

2016014422

AFFIDAVIT  
RECORDING FEES \$22.00  
PRESENTED & RECORDED:  
10-03-2016 08:56 AM  
JOHN LANE  
REGISTER OF DEEDS  
LANCASTER COUNTY, SC  
By: CANDICE PHILLIPS DEPUTY  
BK: DEED 999  
PG: 246-261

[SPACE ABOVE RESERVED FOR RECORD]

Cross Reference: Instrument No.: 2325, Book 289, Page 50  
As Modified by: Instrument No. 2009012866, Book 534, Page 48  
As Further Modified by: Instrument No. 2012006080, Book 667, Page 117  
As Further Modified by: Instrument No. 2013014816, Book 757, Page 273

**Amendment to Agreement Respecting  
Development of Real Estate**

THIS AMENDMENT TO AGREEMENT RESPECTING DEVELOPMENT OF REAL ESTATE (this "*Amendment*") is made by and among RMB Edgewater, LLC, as successor to Metro Acquisitions, LLC pursuant to certain assignments and conveyances described below (herein, "*Developer*" or "*RMB*"); SouthCross Development Group, LLC, a South Carolina limited liability company (herein, "*SDG*") and The Blake at Edgewater, LLC, a Delaware limited liability company (herein, "*Blake*"). Each of Developer, SDG and Blake may be referred to herein as a "*Party*" and collectively as the "*Parties*."

*Witnesseth:*

WHEREAS, on or about December 1, 2004, SDG entered into that certain Agreement Respecting Development of Real Estate with Metro Acquisitions, LLC ("*Metro*") which was filed in the Office of the Register of Deeds of Lancaster County, South Carolina (the "*Registry*") on July 1, 2005, bearing Instrument Number 0002325 and recorded in Deed Book 289, Page 50 (as amended and assigned, the "*Development Agreement*"); and

WHEREAS, pursuant to Amendment to Agreement Respecting Development of Real Estate dated September 22, 2009, bearing Instrument Number 2009012866 and recorded with the Registry in Book 534, Page 48, all of Metro's rights and obligations as "*Developer*" were

Amendment to Agreement Respecting Development of Real Estate  
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assigned to Edgewater Park Partners, LLC, an Indiana limited liability company ("*Edgewater*"); and

WHEREAS, pursuant to that certain Assignment of Developer's Rights Under Agreement Respecting Development of Real Estate dated April 18, 2012 bearing instrument Number 2012006080 and recorded with the Registry in Book 667, Page 117, all of Edgewater's rights as "Developer" were assigned to Dearborn Street Holdings, LLC - Series 16 M & I, an Illinois limited liability company ("*Dearborn*"); and

WHEREAS, pursuant to that certain Assignment of Developer's Rights Under Agreement Respecting Development of Real Estate dated September 25, 2013 bearing Instrument Number 2013014816 and recorded with the Registry in Book 757, Page 273, all of Dearborn's rights as "Developer" were assigned to RMB Edgewater, LLC (the undersigned and within named Developer), and RMB assumed all obligations of "Developer" under the Development Agreement from and after the date thereof; and

WHEREAS, the Development Agreement pertains to certain real property described therein, which is commonly known as "Edgewater Corporate Center" (the "*Center*"); and

WHEREAS, SDG and RMB respectively own certain parcels of property within the Center, and the parcels owned by SDG and RMB are subject to the Development Agreement; and

WHEREAS, on the date hereof, Blake is acquiring a portion of RMB's property within the Center, which is described more specifically on the attached Exhibit "A" (the "*Blake Parcel*") upon which Blake intends to construct and develop a community/senior residential care and medical facility; (the "*Proposed Uses*"); and

WHEREAS, in order to accommodate orderly access and entry to the Blake Parcel, Blake contemplates extending the roadway commonly known as Edgewater Corporate Parkway along a portion of the northern boundary of the Blake Parcel, as depicted on the site plan (the "*Site Plan*") attached hereto as Exhibit "B" (the "*Parkway Extension*"); and

WHEREAS, as reflected on the attached Exhibit "C", Blake also contemplates the construction and installation of certain utility lines and/or infrastructure and the installation of certain drainage facilities, on, within or through the Parkway Extension, the Blake Parcel and certain property owned by SDG, which infrastructure will inure to the benefit of the Center as a whole (collectively and together with the Parkway Extension, the "*Common Infrastructure Improvements*"); and

WHEREAS, the Common Infrastructure Improvements fall within the scope of the infrastructure work to be constructed by Developer as described in the Development Agreement (the costs of which are to be shared and allocated as set forth therein) and accordingly, RMB and SDG are both interested parties with respect to the design, completion and costs of the Common Infrastructure Improvements; and

WHEREAS, Blake requires this Amendment as a condition of acquiring the Blake Parcel to, among other things: (a) clarify and confirm that both SDG and Developer (in its capacity as a successor party to the Development Agreement) consent to the Proposed Uses on the Blake Parcel; and (b) set forth the Parties' respective rights and obligations with respect to the completion of the Common Infrastructure Improvements and the costs associated therewith.

