

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2007 SEP 28 11:49 AM
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INSTRUMENT # 2007200126

2007200126

DECLARATION OF EASEMENTS, RESTRICTIONS AND MAINTENANCE AGREEMENT

THIS DECLARATION OF EASEMENTS, RESTRICTIONS AND MAINTENANCE AGREEMENT (this "Declaration") is made as of this 28th day of September, 2007 by and among ARBORS AT MALLARD CREEK, LLC, a North Carolina limited liability company ("Arbors"), BRANCH BANKING AND TRUST COMPANY, a North Carolina state banking corporation ("BB&T"), and ARBORS AT MALLARD CREEK PROPERTY OWNERS ASSOCIATION, INC., a North Carolina nonprofit corporation (the "Association"). The designations Arbors, BB&T and the Association, as used herein, shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter, as required by context.

Background Statement

WHEREAS, Arbors is the owner of fee simple title to certain real property located in Mecklenburg County, North Carolina, said property being more particularly shown as the double crosshatched area on Exhibit A attached hereto and hereby incorporated by this reference (the "Arbors Tract").

WHEREAS, BB&T is the owner of fee simple title to certain real property located in Mecklenburg County, North Carolina, said property being more particularly described on Exhibit B attached hereto and hereby incorporated by this reference (the "BB&T Tract").

WHEREAS, the Association has asked, and BB&T and Arbors have agreed, for BB&T and Arbors to grant certain easement rights in favor of the Association.

WHEREAS, BB&T has requested, and Arbors has agreed, for Arbors to grant certain easement rights in favor of BB&T.

DRAWN BY AND MAIL TO:
Gary T. McDermott, Esquire
Womble Carlyle Sandridge & Rice, PLLC
301 South College Street, Suite 3500
Charlotte, North Carolina 28202-6025

WHEREAS, BB&T and Arbors have requested, and the Association has agreed, for the Association to take responsibility for certain maintenance obligations with respect to the easements granted herein.

NOW, THEREFORE, in consideration of the premises, the easements herein granted and established for the benefit of the parties hereto, and for any future owners (and mortgagees, as applicable) of all or any portion of the Arbors Tract, the BB&T Tract and the Development Tract (as defined below), Arbors, BB&T and the Association all hereby agree as follows:

1. Storm Drainage Easements.

(a) Arbors hereby grants, bargains, sells and conveys to BB&T, a non-exclusive, perpetual easement (the "Storm Drainage Easement") for the benefit of the BB&T Tract over and across a certain portion of the Arbors Tract as said easement area is shown as the double crosshatched area on Exhibit C attached hereto and hereby incorporated herein by this reference (the "Storm Drainage Easement Area") for the following purposes: (i) the carrying of storm water drainage via underground drainage pipes, and (ii) to tie into and utilize a catch basin and related storm water facilities. Any such underground drainage pipes, catch basin and related storm water facilities now or in the future located within the Storm Drainage Maintenance Easement Area (as defined below and including the Storm Drainage Easement Area) shall be collectively referred to herein as the "Drainage Equipment".

(b) BB&T shall be solely responsible for obtaining all permits necessary in connection with any construction of any storm drainage conduits or other improvements necessary to tie into the Drainage Equipment. After construction or repair of any Drainage Equipment by or at the direction of BB&T within the Storm Drainage Easement Area, the Storm Drainage Easement Area shall be returned by BB&T to the pre-construction condition including replanting grass or other ground cover and grading the property in a neat and orderly manner. After construction or repair of any Drainage Equipment by or at the direction of BB&T within the Storm Drainage Easement Area lying outside of the boundaries of the BB&T Tract, said Storm Drainage Easement Area shall be returned by BB&T to the pre-construction condition including replanting grass or other ground cover and grading the property in a neat and orderly manner.

(c) Arbors and BB&T each hereby grants, bargains, sells and conveys to the Association, a non-exclusive, perpetual easement over and across certain portions of the Arbors Tract and the BB&T Tract shown double crosshatched on Exhibit D attached hereto and hereby incorporated herein by this reference (the "Storm Drainage Maintenance Easement Area"), as well as reasonable access to the Storm Drainage Maintenance Easement Area, to maintain and repair the Drainage Equipment in a good and serviceable condition in compliance with all applicable laws, ordinances and codes, including, without limitation, repairing and replacing all such Drainage Equipment as and when reasonably necessary. The costs for such repair work shall be borne by the Association and the Association shall be responsible, at its sole cost and expense, to maintain, in a commercially reasonable manner, the Drainage Equipment. Such expenses are subject to reimbursement through assessments permitted by the Association pursuant

to that certain declaration encumbering the Arbors Tract, the BB&T Tract and the Development Tract (any of which may be referred to herein individually as a "Tract") recorded in Book 17594, Page 893 of the Mecklenburg County Register for Deeds (the "Arbors Declaration"). Notwithstanding the foregoing or any other provision herein, the Association shall not be responsible for any damage to the Drainage Equipment caused by the then owner(s) of the Arbors Tract and/or BB&T Tract.

2. Backflow Preventer Easement.

(a) BB&T hereby grants, bargains, sells and conveys to Arbors, for the benefit of the Arbors Tract, and to the Association, for the benefit of the Association, for the benefit of the that certain real property shown on Exhibit E attached hereto and hereby incorporated herein by this reference (as the same may be divided and developed, the "Development Tract"), a non-exclusive, perpetual easement (the "Backflow Easement") for the benefit of the Arbors Tract and the Development Tract over and across a certain portion of the BB&T Tract as shown double crosshatched on Exhibit F attached hereto and hereby incorporated herein by this reference (the "Backflow Easement Area"), and reasonable access to the Backflow Easement Area, for the following purposes: (i) the prevention of backflow through the use of the backflow preventer and related equipment now or in the future located within the Backflow Easement Area (the "Backflow Prevention System"), and (ii) to tie into and utilize any lines, pipes or other conduits connecting into the Backflow Prevention System within the Backflow Easement Area (the "Backflow Preventer Connections", together with the Backflow Prevention System, the "Backflow Equipment").

