

**NEW HANOVER COUNTY
REQUEST FOR QUALIFICATIONS
REDEVELOPMENT OF THE GOVERNMENT CENTER**



COUNTY COMMISSIONERS

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1. OVERVIEW

New Hanover County, North Carolina (“the County”) is inviting interested development teams to respond to this solicitation for the redevelopment of the Government Center located at 230 Government Center Drive, Wilmington, NC to include a facility for County offices currently housed in the Government Center and private development suitable for the site that will generate additional tax revenues for the County. The County desires a public-private partnership that will include a variety of uses for the current site such as residential, commercial, and office space in addition to a new facility for the County.

New Hanover County Board of Commissioners unanimously approved a resolution to explore redevelopment of the Government Center at their meeting held on August 12, 2019. The Government Center was originally constructed as a shopping center (Market Place Mall) in 1989. The County purchased and renovated the building beginning in 2002 to repurpose it as an office complex for county government functions. The Government Center currently houses many critical functions of county government including planning and land use, building safety, emergency management and 911, engineering, a satellite register of deeds office, parks and gardens, elections, veterans services, tax, county commissioners and various county administrative offices such as county manager, legal, human resources, information technology and finance.

While the County desires a broad range of redevelopment ideas for the County building, at a minimum, the selected firm shall address the County’s identified priorities as follows for its building:

- Requires space that is easily accessible and convenient for our customers to obtain County services.
- Preference is for a multi-story office facility.
- Requires office space for approximately 370 employees that will accommodate adaptable workspaces for future workstyles such as teleworking which may reduce the space required for employees at the redeveloped facility.
- Requires adequate parking for employees and customers.
- Requires various conference rooms (from small with capacity of 15 people to large with minimum capacity of 200 people).
- Requires a data center that meets the latest ANSI/BICSI 002 and ANSI/TIA 942-A standards.

- Requires the office facility to meet all NFPA, NEC, and North Carolina code requirements for a critical facility.
- Considerations must be made for the County's communications tower to either remain in the current location or be incorporated into the County's new office facility.
- Requires a small clinic area including waiting room, reception area, two exam rooms, and a medical records storage area.
- Requires a wellness center including a small area for gym equipment, male and female changing areas and showers, and a physical therapist room.
- Requires a TV studio including space for shooting, editing, and producing.
- Requires sufficient break room(s) for staff.
- Requires an Emergency Operations Center (EOC) and 911 Communications Center with considerations for staff shelter area within the new County facility.
- Requires ultimate County ownership of the County facility.
- Preference is for County staff to remain in the current facility until the new County office facility is completed to allow for continuity of services.

2. PROJECT SITE

The Government Center is centrally located in the City of Wilmington with access from College Road, a main artery in New Hanover County, and Government Center Drive. The current zoning for the site is Regional Business (RB). The site is made up of three parcels totaling over 15 acres as detailed below and encompasses over 136,000 square feet of covered space. These tracts of land are in a Federal Opportunity Zone, which is a community investment tool to encourage long-term investments by providing tax incentives for qualified investors.



Figure 1: Parcels

Parcel A = 6.06 acres	45,181 sq ft facility	R04916-003-002-000
Parcel B = 4.39 acres	31,736 sq ft facility	R04916-003-007-000
Parcel C = 4.56 acres	59,737 sq ft facility	R05013-008-043-002
Total = 15.01 acres	136,654 sq ft under roof	

The parcels are presently subject, unless modified, to various restrictive covenants and easements, including among others:

1. Restrictive covenants prohibiting residential and certain other specified uses.
2. Mutual ingress/egress easements over the existing parking and drive areas for the reciprocal benefit of certain adjacent parcels.

The County would cooperate with the developer to assist with any reasonable modification requests. A copy of the covenants and easements is attached as **Exhibit A**.



Figure 2: Aerial Photo of the Government Center

The site has approximately 420 parking spaces for employees, customers and tenants.

The Government Center adjoins Ten Pin Alley/Break Time Billiards, a facility which includes a pool hall, a full bar and restaurant, and a bowling alley. This facility and related parking is not owned by the County.

The County leases approximately 7,000 square feet of the total covered space to various entities. Current tenants include a real estate school, a catering facility/kitchen, and a YWCA bridge center.

The Emergency Operation Center (EOC) and 911 Communications Center is a separate building located in Parcel C. This building has approximately 8,580 sq. ft. and is built to withstand Category 3 hurricane wind speeds (111-129 mph). The County's communication tower is located on Parcel B with the tower building being located on Parcel C.



Figure 3: South Entrance off Government Center Drive



Figure 4: West Entrance from College Road

3. SUBMISSION REQUIREMENTS

The County invites highly accomplished developers with a proven track record of delivering successful and recognized developments to submit statements of qualification.

The selected firm will be responsible for creating an overall development plan that is consistent with the County's requirements for the site. Firms should clearly, completely, and concisely address each of the following areas in its response to this RFQ:

1. DEVELOPMENT TEAM

Firms should include a description of all firms comprising the development team, including intended design partners, engineers, construction team, etc. For all key personnel, provide a resume, describing relevant experience and intended role on the project team. For the development team, firms should also include a diagram or organizational chart illustrating the relationship between the lead developer and any subcontractors or partners. For teams led by a joint venture, clearly show the structure and percentage of ownership held by each lead team member.

2. RELEVANT PREVIOUS EXPERIENCE

Firms should demonstrate their ability to succeed at designing, constructing, and managing the project by sharing information on at least three previous projects that illustrate its ability to fulfill the goals of this project. In particular, Firms should highlight:

- Experience in master development of mixed-use projects similar to those located in New Hanover County.
- Mixed-use development that includes public facilities within the same structure or on the same site as private development.
- Experience with the design and construction of a government facility.
- Experience in managing the commercial component of a mixed-use project, including maintaining high occupancy rates.
- A track record of successful public-private development partnerships.
- Experience managing parking that serve both public as well as private users.
- A successful track record of meeting major project milestones on-schedule on similar projects.