NOW THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned Parties hereby covenant and agree as follows:

Agreement

1. INCORPORATION OF RECITALS. The above recitals are incorporated by reference as material provisions of this Amendment clarifying the scope and purpose of this Amendment; the Parties' collective purposes and intentions in executing this Amendment; and the respective rights and obligations under the Development Agreement with respect to the matters addressed in this Amendment. SDG acknowledges and consents to RMB's assumption of the rights and obligations of "Developer" under the Development Agreement pursuant to the documents described in the above recitals.

2. LIMITED JOINDER OF BLAKE. While not a party to the original Development Agreement, Blake joins in this Amendment for the limited purposes stated herein. Blake does not assume or inherit any obligations, responsibilities or liabilities under the Development Agreement, which are not expressly assumed by Blake herein.

3. CONTROLLING DECLARATION.

(a) The Development Agreement, in its original, recorded form, contemplated the subsequent creation and recording of a declaration of covenants, easements and restrictions for the Center. To the best of Developer's and SDG's actual knowledge, the "Declaration" referred to in the Development Agreement is one and the same as that certain Declaration of Covenants, Restrictions and Easements for Edgewater Corporate Center, dated June 30, 2005, recorded in Deed Book 288, at Page 300, as thereafter amended and assigned of record (the "*Recorded Declaration*"), even though it was recorded prior to the Development Agreement. Furthermore, SDG and Developer hereby agree that, from and after the date of this Amendment all references in the Development Agreement to "Declaration" shall thereafter mean and solely refer to the Recorded Declaration. SDG acknowledges that the SDG Properties are subject to the Recorded Declaration.

(b) By virtue of that certain Assignment of Declarant/Initial Owner's Rights under Declaration of Covenants, Restrictions and Easements for Edgewater Corporate Center dated September 25, 2013 and recorded in Deed Book 757, Page 267, Developer was assigned the rights of the Declarant under the Recorded Declaration (the "*Assignment*").

(c) Pursuant to its authority under the Assignment and, without limitation, Sections 3, 12(B)(ii) and 20(A)(ii) of the Recorded Declaration, Developer has executed and recorded an amendment to the Recorded Declaration of even date and record herewith (the "*Declaration Amendment*"), providing, inter alia, that the Proposed Uses are permitted uses of the Blake Parcel under the Recorded Declaration, as amended by the Declaration Amendment.

4. AMENDMENT OF DEVELOPMENT AGREEMENT. SDG and Developer agree to the following amendments to the Development Agreement:

(a) To provide that provisions of the Recorded Declaration (as amended) shall supersede, govern and control the Development Agreement with respect to: (i) issues of permitted use on the real property that is subject to the Development Agreement within the Center; and (ii) provisions regarding architectural review and approval; and

(b) To provide that the Recorded Declaration, as amended, shall supersede any provisions of the Development Agreement which conflict with the permitted uses set forth in the Recorded Declaration, as amended.

5. PROVISIONS REGARDING COMMON INFRASTRUCTURE IMPROVEMENTS.

(a) Subject to the terms hereof, Developer hereby assigns, and Blake hereby assumes Developer's rights and obligations, as applicable, under the Development Agreement only with respect to the construction of the Common Infrastructure Improvements. Blake's sole obligation with respect to the construction of the Common Infrastructure Improvements shall be to perform such work in a lien free manner in accordance with applicable laws and ordinances (including local authorities having jurisdiction) and the specifications attached hereto as Exhibit C (the "*Specifications*") subject to the approval of RMB and/or the Corporation (as defined in the Recorded Declaration), such approval not to be unreasonably withheld or delayed. Developer and SDG hereby approve Blake's limited assumption with respect to the construction of the Common Infrastructure Improvements, subject to and in accordance with the terms and provisions of this Amendment. Blake agrees that Blake, and/or its contractors performing work on the Common Infrastructure Improvements, will carry appropriate general liability and worker's compensation insurance naming SDG and RMB as additional, named insureds.