(b) BB&T hereby grants, bargains, sells and conveys to the Association, a non-exclusive, perpetual easement (the "Backflow Maintenance Easement") over and across the Backflow Easement Area and reasonable access thereto for the inspection, maintenance, installation, repair and replacement of the Backflow Equipment.

3. Maintenance of Easements.

(a) Storm Drainage Easement Area.

(i) The Association shall maintain and repair the Drainage Equipment in a good and serviceable condition in compliance with all applicable laws, ordinances and codes, including, without limitation, repairing and replacing the Drainage Equipment as and when reasonably necessary and paying for all cost and expenses associated therewith, including the restoration of any portion of the Arbors Tract or the BB&T Tract disturbed and any improvements located thereon to pre-existing same or similar condition, with reasonable diligence and in a good and workmanlike manner, in connection with such work. Except in the case of an emergency, in which case the Association shall notify Arbors and/or BB&T (as applicable) as soon as reasonably practical after the commencement of the work, prior to performing any work in the Storm Drainage Maintenance Easement Area, the Association must give fifteen (15) days advance notice to Arbors and/or BB&T (as applicable) of its intention to do so and must coordinate such work

with the activities of Arbors and/or BB&T (as applicable) so that no unreasonable interference with the operation of the Arbors Tract or the BB&T Tract occurs. Notwithstanding the foregoing or any other provision herein, the Association shall not be responsible for any damage to the Drainage Equipment caused by the then owner(s) of the Arbors Tract and/or BB&T Tract.

(ii) At no time shall access to the Arbors Tract or BB&T Tract be unreasonably obstructed as a result of the maintenance and repair of the Storm Drainage Maintenance Easement Area or any of the Drainage Equipment. At no time shall access to the BB&T Tract be unreasonably partially obstructed, and at no time shall the BB&T Tract be obstructed in its entirety unless: (i) the maintenance or repair of the Storm Drainage Maintenance Easement Area and/or any of the Drainage Equipment is essential and necessary for the continued use of the same; and (ii) it is not reasonably possible to cause such repair or maintenance to be made without total obstruction of access to the BB&T Tract. In the event that these two total obstruction conditions are met, the party conducting such maintenance or repair shall either (i) make such repairs outside of BB&T's normal hours of operation except in the event of an emergency, or (ii) to use its best efforts to provide alternate access to the BB&T Tract in compliance with applicable law and governmental ordinances and regulations. In the event that any obstruction of the BB&T Tract shall be necessary for maintenance or repair to the Storm Drainage Maintenance Easement Area and/or any of the Drainage Equipment, the party making such maintenance or repair shall give BB&T at least three (3) days prior written notice thereof, except in the event of an emergency, in which event that party shall give notice to BB&T to the extent reasonably possible under the circumstances. "Partially obstructed", as used in this Section 3 (a)(ii), shall mean an obstruction of the road commonly known as "West Arbors Drive" which causes the flow of traffic over West Arbors Drive to be limited to a single lane. The approximate area and location of a portion West Arbors Drive is shown as the shaded area on Exhibit G attached hereto and incorporated herein by this reference.

(iii) All maintenance shall be completed so as to minimize disruption to existing improvements on the Arbors Tract and the BB&T Tract and shall be completed in accordance with all applicable laws.

(iv) The cost of any repairs and maintenance of the Drainage Equipment shall be at the expense of the Association (subject to reimbursement through assessments permitted by the Association pursuant to the Arbors Declaration) and **the Association shall be required to repair, at its expense, all** damage caused by the installation, repair and maintenance of the Drainage Equipment (including replacing damaged landscaping). Notwithstanding the foregoing or any other provision herein, the Association shall not be responsible for any damage to the Drainage Equipment caused by the then owner(s) of the Arbors Tract and/or BB&T Tract.

(v) The Association agrees to use reasonable efforts to assure that any entry upon the Arbors Tract or the BB&T Tract reasonably necessary in connection with the repair and maintenance of the Drainage Equipment shall be performed in such a manner so as to limit and minimize interference with Arbor's and BB&T's (and their tenants' and occupants', as the case may be) use of the their respective tracts, and damage to any of the improvements located thereon.

(b) Backflow Easement Area.

(i) The Association shall maintain and repair the Backflow Prevention Equipment in a good and serviceable condition in compliance with all applicable laws, ordinances and codes, including, without limitation, repairing and replacing the Backflow Prevention Equipment as and when reasonably necessary and paying for all cost and expenses associated therewith, including the restoration of any portion of the BB&T Tract disturbed and any improvements located thereon to pre-existing same or similar condition, with reasonable diligence and in a good and workmanlike manner, in connection with such work. Except in the case of an emergency, in which case the Association shall notify BB&T as soon as reasonably practical after the commencement of the work, prior to performing any work in the Backflow Preventer Easement Area, the Association must give fifteen (15) days advance notice to BB&T of its intention to do so and must coordinate such work with the activities of BB&T so that no unreasonable interference with the operation of the BB&T Tract occurs. Notwithstanding the foregoing or any other provision herein, the Association shall not be responsible for any damage to the Backflow Prevention Equipment caused by the then owner(s) of the Arbors Tract, the BB&T Tract, and/or the Development Tract.

