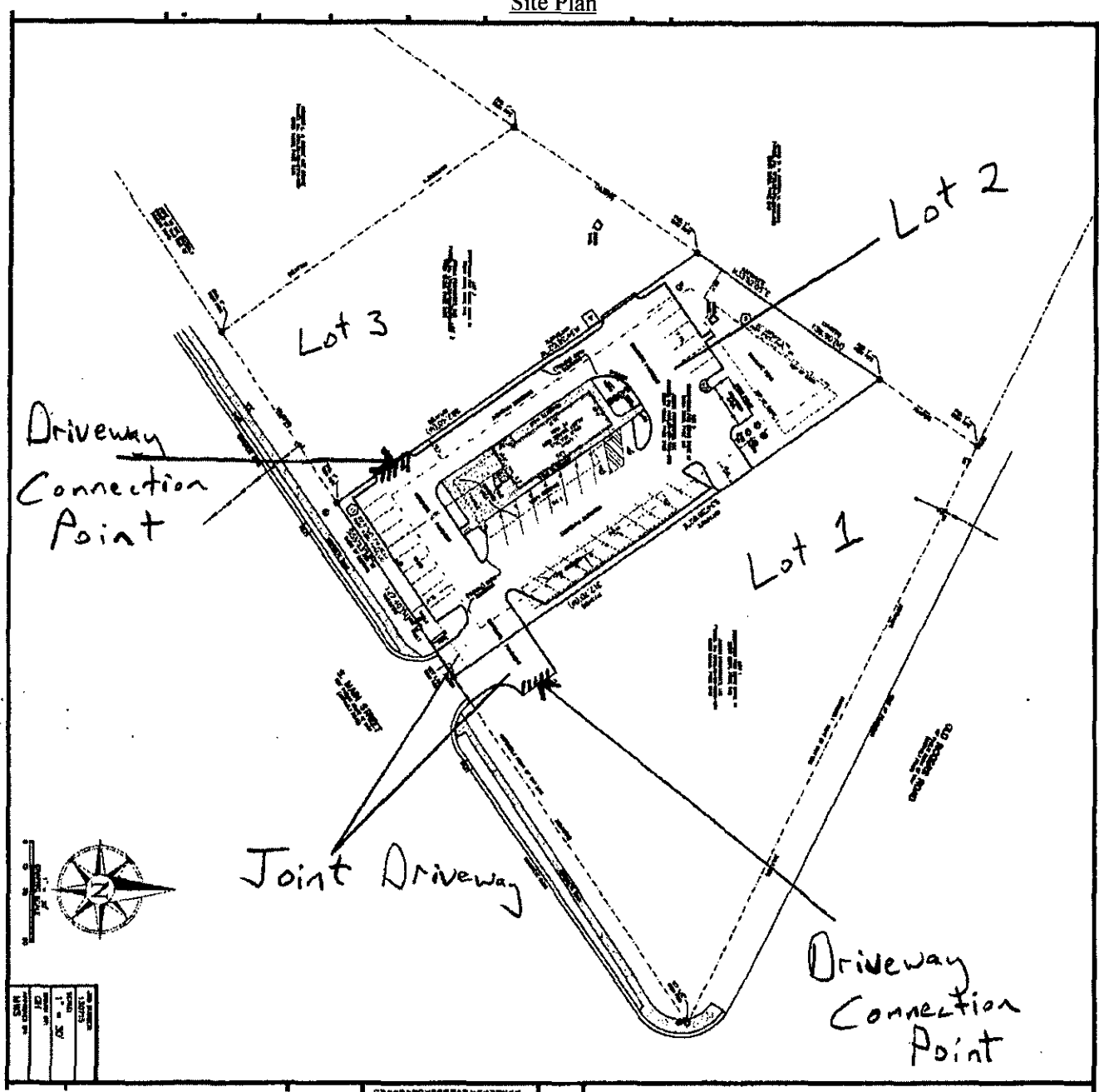
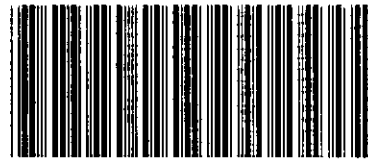


EXHIBIT B

Site Plan





BOOK:015441 PAGE:01221 - 01233

**Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.**



**Wake County Register of Deeds
Laura M. Riddick
Register of Deeds**

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ New Time Stamp
_____ # of Pages **MF**