(b) Developer assigns to Blake all rights it may have under the Development Agreement for reimbursement by SDG, or its successors and/or assigns, for an allocated pro rata portion of the costs and fees associated with the Common Infrastructure Improvements to the extent such work is completed by Blake in accordance with Section 5(a), as if Developer had performed and paid for such work.

(c) Blake hereby agrees that, upon completion of the Common Infrastructure Improvements in accordance with Section 5(a), Blake will submit a written notice of completion to Hoyt + Berenyi ("*H & B*") and Yarbrough, Williams & Houle (the "*Verification*")

*Parties*"), together with: (i) reasonable back-up documentation of Blake's actual documented costs incurred for the completion of the Common Infrastructure Improvements; (ii) reasonable and customary assurances that all subcontractors and materialmen have been paid in full; and (iii) a request that the Verification Parties issue a written certification to RMB, SDG and the Corporation that the Common Infrastructure Improvements have been substantially completed in accordance with the Specifications (the "*Certificate of Completion*"). Upon issuance of the Certificate of Completion, Blake will be deemed to have fully performed all of its obligations under this Amendment and shall be fully released from any further obligations regarding the construction of the Common Infrastructure Improvements.

(d) Upon issuance of the Certificate of Completion, SDG agrees to pay for and reimburse Blake its pro rata share of all costs and fees for which the Blake is entitled to receive (as the assignee of Developer) for the completed Common Infrastructure Improvements pursuant the assignment set forth in Section (b) above. The parties agrees that SDG's pro rata share of costs shall be 18%, not to exceed the total sum of \$26,931.72. Such payment will be reimbursed in the time and manner contemplated by the Development Agreement.

(f) Upon completion of the Common Infrastructure Improvements, such improvements will be deemed common elements and/or amenities of the Center (until such time as they may be publicly dedicated) and the cost of maintenance, repair and upkeep shall be dealt with in the manner set forth in the Recorded Declaration. Blake agrees to use commercially reasonable efforts to obtain warranties generally available in the course and trade from contractors performing the work associated with the Common Infrastructure Improvements. Any warranties related to the Common Infrastructure Improvements shall be assigned to RMB (as Declarant) or, at Declarant's option and election, the Corporation.

#### 7. MISCELLANEOUS PROVISIONS.

(a) Each Party to this Amendment acknowledges that the Parties' respective obligations hereunder may be enforced through equitable relief, including, but not limited to, specific performance.

(b) Any capitalized terms used, but not defined, in this Amendment, shall have the meaning ascribed to such terms in the Development Agreement.

(c) Except as specifically amended by this Amendment, the Development Agreement shall remain in full force and effect as previously amended and assigned, and as so amended by this Amendment.

(d) This Amendment may be executed in multiple counterparts each of which shall be deemed an original and which, taken together, shall constitute one and the same Amendment.

(e) All of the terms, agreements, covenants and conditions of this Amendment will be binding upon, and inure to the benefit of and are enforceable by, the Parties hereto and their respective successors and/or assigns.

(f) Each Party hereby agrees that it will, and at any time and from time to time after the date hereof, and without further consideration, take all such further actions and execute and deliver all such further instruments or documents, as may be reasonably necessary to effectuate the purposes of this Amendment. In providing mutual consent to the amendments herein provided, neither RMB nor SDG makes any representation or warranties to Blake (or any other person or entity) concerning the Development Agreement, including, without limitation, their respective rights and authority thereunder.

(g) The section headings and captions used in this Amendment are inserted for convenience only and will not affect in any way the meaning or interpretation of this Amendment.

(h) The Parties agree that the full form of this Amendment shall be recorded in the Registry.

*[remainder of page intentionally left blank; signature page follows]*

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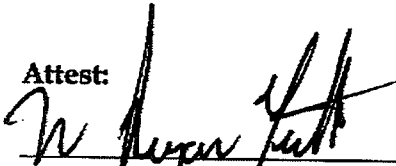

IN WITNESS WHEREOF, Developer, SDG and Blake have executed this Amendment as of the ~~30~~ day of ~~September~~ 2016.