(ii) At no time shall access to the BB&T Tract be unreasonably obstructed as a result of the maintenance and repair of the Backflow Easement Area or any of the Backflow Prevention Equipment. At no time shall access to the BB&T Tract be unreasonably partially obstructed, and at no time shall the BB&T Tract be obstructed in its entirety unless: (i) the maintenance or repair of the Backflow Easement Area and/or any of the Backflow Prevention Equipment is essential and necessary for the continued use of the same; and (ii) it is not reasonably possible to cause such repair or maintenance to be made without total obstruction of access to the BB&T Tract. In the event that these two total obstruction conditions are met, the party conducting such maintenance or repair shall either (i) make such repairs outside of BB&T's normal hours of operation except in the event of an emergency, or (ii) to use its best efforts to provide alternate access to the BB&T Tract in compliance with applicable law and governmental ordinances and regulations. In the event that any obstruction of the BB&T Tract shall be necessary for maintenance or repair to the Backflow Easement Area and/or any of the Backflow Prevention Equipment, the party making such maintenance or repair shall give BB&T at least three (3) days prior written notice thereof, except in the event of an emergency, in which event that party shall give notice to BB&T to the extent reasonably possible under the circumstances. "Partially obstructed", as used in this Section 3 (b)(ii), shall mean

an obstruction of the road commonly known as "West Arbors Drive" which causes the flow of traffic over West Arbors Drive to be limited to a single lane. The approximate area and location of a portion West Arbors Drive is shown as the shaded area on Exhibit G attached hereto and incorporated herein by this reference.

(iii) All maintenance shall be completed so as to minimize disruption to existing improvements on the BB&T Tract and shall be completed in accordance with all applicable laws.

(iv) The cost of any repairs and maintenance of the Backflow Prevention Equipment shall be at the expense of the Association (subject to reimbursement through assessments permitted by the Association pursuant to the Arbors Declaration) and the Association shall be required to repair, at its expense, all damage caused by the installation, repair and maintenance of the Backflow Prevention Equipment (including replacing damaged landscaping). Notwithstanding the foregoing or any other provision herein, the Association shall not be responsible for any damage to the Backflow Prevention Equipment caused by the then owner(s) of the Arbors Tract, the BB&T Tract and/or the Development Tract.

(v) The Association agrees to use reasonable efforts to assure that any entry upon the BB&T Tract reasonably necessary in connection with the repair and maintenance of the Backflow Prevention Equipment shall be performed in such a manner so as to limit and minimize interference with BB&T's (and their tenants and occupants, as the case may be) use of the their respective tracts, and damage to any of the improvements located thereon.

4. Representations.

(a) BB&T hereby represents, covenants and warrants that BB&T is seized of the BB&T Tract in fee simple and has the right to convey the rights and easements described herein, and that BB&T will warrant and defend the title to the same against the claims of all persons whomsoever.

(b) Arbors hereby represents, covenants and warrants that Arbors is seized of the Arbors Tract in fee simple and has the right to convey the rights and easements described herein, and that Arbors will warrant and defend the title to the same against the claims of all persons whomsoever.

5. The Arbors Declaration. Notwithstanding anything to the contrary, BB&T acknowledges the subjection of the BB&T Tract to the terms and conditions of the Arbors Declaration, including the right of the Declarant (as defined therein) to record and revise plats for the Property (as defined in the Arbors Declaration) creating various easements and restrictions as permitted pursuant to the terms of the Declaration.

6. Indemnity. Each party hereto agrees to protect, defend and hold harmless the other parties, and their successors and assigns, from any liability, loss, cost, damage and expense (including reasonable attorneys' fees) arising out of or in any way connected with the acts or omissions of that Party or their respective employees, agents, or others for whose acts the indemnitor is legally liable in their use of the Backflow Easement Area and/or the Storm Drainage Easement Area, including without limitation any acts or omissions relating to the inspection, installation, repair, replacement or maintenance of the Backflow Equipment or the Drainage Equipment within their respective Easement Areas.

7. Binding Effect. The easements contained in this Declaration are covenants running with the land and shall inure to the benefit of the parties, each future owner of fee simple title to all or a part of the Arbors Tract, the BB&T Tract and the Development Tract and their respective grantees, successors, assigns and lessees.

8. Entire Agreement. This Declaration and the exhibits attached hereto contain the entire agreement between the parties. No modification or amendment of this Declaration shall be of any force or effect unless made in writing and executed by the parties (or their respective successors or assigns).

9. Governing Law. This Declaration shall be governed by the laws of the State of North Carolina.

10. Severability. The provisions of this Declaration are severable and the invalidity of one or more of the provisions shall not affect the validity or enforceability of any other provisions.

12. No Merger of Easements. The easements hereby established shall not be terminated, by merger, upon the conveyance or any Tract, or otherwise, unless expressly terminated.

13. Private Agreement. This Declaration is not intended, and shall not be construed, to grant rights to the public in general.

14. Counterparts. This Declaration may be executed in any number of counterparts, which shall collectively constitute one instrument.

[signature pages follow]

IN WITNESS WHEREOF, the parties hereto have executed this Declaration under seal as of the day and year first above written.