- Experience negotiating and executing complex public-private development agreements.
- Management experience with the operation of a building containing both public and private tenants, including maintenance, security, and capital project management.
- Experience of the project team members and a description of their roles working together on previous projects to successfully plan, construct, and deliver complex public-private development projects on-time and on-budget.
- Recent experience of the project team working in North Carolina on projects of similar size.

For all projects submitted as examples of relevant previous experience, Firms should provide:

- Project location;
- Project size, including phasing;
- Description of site uses;
- Completion date;
- Public sector involvement, if any;
- Total project costs and financing structure (detailing sources of capital); and
- A representative image (or images) of the project;
- Copies of executed development agreements (including ownership and operational structure of the project);
- Copies of executed parking agreements (if not included in the development agreement); and
- The names and contact information for the following Public sector project manager(s)
- Legal team leaders (public and private)
- Design team leader
- Construction team leader

3. FINANCIAL CAPABILITY

Firms should provide detailed information about their ability to financially fulfill the obligations of the development project. Firms should provide the following information:

- Information about the Firm's overall financial position, past history of raising capital, and resources available to complete this project.
- Most recent audited annual financial statement.

- Composition of real estate portfolio by type as of December 31, 2018 and occupancy percentage.
- References from financing agencies on prior projects and letters of intent from potential lenders.
- A statement indicating that the Firm does not currently and has not had any loans in default within the past five years, and has not filed for bankruptcy, had a project foreclosed or been subject to any government initiated action to impose fines or criminal penalties. Alternatively, if any of these have occurred, include a description of the actions and the project-related circumstances in which the actions took place.
- Description of any litigation that has been filed against the development team or its members related to real estate projects during the past 10 years, as well as the outcome of that litigation. If no litigation has been filed, please include a statement to this effect.
- Examples of previously executed financing agreements for similar public/private development projects.
- Experience utilizing tax advantaged financing methods for similar public/private development projects.

***Note:** Any portion of the material that is noted by the Firm as being proprietary will be withheld from disclosure to the public to the extent permitted by North Carolina G.S. 66- 152(3).

4. AVAILABILITY

Firms should submit a written statement of their ability to undertake the public-private development project and project time line for completion.

4. EVALUATION CRITERIA

DEVELOPMENT TEAM

Teams will be evaluated on the team structure, their working relationship with each other, and their completed projects working together.

RELEVANT PREVIOUS EXPERIENCE

Firms will be evaluated on relevant and recent experience with developing successful projects that are similar in vision, scope, size, and challenges as identified in this RFQ. Firms, including any potential development partners, will need to demonstrate relevant experience in complex public-private ventures and mixed-use projects, with a proven track record of project execution and achievement of public-sector and community objectives.

FINANCIAL CAPABILITY

Firms' financial capability to fulfill the obligations of redeveloping the site will be evaluated based on its previous ability to financially meet the obligations of similar projects and demonstration of its ability and capacity to secure future financing that will appropriately fund the project through construction and maintenance for many years to come.

AVAILABILITY

Firms will be evaluated on their approach to fulfilling the County's Objectives and timeline.

5. SELECTION PROCESS

Each firm will be evaluated based upon information provided in the Evaluation Criteria listed above. The County may negotiate with one or more firms during the evaluation process with whom to negotiate the terms and conditions of a contract to perform the public private development project. The County will advertise the terms of the proposed contract with the successful firm at least thirty (30) days before entering into a development contract.

The County reserves the right to reject any and all statements of qualifications and also reserves the right to waive any irregularities in the statements of qualifications.

6. SOLICITATION SCHEDULE

Solicitation Task	Date
Release of RFP	August 30, 2019
Deadline for Initial Questions	September 11, 2019 by 5:00 PM
Pre-Submittal Conference	September 18, 2019 at 10:00 AM
Deadline for Final Questions	September 25, 2019 by 5:00 PM
Response to All Questions Posted	October 2, 2019
Deadline for Receipt of Statements of Qualifications	October 22, 2019 by 5:00 PM

The County will host a pre-submittal conference on September 18, 2019, at 10:00 AM EST, at the New Hanover County Government Center located at 230 Government Center Drive, Suite 165, Wilmington, NC 28403 in Finance Conference Room 500. Attendance at the pre-submittal conference is mandatory, with at least one representative from the proposed project team. This meeting will provide information about the RFQ, include a tour of the building and provide a forum for the County to discuss initial questions received and to discuss the process and contents of the RFQ.

Prior to the pre-submittal meeting date, firms are asked to submit their first round of questions via email to lbutler@nhcgov.com. The deadline for receipt of initial questions is September 11, 2019 at 5:00 P.M.

Following the pre-submittal meeting, all inquiries, requests for interpretation, technical questions, clarification, or additional information shall be directed to Lena Butler, Purchasing Supervisor by emailing lbutler@nhcgov.com.

All final questions shall be received no later than 5:00 P.M., EST, September 25, 2019. Written responses to all questions will be posted no later than October 2, 2019.

Firms may not have communications, verbal or otherwise, concerning this RFQ with any personnel or Boards from New Hanover County, other than the person listed in this section. If any firm attempts any unauthorized communication, the RFQ may be rejected.

All Firms who intend to submit a Statement of Qualification on this project should send an email to lbutler@nhcgov.com including pertinent contact information. This will ensure that you receive all addenda issued for this RFQ, if applicable. Deadline for receipt of Statement of Qualifications is due by October 22, 2019 at 5:00 P.M.

7. SUBMISSION INSTRUCTIONS

Firms are instructed to submit one (1) original and one (1) electronic copy on CD or USB. Please do not submit a protected electronic copy which can't be copied. The electronic copy allows the information to be copied and distributed among the evaluation team.