Attest:  
\_\_\_\_\_  
Printed Name: \_\_\_\_\_


\_\_\_\_\_  
Printed Name: \_\_\_\_\_


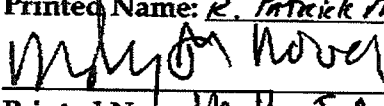
"Developer" or "RMB"  
RMB Edgewater, LLC,  
a North Carolina limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

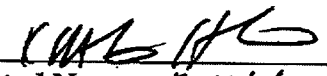
Attest:  
  
Printed Name: Stephanie C. McLawhorn  
  
Printed Name: Stephanie C. McLawhorn

"SDG"  
SouthCross Development Group, LLC,  
a South Carolina limited liability company

By:   
Printed Name: Sharon Seneca  
Title: MANAGER

Attest:  
  
Printed Name: R. Patrick McCrone  
  
Printed Name: Molly J. Moody

"Blake"  
The Blake at Edgewater, LLC,  
a Delaware limited liability company

By:   
Printed Name: Michael Herdeberg  
Title: Authorized Signatory

IN WITNESS WHEREOF, Developer, SDG and Blake have executed this Amendment as of the 20 day of ~~September~~, 2016.

Attest:

D.J. Burkhardt  
Printed Name: D.J. Burkhardt  
Paula S. Winder  
Printed Name: PAULA S. WINDER

"Developer" or "RMB"

RMB Edgewater, LLC,  
a North Carolina limited liability company

By: [Signature]  
Printed Name: JAMES E. HERRICK  
Title: Manager

Attest:

[Signature]  
Printed Name: W. Bryan Tuttle  
[Signature]  
Printed Name: Stephani C. McLamb

"SDG"

SouthCross Development Group, LLC,  
a South Carolina limited liability company

By: [Signature]  
Printed Name: Sharon Sencera  
Title: Manager

Attest:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
\_\_\_\_\_  
Printed Name: \_\_\_\_\_

"Blake"

The Blake at Edgewater, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_



State of North Carolina )

County of Mecklenburg )

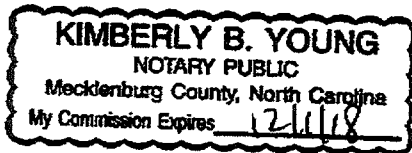
Before me, a Notary Public in and for said County and State, personally appeared Jane H. Heston the Manager of RMB Edgewater, LLC, who, after having been duly sworn, acknowledged the execution of the foregoing Temporary Construction and Temporary Access Easement on behalf of such limited liability company.

WITNESS, my hand and Notarial Seal, this the 18 day of September 2016

Kimberly B. Young  
Notary Public  
Printed Name: Kimberly B. Young

My Commission Expires:  
12/11/18

My County of Residence:  
Mecklenburg



State of SC )  
County of York )

Before me, a Notary Public in and for said County and State, personally appeared Ron Swick the manager of SouthCross Development Group, LLC, who, after having been duly sworn, acknowledged the execution of the foregoing Temporary Construction and Temporary Access Easement on behalf of such limited liability company.

WITNESS, my hand and Notarial Seal, this the 24<sup>th</sup> day of August, 2016

Randi L Rawls  
Notary Public  
Printed Name: Randi L Rawls

My Commission Expires:  
03/23/2026

My County of Residence:  
Chester



State of Mississippi )  
County of Hinds )

Before me, a Notary Public in and for said County and State, personally appeared K. Michael Heidelberg the Authorized Signatory of The Blake at Edgewater, LLC, who, after having been duly sworn, acknowledged the execution of the foregoing Temporary Construction and Temporary Access Easement on behalf of such limited liability company.

WITNESS, my hand and Notarial Seal, this the 24<sup>th</sup> day of September, 2016