ARBORS:

ARBORS AT MALLARD CREEK, LLC,
a North Carolina limited liability company,

By: MALLARD LAND PARTNERS, LLC, its Manager

By: Jack M. Levinson
Name: Jack M. Levinson
Title: Manager

STATE OF North Carolina
COUNTY Mecklenburg

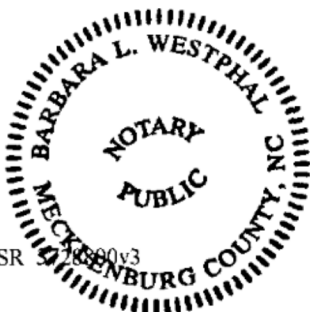
I, Barbara L. Westphal, a Notary Public of Mecklenburg County,
State of North Carolina, do hereby certify that
Jack M. Levinson (the "Signatory"), personally appeared before me this day
and acknowledged that he/she is Manager of MALLARD LAND PARTNERS, LLC, a
North Carolina limited liability company, manager of ARBORS AT MALLARD CREEK, LLC,
a North Carolina limited liability company, and that he/she, in such capacity and being
authorized to do so, executed the foregoing on behalf of the Mallard Land Partners, LLC as
manager of Arbors at Mallard Creek, LLC.

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

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

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

Witness my hand and official stamp or seal this 27th day of
September, 2007.



Barbara L. Westphal
Notary Public

Print Name: Barbara L. Westphal

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: February 4, 2012

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

BB&T:

BRANCH BANKING AND TRUST COMPANY,
a North Carolina state banking corporation

By: B. Shamloo
Print Name: BRENDA H. SHAMLOO
Title: Vice President

STATE OF North Carolina
COUNTY OF Forsyth

I, Tanya N Trivette, a Notary Public of
Forsyth County, State of North Carolina,
certify that Brenda H. Shamloo (the "Signatory"), personally
came before me this day and acknowledged that he/she is Vice President
of BRANCH BANKING AND TRUST COMPANY, a North Carolina state banking
corporation, and that he/she, in such capacity and being authorized to do so, executed the
foregoing on behalf of the corporation.

I certify that the Signatory personally appeared before me this day, and

(check one of the following)

☒ (I have personal knowledge of the identity of the Signatory); or
☐ (I have seen satisfactory evidence of the Signatory's identity, by a current
state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

☐ a driver's license or
☐ in the form of _____); or
☐ (a credible witness has sworn to the identity of the Signatory).

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

Witness my hand and official stamp or seal this 27th day of September, 2007.

Tanya N Trivette

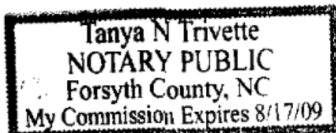
Notary Public

Print Name: Tanya N Trivette

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 8/17/09

☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)



THE ASSOCIATION:

ARBORS AT MALLARD CREEK PROPERTY
OWNERS ASSOCIATION, INC.,
a North Carolina nonprofit corporation

By: Jack M. Levinson
Print Name: Jack M. Levinson
Title: President

STATE OF North Carolina
COUNTY OF Mecklenburg

I, Barbara L. Westphal, a Notary Public of
Mecklenburg County, State of North Carolina,
certify that Jack M. Levinson (the "Signatory"), personally
came before me this day and acknowledged that he/she is President
of ARBORS AT MALLARD CREEK PROPERTY OWNERS ASSOCIATION, INC., a North
Carolina nonprofit corporation, and that he/she, in such capacity and being authorized to do so,
executed the foregoing on behalf of the corporation.

I certify that the Signatory personally appeared before me this day, and

(check one of the following)

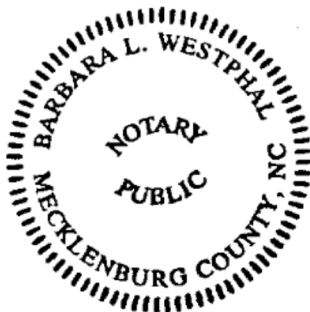
X (I have personal knowledge of the identity of the Signatory); or
____ (I have seen satisfactory evidence of the Signatory's identity, by a current
state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

____ a driver's license or
____ in the form of _____); or
____ (a credible witness has sworn to the identity of the Signatory).

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

Witness my hand and official stamp or seal this 27th day of September, 2007.



Barbara L. Westphal
Notary Public
Print Name: Barbara L. Westphal
[Note: Notary Public must sign exactly as on notary seal]
My Commission Expires: February 4, 2012

☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

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

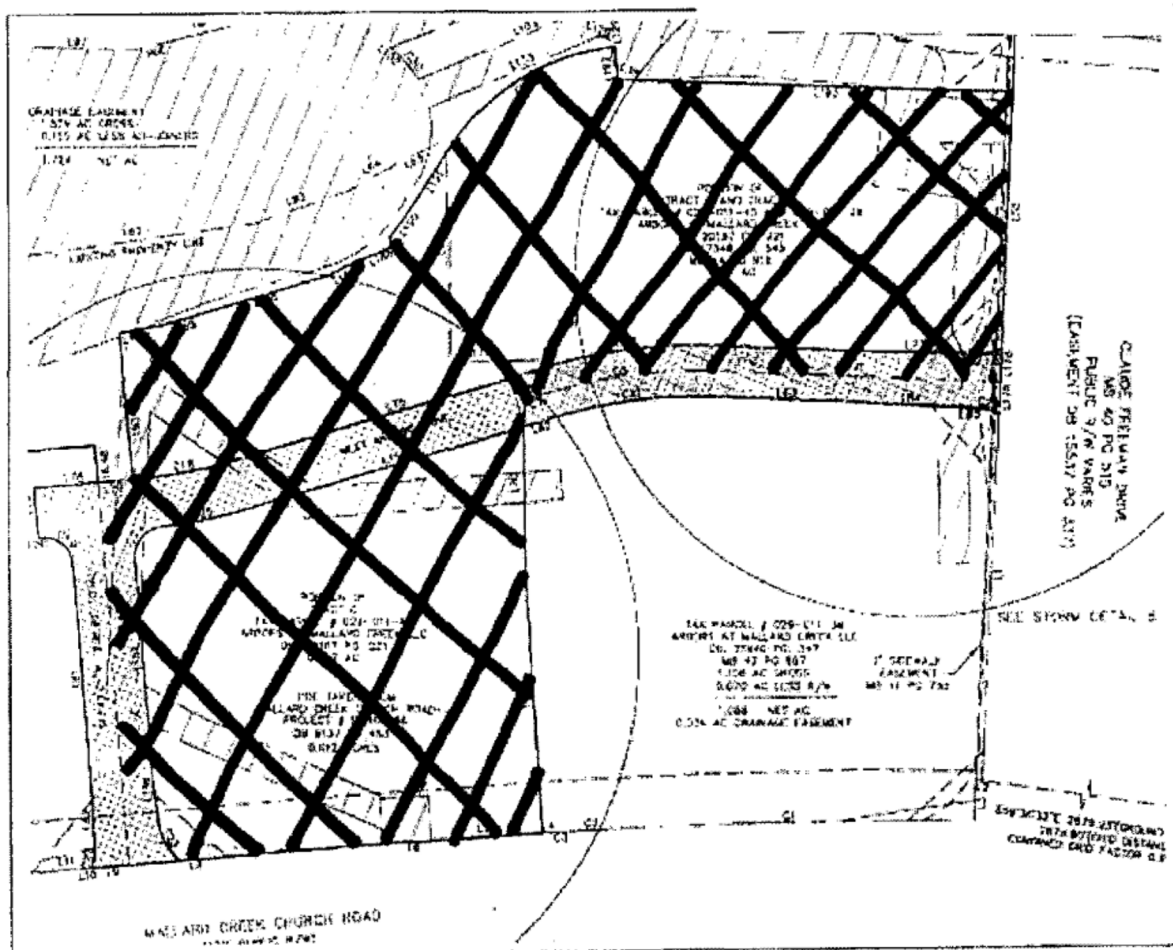


EXHIBIT B

BEING all of LOT 7, containing approximately 1.158 acres, as shown on "Final Plat of Lot 7 – Arbors at Mallard Creek, Phase 1" recorded in Map Book 42 at Page 697 in the Mecklenburg County Public Registry.

"THIS MAP IS NOT A CERTIFIED SURVEY
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COMPLIANCE WITH ANY APPLICABLE
LAND DEVELOPMENT REGULATIONS"

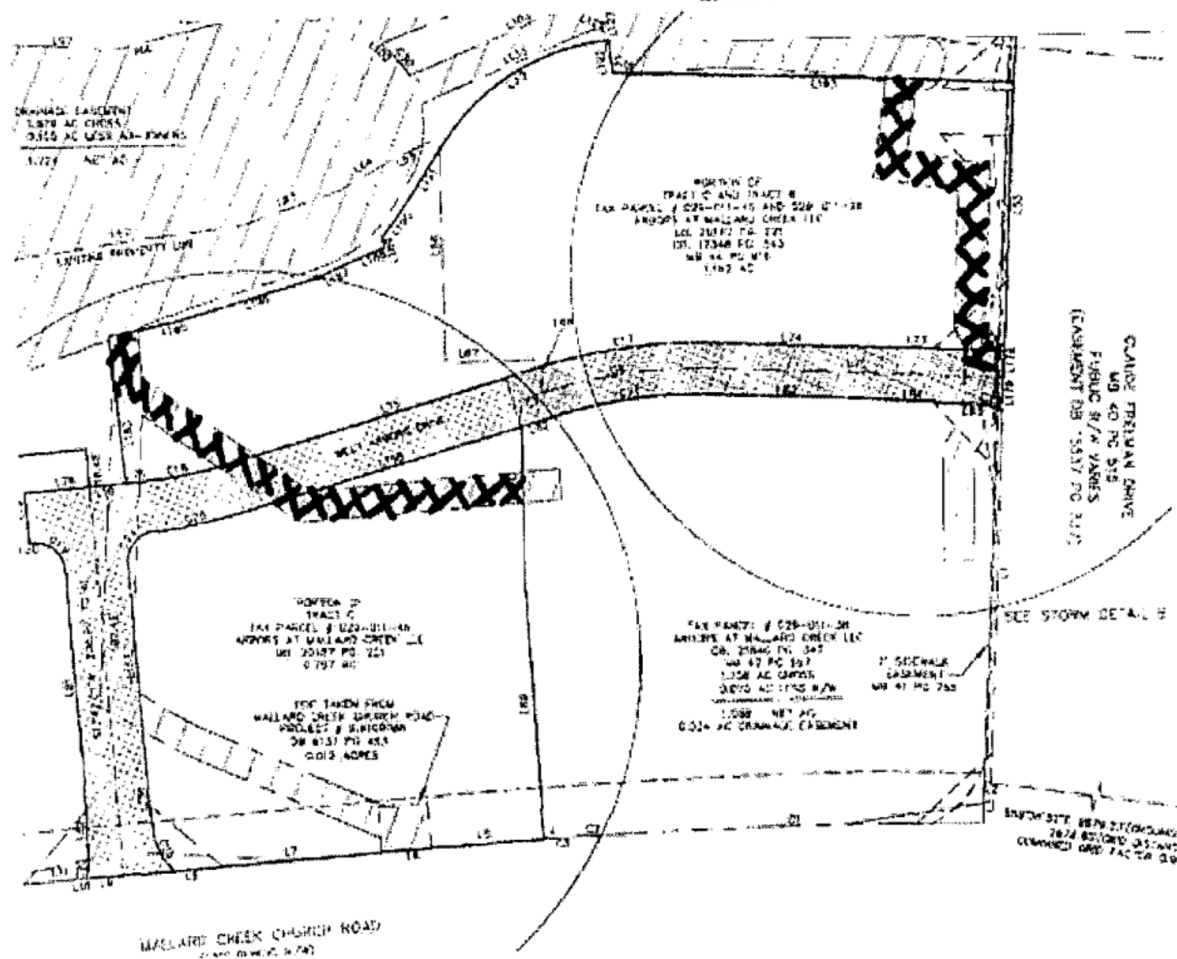


EXHIBIT D

"THIS MAP IS NOT A CERTIFIED SURVEY
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LAND DEVELOPMENT REGULATIONS"