Submit the RFQ in a sealed envelope properly marked "**RFQ REDEVELOPMENT OF THE GOVERNMENT CENTER**" and addressed to:

New Hanover County Finance Office
Attn: Lena Butler, Purchasing Supervisor
230 Government Center Drive, Suite 165
Wilmington, NC 28403

The County reserves the right to accept or reject any or all Requests for Qualifications, with or without cause. All decisions related to this solicitation by the County will be final. The County reserves the right to request clarification of information submitted and to request additional information from all firms submitting Qualification Statements.

Costs for preparing the Statement of Qualifications are solely the responsibility of the Respondent.

FATIC 4 12
ALTA Loan Policy (10/17/92)

Policy No. FA-31-272086

POLICY OF TITLE INSURANCE



ISSUED BY

First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
 - (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
 - (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

First American Title Insurance Company

BY *Parker S. Kennedy* PRESIDENT

ATTEST *Mark R. Arneson* SECRETARY



EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership of a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or
- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of insured at Date of Policy, or the inability or failure of any subsequent owner of indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or a consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statute for services, labor or materials over the lien of the insured mortgage) arising from improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A. The term "insured" also includes:

(i) the owner of the indebtedness secured by the insured mortgage and each successor in ownership of the indebtedness except a successor who is an obligor under the provisions of Section 12(c) of these Conditions and Stipulations (reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor in interest unless the successor acquired the indebtedness as a purchaser for value without knowledge of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy as affecting title to the estate or interest in the land);

(ii) any governmental agency or governmental instrumentality which is an insurer or guarantor under an insurance contract or guaranty insuring or guaranteeing the indebtedness secured by the insured mortgage, or any part thereof, whether named as an insured herein or not;

(iii) the parties designated in Section 2(a) of these Conditions and Stipulations.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule (A), and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A or the insured mortgage to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE.

(a) **After Acquisition of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of (i) an insured who acquires all or any part of the estate or interest in the land by foreclosure, trustee's sale, conveyance in lieu of foreclosure, or other legal manner which discharges the lien of

settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following options:

(a) To Pay or Tender Payment of the Amount of Insurance or to Purchase the Indebtedness

(i) to pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized

the insured was and continued to be obligated to advance a and after Date of Policy.

9. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

(a) All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto. However, any payments made prior to the acquisition of title to the estate or interest as provided in Section 2(a) of these Conditions and Stipulations shall not reduce pro tanto the amount of the insurance afforded under this policy except to the extent that the payments reduce the amount of the indebtedness secured by the insured mortgage.

(b) Payment in part by any person of the principal of the indebtedness, or any other obligation secured by the insured mortgage, or any voluntary partial satisfaction or release of the insured mortgage, to the extent of the payment, satisfaction or release, shall reduce the amount of insurance pro tanto. The amount of insurance may thereafter be increased by accruing interest and advances made to protect the lien of the insured mortgage and secured thereby, with interest thereon, provided in no event shall the amount of insurance be greater than the amount of insurance stated in Schedule A.

(c) Payment in full by any person or the voluntary satisfaction or release of the insured mortgage shall terminate all liability of the Company except as provided in Section 2(a) of these Conditions and Stipulations.

10. LIABILITY NONCUMULATIVE.

If the insured acquires title to the estate or interest in satisfaction of the indebtedness secured by the insured mortgage, or any part thereof, it is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy.

11. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

12. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) **The Company's Right of Subrogation.** Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and

the insured mortgage: (ii) a transferee of the estate or interest so acquired from an insured corporation, provided the transferee is the parent or wholly-owned subsidiary of the insured corporation, and their corporate successors by operation of law and not by purchase, subject to any rights or defenses the Company may have against any predecessor insureds; and (iii) any governmental agency or governmental instrumentality which acquires all or any part of the estate or interest pursuant to a contract of insurance or guaranty insuring or guaranteeing the interest secured by the insured mortgage.

(b) **After Conveyance of Title.** The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

(c) **Amount of Insurance:** The amount of insurance after the acquisition or after the conveyance shall in neither event exceed the least of:

(i) the amount of insurance stated in Schedule A.
(ii) the amount of the principal of the indebtedness secured by the insured mortgage as of Date of Policy, interest thereon, expenses of foreclosure, amounts advanced pursuant to the insured mortgage to assure compliance with laws or to protect the lien of the insured mortgage prior to the time of acquisition of the estate or interest in the land and secured thereby and reasonable amounts expended to prevent deterioration of improvements, but reduced by the amount of all payments made; or

(iii) the amount paid by any governmental agency or governmental instrumentality, if the agency or instrumentality is the insured claimant, in the acquisition of the estate or interest in satisfaction of its insurance contract or guaranty.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest or the lien of the insured mortgage, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest or the lien of the insured mortgage, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the insured to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting

by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay; or

(ii) to purchase the indebtedness secured by the insured mortgage for the amount owing thereon together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of purchase and which the Company is obligated to pay.

If the Company offers to purchase the indebtedness as herein provided, the owner of the indebtedness shall transfer, assign, and convey the indebtedness and the insured mortgage, together with any collateral security, to the Company upon payment therefor.