Callie B. Watson  
Notary Public  
Printed Name: Callie B. Watson



My Commission Expires:  
5-28-2017

My County of Residence:  
Rankin

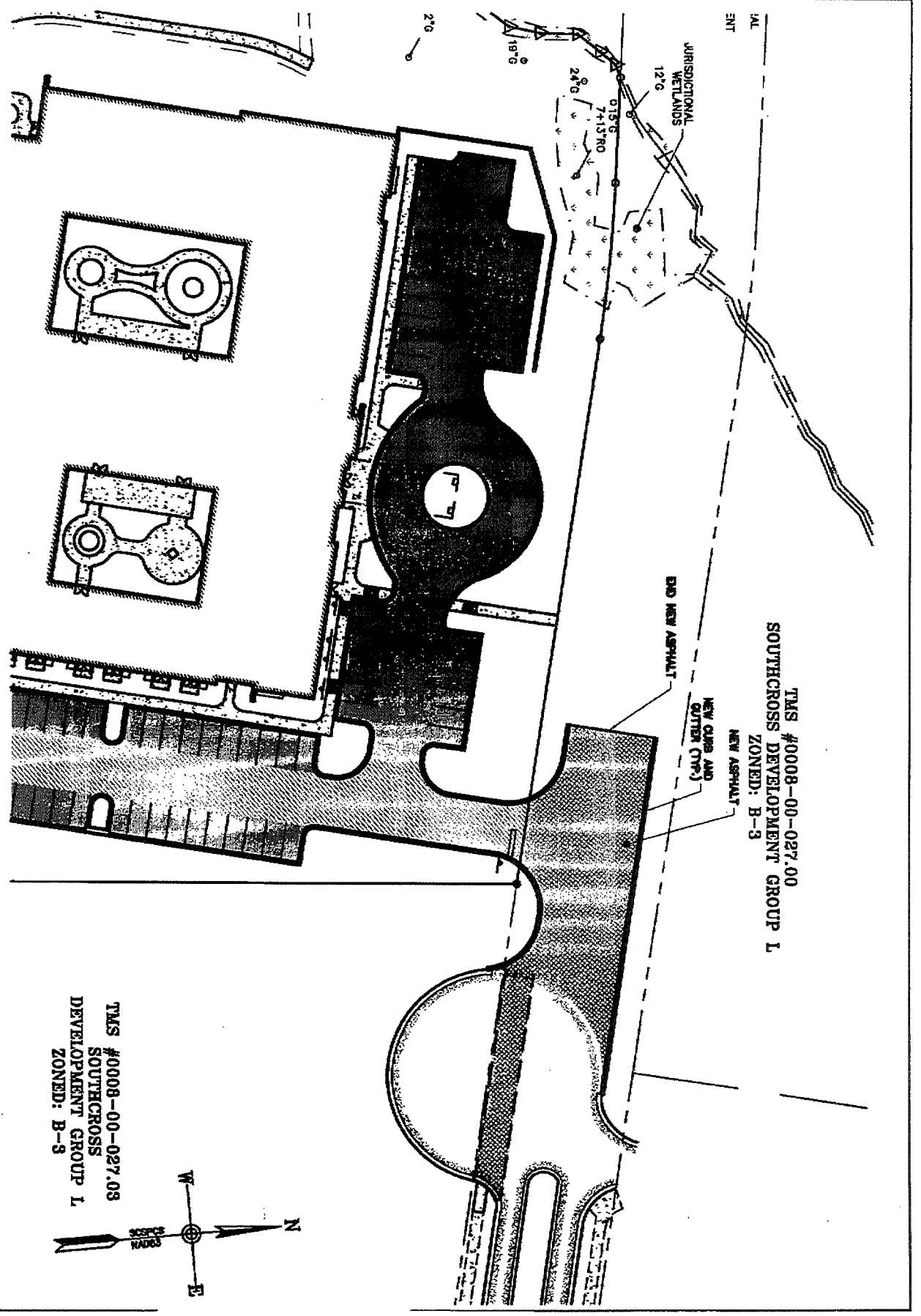
**Exhibit "A"**

**Blake Parcel**



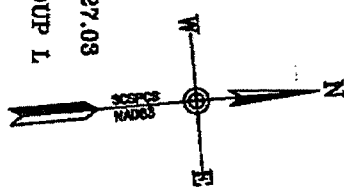
**Exhibit "B"**

**Site Plan**



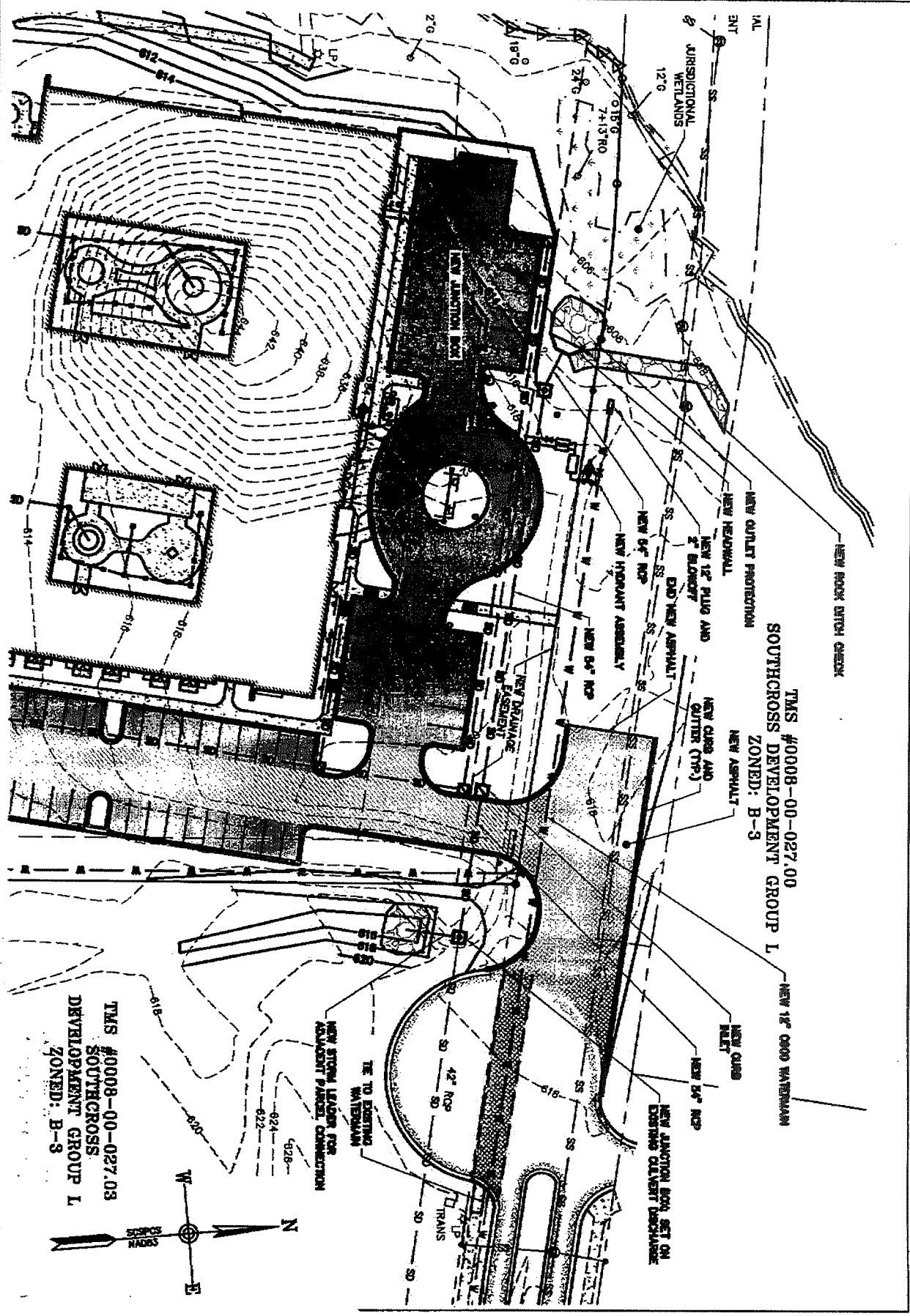
TMS #0008-00-027.00  
 SOUTHCROSS DEVELOPMENT GROUP I  
 ZONED: B-3

TMS #0008-00-027.03  
 SOUTHCROSS  
 DEVELOPMENT GROUP I  
 ZONED: B-3



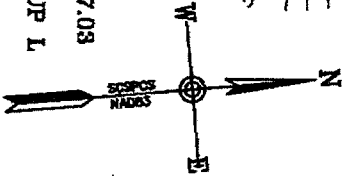
<b>H3 HOYT + BERENYI</b> P.O. Box 1470 Lakeland, SC 29552   843 688-3546   www.hoytberenyi.com	<b>JOB NAME:</b> The Blake at Edgewater	<b>SCALE:</b> 1" = 60'	<b>TITLE:</b> EXHIBIT 'B' - SITE PLAN
	<b>JOB NUMBER:</b> 16-014	<b>DATE:</b> August 2, 2016	

**Exhibit "C"**  
**Specifications**



TMS #0008-00-027.00  
 SOUTH-CROSS DEVELOPMENT GROUP I  
 ZONED: B-3

TMS #0008-00-027.03  
 SOUTH-CROSS  
 DEVELOPMENT GROUP I  
 ZONED: B-3



**H3 HOYT + BERENYI**

P.O. Box 1470 Ladson, SC 29456 | 843.408.3546 | www.hoytberenyi.com

JOB NAME: The Blake at Edgewater

JOB NUMBER: 16-014

SCALE: 1" = 60'

DATE: August 2, 2016

TITLE:

EXHIBIT "C" - SPECIFICATIONS