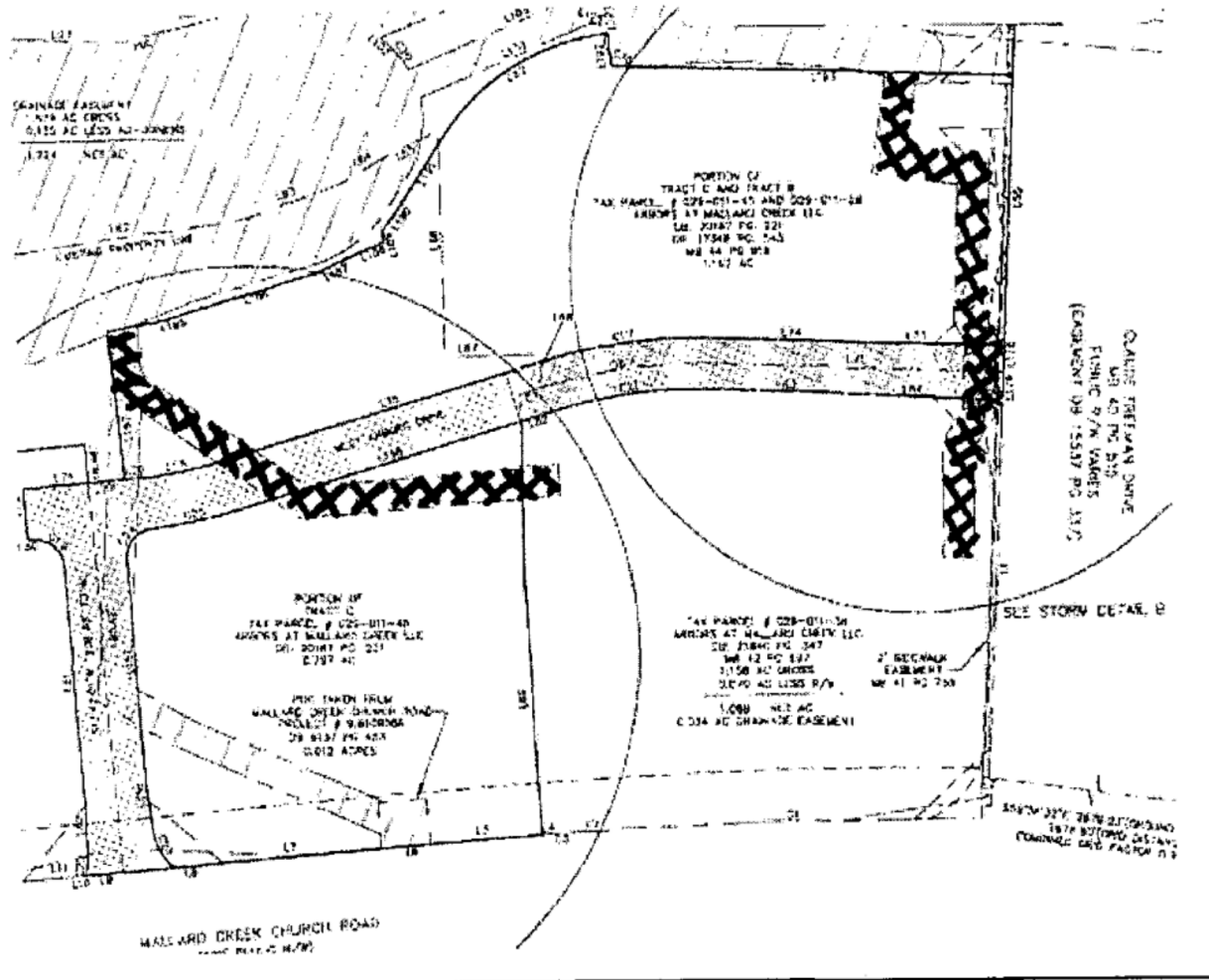


EXHIBIT E

"THIS MAP IS NOT A CERTIFIED SURVEY
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COMPLIANCE WITH ANY APPLICABLE
LAND DEVELOPMENT REGULATIONS"