Upon the exercise by the Company of either of the options provided for in paragraphs a(i) or (ii), all liability and obligations to the insured under this policy, other than to make the payment required in those paragraphs, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) **To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.**

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs b(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the amount of insurance stated in Schedule A, or, if applicable, the amount of insurance as defined in Section 2 (c) of these Conditions and Stipulations;

(ii) the amount of the unpaid principal indebtedness secured by the insured mortgage as limited or provided under Section 8 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage insured against by this policy occurs, together with interest thereon; or

(iii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the insured has acquired the estate or interest in the manner described in Section 2(a) of these Conditions and Stipulations or has conveyed the title, then the liability of the Company shall continue as set forth in Section 7(a) of these Conditions and Stipulations.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, or otherwise establishes the lien of the insured mortgage, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title or to the lien of the insured mortgage, as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

(d) The Company shall not be liable for:

(i) any indebtedness created subsequent to Date of Policy except for advances made to protect the lien of the insured mortgage and secured thereby and reasonable amounts expended to prevent deterioration of improvements; or

(ii) construction loan advances made subsequent to Date of Policy, except construction loan advances made subsequent to Date of Policy for the purpose of financing in whole or in part the construction of an improvement to the land which at Date of Policy were secured by the insured mortgage and which

remedies against any person or property necessary in or perfect this right of subrogation. The insured claimant shall mail the Company to sue, compromise or settle in the name of insured claimant and to use the name of the insured claimant any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover loss of the insured claimant, the Company shall be subrogated to all rights and remedies of the insured claimant after insured claimant shall have recovered its principal, interest, costs of collection.

(b) The Insured's Rights and Limitations.

Notwithstanding the foregoing, the owner of the indebtedness secured by the insured mortgage, provided the priority lien of the insured mortgage or its enforceability is not affected, may release or substitute the personal liability of any debt guarantor, or extend or otherwise modify the terms of payment or release a portion of the estate or interest from the lien of insured mortgage, or release any collateral security for indebtedness.

When the permitted acts of the insured claimant occur and the insured has knowledge of any claim of title or interest adverse to the title to the estate or interest or the priority enforceability of the lien of the insured mortgage, as insured, the Company shall be required to pay only that part of any loss insured against by this policy which shall exceed the amount any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(c) The Company's Rights Against Non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

The Company's right of subrogation shall not be avoided in acquisition of the insured mortgage by an obligor (except an obligor described in Section 1(a)(ii) of these Conditions and Stipulations) who acquires the insured mortgage as a result of an indemnity, guarantee, other policy of insurance, or bond or the obligor will not be an insured under this policy, notwithstanding Section 1(a)(i) of these Conditions and Stipulations.

13. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction therefor.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

14. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the lien of the insured mortgage or of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

15. SEVERABILITY.

In the event any provision of this policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

16. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at 114 East Fifth Street, Santa Ana, California 92701, or to the office which issued this policy.

FIRST AMERICAN



First American Title Insurance Company

**POLICY
OF
TITLE
INSURANCE**

Issued by:
THE TITLE COMPANY OF
NORTH CAROLINA, INC.
209 N. 5th Avenue
Post Office Box 2177
Wilmington, North Carolina 28402
(910) 343-8374
(800) 222-6613 (NC WATS)



First American Title Insurance Company

Loan Policy

Schedule A

Policy ID: FA31272086

Coverage: \$5,100,000.00

Premium: \$1,620.00

Policy Date: May 20, 2005 at 09:03am in New Hanover County

Insured: Bank of America, N.A. its successors and assigns, as their respective interests may appear

1. The fee simple estate or interest in the land which is encumbered by the insured Deed(s) of Trust is at Policy Date vested in:

NEW HANOVER COUNTY

2. The insured Deed(s) of Trust and Assignment(s) thereof, if any, are described as follows:

DEED(S) OF TRUST executed by COUNTY OF NEW HANOVER, NORTH CAROLINA to PRLAP, Inc., Trustee(s) for Bank of America, N.A., dated May 20, 2005, recorded on May 20, 2005, at 09:03am in Book 4813, Page 770, New Hanover County Registry, securing the sum of \$5,100,000.00.

3. The land referred to in this Policy is described as follows:
See attachment(s).

Schedule B - I

This policy does not insure against loss or damage by reason of the following:

1. Taxes for the year 2005, not yet due and payable.
2. Restrictive Covenants recorded in Book 1272, Page 328; Book 1403, Page 1859; Book 2675, Page 747; Book 3392, Page 660; Book 3704, Page 155; Map Book 28, Pages 29-31; Map Book 28, Page 110; and Map Book 44, Page 81, New Hanover County Registry; but the Company insures that said covenants have not been violated and that a future violation thereof will not cause a forfeiture or reversion of title.
3. Terms of Lease to Video Max, Inc., a memorandum of which is recorded in Book 1417, Page 724, New Hanover County Registry.
4. Comprehensive Reciprocal Easement and Operation Agreement(s)

ALTA Loan Policy 10-17-92

Office: TITLE COMPANY OF NORTH CAROLINA, INC.
209 N. 5TH AVENUE, WILMINGTON, NC 28402 910-343-8374

File ID: 05W3624 ID: FA31272086 [118283] Printed: 06-21-2005 by LAB

Page 1

First American Title Insurance Company

Loan Policy

Schedule B - I (Continued)

- recorded in Book 3704, Page 155, New Hanover County Registry.
5. Non-Exclusive Access Easement(s) in favor of Chi Chi's USA, Inc. recorded in Book 1433, Page 534, New Hanover County Registry.
 6. Access Easement(s) in favor of David H. Garris recorded in Book 2708, Page 984, New Hanover County Registry.
 7. Easement(s) to North Carolina Highway and Public Works Commission recorded in Book 577, Page 281; Book 633, Page 195 and Book 658, Page 330, New Hanover County Registry.
 8. Easement(s) to Carolina Power and Light Company recorded in Book 712, Page 208; Book 810, Page 341; Book 903, Page 454; Book 1102, Page 464; and Book 1284, Page 1924, New Hanover County Registry.
 9. Easement(s) to CRN Wilmington Venture recorded in Book 1260, Page 455, New Hanover County Registry.
 10. Easement(s) to the City of Wilmington recorded in Book 1288, Page 358, New Hanover County Registry.
 11. Easement(s) to Southern Bell Telephone and Telegraph Company recorded in Book 1290, Page 367; and Book 1290, Page 373, New Hanover County Registry.
 12. Common Area Easement(s) recorded in Book 1403, Page 1859, New Hanover County Registry.
 13. Access Agreement(s) with New Hanover County recorded in Book 3392, Page 700, New Hanover County Registry.
 14. Public Utility Easement(s) recorded in Book 1288, Page 358, New Hanover County Registry.
 15. Road, Utility and Drainage Easement(s) referenced in Deed from CRN Wilmington Venture recorded in Book 1276, Page 457; and Book 1283, Page 1085, New Hanover County Registry.
 16. Right(s) of way of North Carolina State Highway 132 recorded in Book 658, Page 30, New Hanover County Registry.
 17. Consent Judgment, N.C. State Highway Commission recorded in Book 633, Page 195, New Hanover County Registry.
 18. Easement(s) to Raiford D. Trask, et ux recorded in Book 903, Page

ALTA Loan Policy 10-17-92

Office: TITLE COMPANY OF NORTH CAROLINA, INC.
209 N. 5TH AVENUE, WILMINGTON, NC 28402 910-343-8374

File ID: 05W3624 ID: FA31272086 [118283] Printed: 06-21-2005 by LAB

First American Title Insurance Company

Loan Policy

Schedule B - I (Continued)

- 454; and Book 1102, Page 464, New Hanover County Registry.
19. Easement(s) granted and described in Deed to Brenco recorded in Book 1403, Page 1859, New Hanover County Registry.
 20. Agreement(s) recorded in Book 1371, Page 544, New Hanover County Registry.
 21. Terms and conditions of that Common Area Use Agreement as to the rear portion of the building.
 22. Rights of others to utilization of all common entrances, walkways and parking areas.
 23. The following matters that are shown on survey dated March 24, 2005, by Sherwin D. Cribb, Professional Land Surveyor:
 - A. 20-foot Public Water Line Easements along the western and southern lot lines and crossing insured land.
 - B. 20-foot Private Storm Drain Easements along eastern lot line and crossing insured land.

Schedule B - II

In addition to the matters set forth in Schedule B - Part I, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the Company insures that such matters are subordinate to the lien or charge of the insured Deed(s) of Trust upon the estate or interest: None

Sherwin D. Cribb

Authorized Signature: _____

ALTA Loan Policy 10-17-92

Office: TITLE COMPANY OF NORTH CAROLINA, INC.
209 N. 5TH AVENUE, WILMINGTON, NC 28402 910-343-8374

File ID: 05W3624 ID: FA31272086 [118283] Printed: 06-21-2005 by LAB

ATTACHMENT

All of that tract or parcel of land lying and being in New Hanover County, North Carolina, being more particularly described as follows:

BEGINNING at a point, said point being located on the northerly right-of-way of Market Place Drive and being the southwesterly corner of the property owned by New Hanover County, and being recorded in Book 3698, Page 527, New Hanover County Register of Deeds, running thence along the northerly right-of-way of Market Place Drive, along curve to the left having a chord distance of 200.01 feet, a radius of 340 feet South 65° 8'24" West to a point; running thence North 5° 32'50" West 70.85 feet to a point; running thence North 89°2'21" West 130.87 feet to a point; running thence North 66° 07'47" West 272.48 feet to a point; running thence North 5° 32'50" West 334.67 feet to a point; running thence North 84° 31'51" East 358.79 feet to a point; running thence North 5° 28'09" West 83.75 feet to a point; running thence North 84°31'51" East 200.23 feet to a point; running thence South 5°32'50" East 25.26 feet to a point; running thence South 84°31'10" West 12.07 feet to a point; running thence South 5°28'50" East 133.19 feet to a point; running thence South 84°32'09" West 102.63 feet to a point; running thence North 5°34'17" East 0.40 feet to a point; running thence South 39°26'33" East 6.10 feet to a point; running thence South 84°26'33" West 2 feet to a point; running thence South 5°33'27" West 22.06 feet to a point; running thence North 82°12'45" East 2.05 feet to a point; running thence South 50°25'51" East 6.05 feet to a point; running thence North 84°37'34" East 102.58 feet to a point; running thence South 5°11'49" East 110.81 feet to a point; running thence North 84°32'12" East 9.94 feet to a point; running thence South 5°32'41" East 271.77 feet to a point and place of BEGINNING.

BEING part of Lot 5, Wilmington Market Place as recorded in Map Book 28, Page 29, and being a 6.24 acre tract of land as shown on the survey entitled, "Recombination of Existing Parcels for New Market, LLC" prepared by Sherwin D. Cribb, Registered Land Surveyor, dated March 24, 2005.

2/27



FOR REGISTRATION REGISTER OF DEEDS
REBECCA T CHRISTIAN
NEW HANOVER COUNTY, NC
2003 MAR 25 03:53 24 PM
BK 3704 PG 155-176 FEE \$74 00

INSTRUMENT # 2003016940

RETURNED TO *County Atty*

5013-008-062-000;
5013-008-083-002;
Tax Parcel Nos: 4916-003-001-000;
RD 4916-003-002-000!