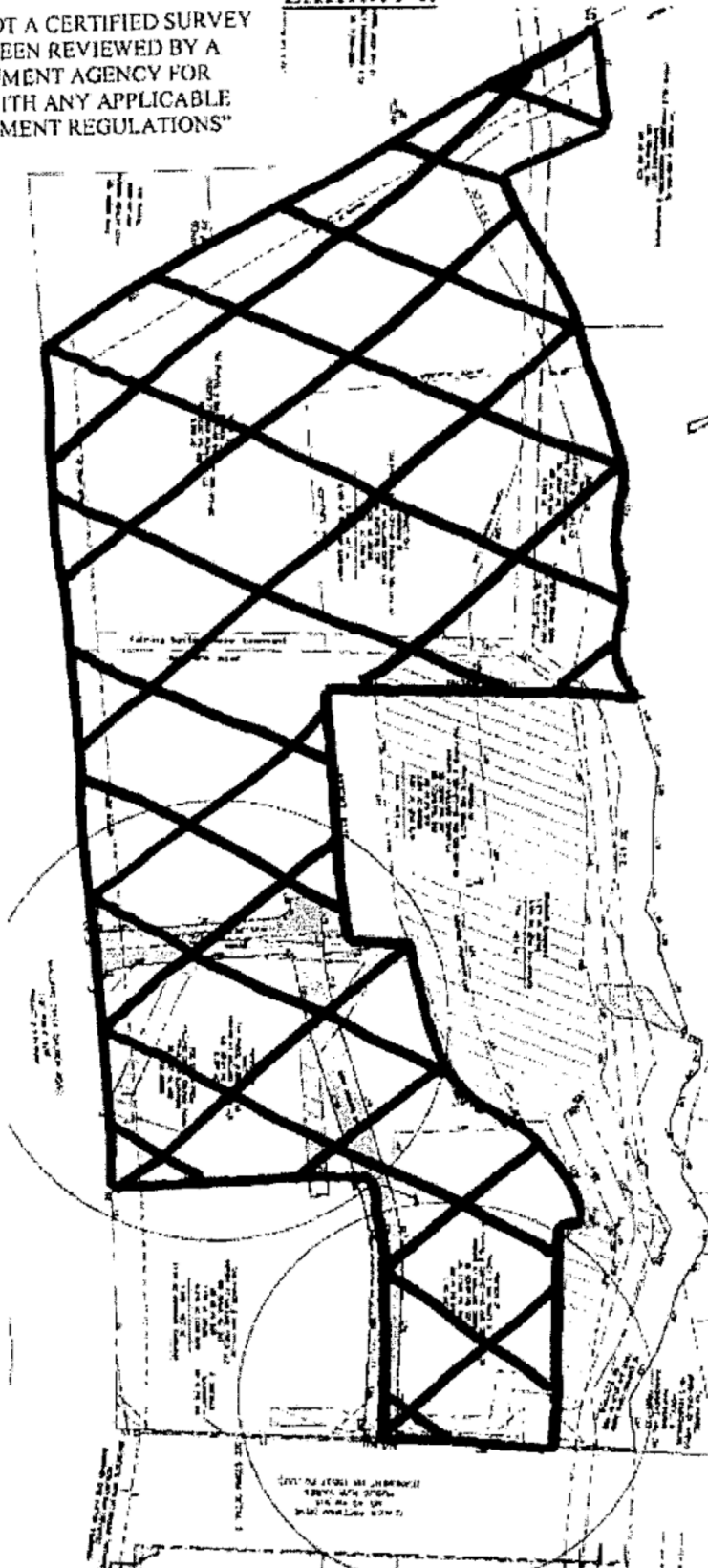


EXHIBIT F

"THIS MAP IS NOT A CERTIFIED SURVEY
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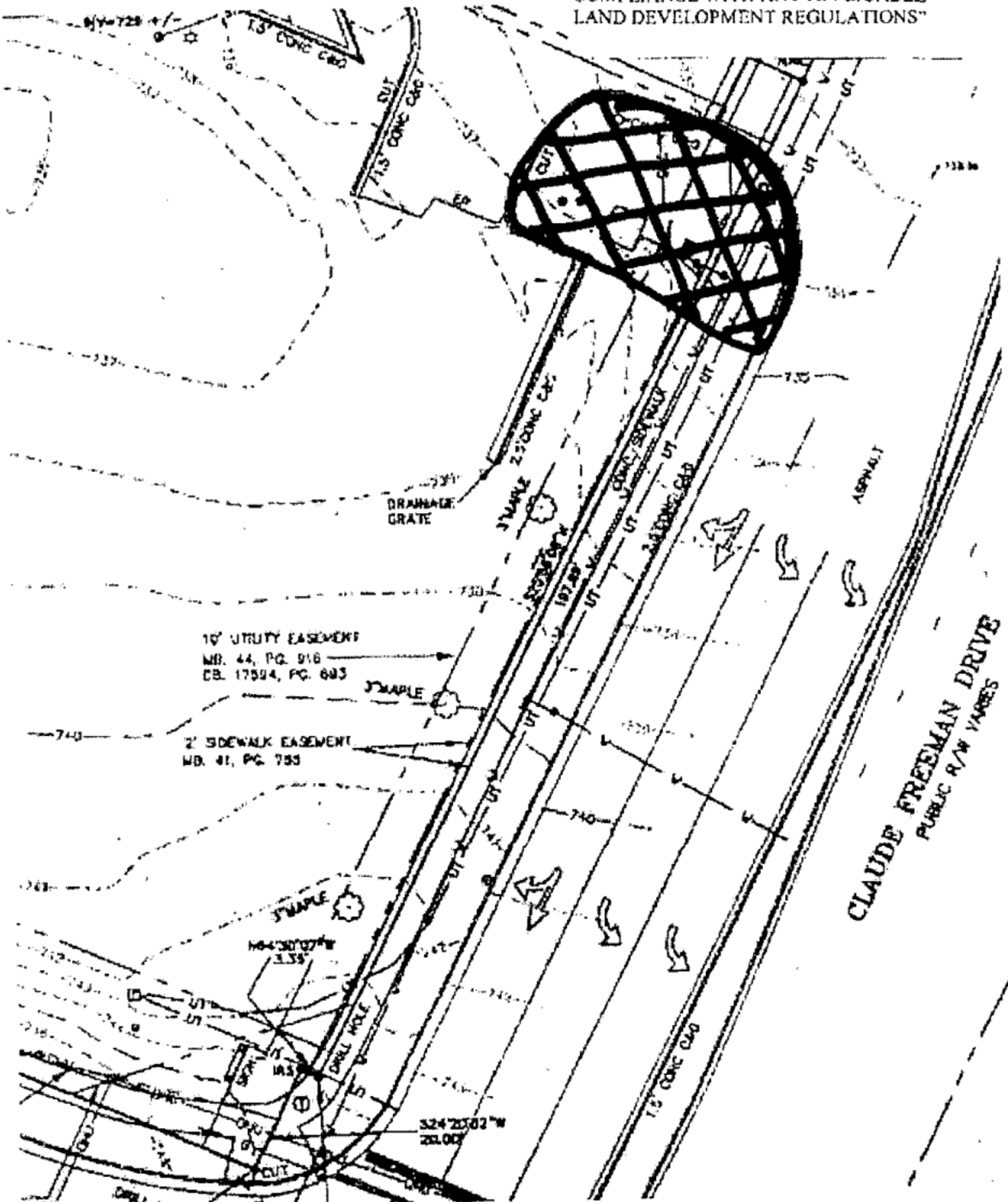
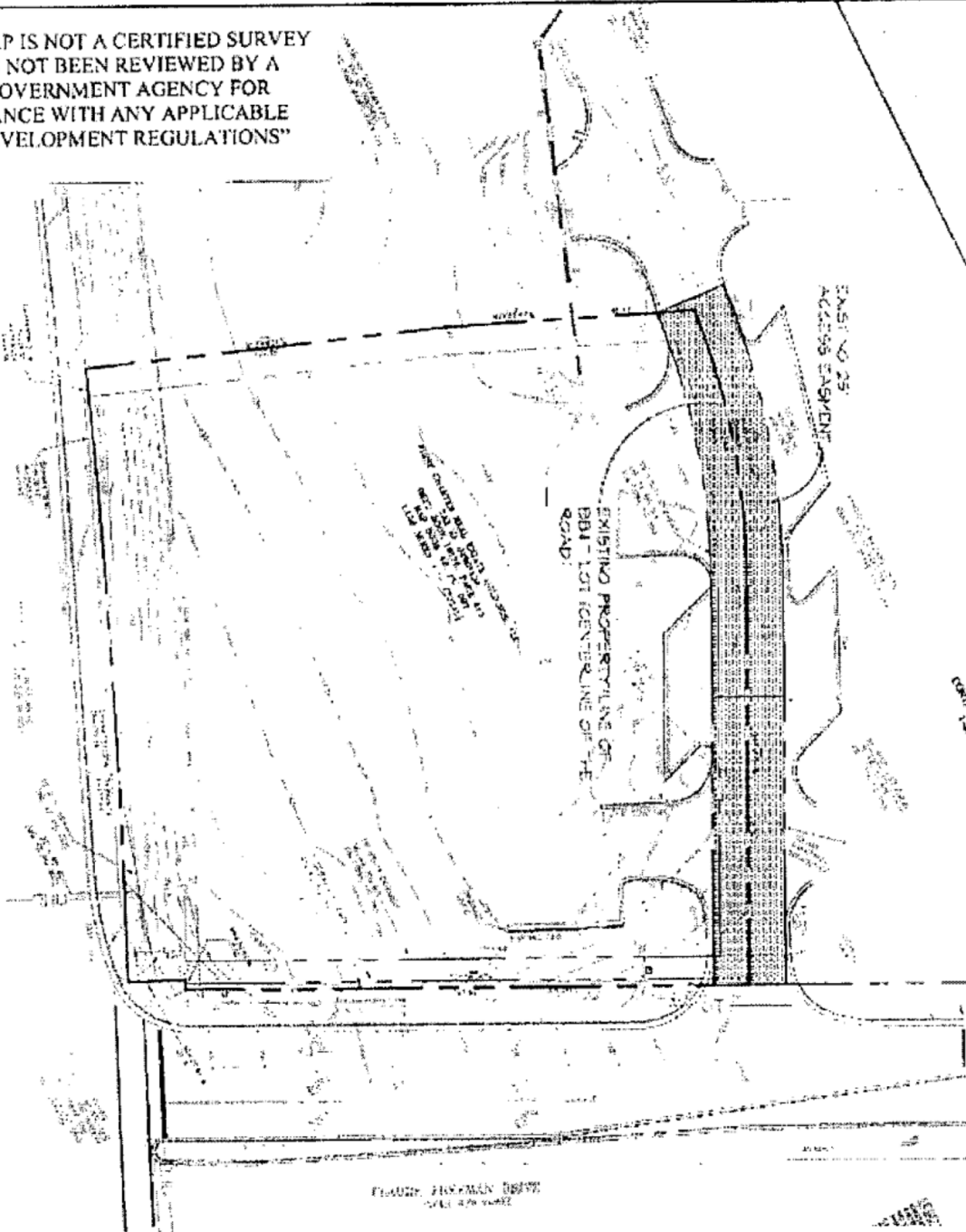
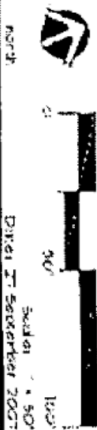


EXHIBIT G

"THIS MAP IS NOT A CERTIFIED SURVEY
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COMPLIANCE WITH ANY APPLICABLE
LAND DEVELOPMENT REGULATIONS"

EXISTING CONDITIONS
EXHIBIT B



BB&T Arbors
Mallard Creek Church Rd.
Charlotte, North Carolina

TURNING LAND
INTO LANDMARKS
140 E. 10th Street, Suite 5
Wilmington, NC 28401
919.782.1522
Fax 919.782-1072
info@mla.com





JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of the recorded document, and must be submitted with original for re-recording
and/or cancellation.

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Book: RE 22869 Page: 184-201
Document No.: 2007200126
RESTR 18 PGS \$62.00
Recorder: APRIL JONES



2007200126