Prepared by Ronald A. Matamoros, Esq
Return to Blanco Tackabery Combs & Matamoros, P A , P O Drawer 25008, Winston-Salem, NC 27114

**COMPREHENSIVE RECIPROCAL EASEMENT
AND OPERATION AGREEMENT**

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

THIS COMPREHENSIVE RECIPROCAL EASEMENT AND OPERATION AGREEMENT ("REOA") is made and entered into as of this 25th day of March, 2003, by and between NEW MARKET, LLC, a North Carolina limited liability company ("New Market") and NEW HANOVER COUNTY, a county politic ("County"),

WITNESSETH

WHEREAS, New Market is the owner of a certain tracts of land described on Exhibit A attached hereto and identified as the "New Market Tracts"; and

WHEREAS, the County is the owner of a certain tract of land described on Exhibit B attached hereto and identified as the "County Tract", and

WHEREAS, New Market has agreed to sell a portion of the New Market Tracts (the "Hebert Tract") to The Hebert Group, L L C ("Hebert"), and

WHEREAS, the signatories hereto intend to operate their respective Tracts in conjunction with each other as integral parts of a mixed used commercial complex, but not a planned or common interest development/community, and in order to effectuate the common use and operation thereof they desire to enter into certain covenants and agreements, and to grant each other certain reciprocal easements, in, to, over and across their respective Tracts, and

WHEREAS, the parties further desire to terminate any and all prior restrictive covenants and easement agreements previously affecting their respective Tracts

NOW, THEREFORE, in consideration of the mutual covenants and conditions, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do agree as follows

ARTICLE I

DEFINITIONS

1.01 Building "Building" shall mean any enclosed structure placed, constructed or located on a Tract, which for the purpose of this REOA shall include any appurtenant canopies, supports, loading docks, truck ramps and other outward extensions

1.02 Common Area "Common Area" shall mean all areas within the exterior boundaries of the Shopping Center, exclusive of Buildings

1.03 Occupant "Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of a Building in the Shopping Center under an ownership right or any lease, sublease, license, concession or other similar agreement

1.04 Party "Party" shall mean each signatory hereto and, after compliance with the notice requirements set forth below, their respective successors and assigns who become owners of any portion of the Shopping Center. Each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the portion of the Shopping Center owned by it which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time the transferring Party shall be released from the obligations of this REOA arising subsequent to the effective date on the transfer notice. A Party transferring all or any portion of its interest in the Shopping Center shall give notice to all other Parties of such transfer shall including therein at least the following information.

- (a) the name and address of the new Party, and
- (b) a copy of the legal description of the portion of the Shopping Center transferred

If a Tract is owned by more than one Person, the Person or Persons holding at least 51% of the ownership interest in the Tract shall designate one of their number to represent all owners of the Tract and such designated Person shall be deemed the Party for such Tract. Until the notice of transfer is given, the transferring Party shall (for the purpose of this REOA only) be the transferee's agent.

Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is placed upon the transferred portion of the Shopping Center prior to receipt of the notice.

The Parties acknowledge that New Market intends to convey the Hebert Tract to Hebert in a transaction to be consummated subsequent to the execution and recordation of these restrictions. Upon

the recordation of a deed from New Market to Hebert, Hebert shall be deemed a party hereunder without any further notice or consent

1 05 Permittee "Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Shopping Center Persons engaged in civic, public or political activities within the Shopping Center, including but not limited to, the activities set forth below, shall not be considered Permittees

- (a) Exhibiting any placard, sign, or notice,
- (b) Distribution of any circular, handbill, placard, or booklet,
- (c) Soliciting memberships or contributions for private, civic, public or charitable purposes,
- (d) Parading, picketing, or demonstrating, and
- (e) Failing to follow regulations established by the Parties relating to the use of the Shopping Center

1 06 Person "Person" shall mean any individual, partnership, firm, association, corporation, trust, or any other form of business or government entity

1 07 Tract "Tract" shall mean that portion of the Shopping Center owned by a Party

1 08 Utility Lines "Utility Lines" shall mean those facilities and systems for the transmission of utility services, the drainage and storage of surface water, and the collection and disposal of waste water and sewage "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to two or more of the New Market Tracts, County Tract and Hebert Tract "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to either the New Market Tracts, County Tract or Hebert Tract For the purpose of this REOA, the portion of the Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line

ARTICLE II

TERMINATION OF PRIOR AGREEMENTS

2 01 Prior Agreements The following is a list of prior access agreements, restrictive covenants, reciprocal easements and related agreements affecting one or more of the Tracts, all of which, effective upon the recordation of this Agreement, shall be deemed terminated, cancelled and voided

- (a) Restrictive Covenant Agreement recorded in Book 1272, Page 328,
- (b) Party Wall Agreement recorded in Book 1366, Page 895,

- (c) Restrictive Covenants reserved in Deed recorded in Book 1403, Page 1859;
- (d) Amendment of Restrictive Covenants and Termination of Easements and Contract recorded in Book 2675, Page 747,
- (e) Amendment to Restrictive Covenants recorded in Book 3392, Page 660,
- (f) Access Agreement recorded in Book 3392, Page 700

ARTICLE III

EASEMENTS

3 01 Ingress, Egress and Parking During the term of this REOA each Party hereby grants and conveys to each other Party for the benefit of the Tract owned by such Party, for its use and for the use of its Permittees, in common with others entitled to use the same, a perpetual non-exclusive easement for the passage and parking of vehicles over and across the parking and driveway areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use. Such easement rights shall be subject to the following reservations as well as other provisions contained in this REOA.

(a) Each Party further reserves the right to close off its portion of the Common Area for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that (i) prior to closing off any portion of the Common Area, as herein provided, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing with each other Party so that no unreasonable interference in the passage of pedestrians or vehicles shall occur, and (ii) no portion of the Common Area shall be closed if any Tract would be denied legal access to a public right-of-way as a result of such closing, and

(b) Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using the Common Area on its Tract

3 02 Utilities.

(a) Each Party hereby grants and conveys to each other Party for the benefit of the Tract owned by such Party non-exclusive perpetual easements in, to, over, under, along and across those portions of the Common Area located on the grantor's Tract necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Tract, including but not limited to, sanitary sewers, storm drains, water (fire and domestic), gas, electrical, telephone and communication lines. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility, or five feet (5') on each side of the centerline if the easement is granted to a Party. Without limiting the foregoing, the owner of the County Tract hereby grants to the owners of the Hebert Tract and New Market Tracts, for the benefit of the Hebert Tract and New Market Tracts, a perpetual non-

exclusive easement for the use of the storm water retention facilities and the waste water and sewage collection and disposal system located on the County Tract.

(b) The grantor shall have the right to relocate a Utility Line upon thirty (30) days' prior written notice, provided that such relocation

(i) shall not interfere with or diminish the utility service to the grantee during the grantee's business hours, and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects,

(ii) shall not reduce or unreasonably impair the usefulness or function of such Utility Line;

(iii) shall be performed without cost or expense to grantee;

(iv) shall be completed using materials and design standards which equal or exceed those originally used, and

(v) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereover.

Documentation of the relocated easement area, including the furnishing of an "as-built" survey, shall be the grantor's expense and shall be accomplished as soon as possible following completion of such relocation

(c) Each party hereby grants and conveys to each Party owning an adjacent Tract the perpetual right and easement to discharge surface storm drainage and/or runoff from the grantee's Tract over, upon and across the Common Area of the grantor's Tract. No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract either in the aggregate or by directing the flow of surface water to a limited area.

ARTICLE IV

PARTY WALL COVENANTS

4.01 Existence of Party Walls The Parties acknowledge that the common property lines of one or more of the Tracts bisect one or more Buildings creating common walls ("Party Walls") Tracts containing Party Walls shall be subject to the following provisions:

(a) Any such Party Wall as now constructed shall not be materially altered or changed without the written consent of the Parties owning the Tracts bounded by such Party Wall;

(b) No Person shall have the right to add to or detract from the Party Wall in any manner whatsoever without the written consent of the Parties owning the Tracts bounded by such Party Wall, it being the intention that the Party Wall shall, at all times, remain in the same position as when erected,

(c) If it shall be necessary to repair a Party Wall, the expense of rebuilding the same shall be the borne by the owners of the Tracts sharing the Party Wall in equal proportions, and whenever the Party Wall or any portion thereof shall be rebuilt, it shall be erected upon the same place or line that now stands and shall be the same size as when originally erected unless otherwise agreed to in writing by the owners of the Tracts so affected,

(d) In order to be protected from fire or other casualty, the Parties owning the Tracts containing the Party Walls shall henceforth and forever more cause their portion of the Buildings to be fully insured up to the full replacement value of said Buildings from fire and other casualty and agree to keep extended coverage on their portion of the Buildings which fully insures all Parties Each Party shall furnish the other Party copies of such insurance policy and a certification, by letter or otherwise, that said policy is in full force and effect,

(e) Each owner of a Tract subject to a Party Wall agrees that, in the event of fire or other casualty to the portions of the Building located on said Tracts, they will, within a period of ninety (90) days from such fire, casualty or damage to said Building, restore the Party Wall to its former condition Failure to do so shall give the right to the other Tract owner to cause said Party Wall to be repaired and restored, and the owner failing to restore shall be responsible to the restoring Party for its proportionate share of the expenses incurred for said restoration,

(f) For the mutual benefit of the owners of such Tracts, the owners are hereby obligated that they shall maintain the roof and exterior of the Buildings in good condition and repair

ARTICLE V

MAINTENANCE AND REPAIR

5 01 Utility Lines Each Party, at its sole cost and expense, shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Utility Lines located within or on said Tract

5 02 Common Area

(a) Each Party shall maintain, or cause to be maintained, the Common Area on its Tract in a sightly, safe condition and good state of repair The unimproved Common Area shall be kept mowed (if grassed) and litter free The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first class retail developments of comparable size in the Wilmington area. Notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances and the provisions of this REOA All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole The maintenance and repair obligations shall include, but not be limited to, the following:

(i) **Drive and Parking Areas.** Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing and resurfacing

(ii) **Debris and Refuse** Daily (as necessary) removal of all papers, debris, filth, refuse, ice and snow (2" on surface), including daily vacuuming and broom sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees

(iii) **Non-Occupant Signs and Markers.** Maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs or markers, restripe parking lots and drive lanes as necessary to maintain parking space designation and traffic direction, and keep clearly marked fire lanes, loading zones, no parking areas and pedestrian crosswalks

(iv) **Lighting** Maintaining, cleaning and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers

(v) **Landscaping** Maintaining and replacing of all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed free. Maintain and replace landscape planters, including those adjacent to exterior walls of Buildings. Modify irrigation system to satisfy governmental water allocation or emergency requirements

(vi) **Utility Lines** Maintaining, cleaning, replacing, and repairing any and all Utility Lines, including any storm water retention facilities and waste water and sewage collection and disposal system

(vii) **Obstructions** Keeping the Common Area free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this REOA

(viii) **Sidewalks.** Maintaining, cleaning and replacing of all sidewalks, including those adjacent and contiguous to Buildings located within the Shopping Center. Sidewalks shall be steam cleaned at least annually and shall be swept at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area

(ix) **Traffic** Supervision of traffic at entrances and exits to the Shopping Center and within the Shopping Center as conditions reasonably require in order to maintain an orderly and proper traffic flow

5 03 Enforcement of Maintenance Obligations

(a) If, in the reasonable opinion of one or more Parties (the "Non-Defaulting Parties"), another Party (the "Defaulting Party") has failed to comply with its obligations under this section to maintain those portions of the Common Area located on said Defaulting Party's Tract, the Non-Defaulting Parties may, upon ten (10) days' written notice to the Defaulting Party, undertake such remedial action as they deem necessary and appropriate to correct, repair or replace any such item of non-repair. The foregoing notwithstanding, if, during the ten (10) day notice period, the Defaulting Party acknowledges its obligation to undertake said repairs and, provided that such repairs are not reasonably deemed emergency in nature, the Defaulting Party shall have thirty (30) days in which to complete such repairs prior to the Non-Defaulting Parties undertaking said repairs on their own.

(b) If Non-Defaulting Parties shall undertake such repairs upon a Defaulting Party's Tract, the Defaulting Party shall be obligated to reimburse the Non-Defaulting Parties for all reasonable costs and expenses incurred by such Parties in remediating or repairing such portions of the Common Area.

ARTICLE VI

OPERATION OF THE SHOPPING CENTER

6 01 Uses

(a) The Shopping Center shall be used only for governmental offices, retail sales, offices, a bowling alley or other commercial purposes.

(b) The following uses shall not be permitted:

(i) Any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any Building in the Shopping Center;

(ii) Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation,

(iii) Any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction or maintenance),

(iv) Any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any Building),

(v) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation (but this provision shall not prevent the disposition by the County of public property or an Occupant from determining its own selling prices, nor shall it preclude the conduct of periodic seasonal sales, promotional or clearance sales or legitimate going out of business sales which are conducted in accordance with the terms of this REOA and which are not otherwise prohibited by the terms of this REOA),

(vi) Any central laundry, dry cleaning plant, or laundromat, provided, however, this prohibition shall not be applicable to on-site laundry and dry cleaning pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Shopping Center is located;

(vii) Except for the disposition by the County of public property, any automobile, truck, trailer or recreational vehicles sales, leasing, display or body shop repair operation,

(viii) Any residential use, including but not limited to single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments, or lodging rooms,

(ix) Any veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops),

(x) Any mortuary or funeral home,

(xi) Any establishment selling or exhibiting pornographic materials or drug-related paraphernalia,

(xii) Any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business, provided the foregoing shall not apply to the Hebert Tract,

(xiii) Any gambling facility or operation, including but not limited to off-track or sports betting parlor, table games, such as black jack or poker; slot machines, video poker/black jack/keno machines or similar devices, or bingo hall, provided the foregoing shall not apply to the Hebert Tract. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are incidental to the business operation being conducted by the Occupant

(c) No portion of the Shopping Center except the Hebert Tract shall be used, whether as a primary or incidental use, for the operation of a bowling alley or billiard parlor

(d) No Party shall use, or permit the use of Hazardous Materials on, about, under or in its Tract, or the Shopping Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to, costs of investigation, remedial response, and reasonable attorneys' fees and costs of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business

For purposes of this paragraph (d), the term (i) "Hazardous Materials" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law; and (ii) "Environmental Laws" shall mean all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time

(e) Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area, for the purpose of this provision, a tax assessment or other form of charge applicable to parking spaces or parking lots may be deemed by the Approving Parties an imposition required by law

(f) Each Party shall use its best efforts to cause the employees of the Occupants of its Tract to park their vehicles only on such Tract

(g) This REOA is not intended to, and does not, create or impose any obligation on a Party to operate, continuously operate, or cause to be operated a business or any particular business at the Shopping Center or on any Tract

6 02 Insurance

(a) Each Party (as to its Tract only) shall maintain or cause to be maintained in full force and effect Commercial General Liability Insurance with a combined single limit of liability of at least Two Million Dollars (\$2,000,000), with such coverage increasing five percent (5%) every five (5) years, for bodily injury, personal injury and property damage, arising out of any one occurrence, the other Parties shall be "additional insureds" under such policy as it applies to the insuring Party's Tract

Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any Person located on the Tract owned by each indemnifying Party, provided, however, the foregoing obligation shall not apply to claims caused by the negligence or willful act or omission of such other Party, its licensees, concessionaries, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof

(b) Each Party (the "Releasing Party") hereby releases and waives for itself and each Person claiming by, through or under it, each other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type covered by the insurance required to be maintained under this section, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self insurance reserve. Releasing Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance, and to the policies of insurance carried by its Occupants, with respect to the foregoing

release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given.

Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses, and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit asserted by or through any Permittees of the indemnifying Party's Tract for any loss or damage to the property of such Permittee located upon the indemnifying Party's Tract, which loss or damage would have been covered by the insurance required to be maintained under this section, irrespective of any negligence on the part of any other Party which may have contributed to or caused such loss

6.03 Taxes and Assessments Each Party shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Tract, the Building, and other improvements located thereon, and any personal property owned or leased by such Party in the Shopping Center, provided that if the taxes or assessments or any part thereof may be paid in installments, the Party may pay each such installment as and when the same becomes due and payable. Nothing contained in this subsection shall prevent any Party from contesting at its cost and expense any such taxes and assessments with respect to its Tract in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time as such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

ARTICLE VII

MISCELLANEOUS

7.01 Default

(a) The occurrence of any one or more of the following events shall constitute a material default and breach of this REOA by the non-performing Party (the "Defaulting Party")

(i) The failure to make any payment required to be made hereunder within ten (10) days of the due date, or

(ii) The failure to observe or perform any of the covenants, conditions or obligations of this REOA, other than as described in (i) above, within thirty (30) days after the issuance of a notice by another Party (the Non-Defaulting Party) specifying the nature of the default claimed

(b) With respect to any default under (a)(i) or (ii) above, any Non-Defaulting Party shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party, provided, however, that in the event the default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into

any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus interest as provided herein, within ten (10) days of receipt of demand, together with reasonable documentation supporting the expenditures made.

(c) Costs and expenses accruing and/or assessed pursuant to this Agreement shall constitute a lien against the Defaulting Party's Tract. The lien shall attach and take effect only upon recordation of a claim of lien in the office of the New Hanover County Clerk of Superior Court by the Party making the claim. The claim of lien shall include the following:

- (i) The name of the lien claimant,
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as a curing Party,
- (iii) An identification of the owner or reputed owner of the Tract or interest therein against which the lien is claimed;
- (iv) A description of the Tract against which the lien is claimed,
- (v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof, and
- (vi) A statement that the lien is claimed pursuant to the provisions of this REOA, reciting the date, book and page of recordation hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by mailing pursuant to 7-03 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including, without limitation, suit in the nature of a *suite* to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located.

(d) The Parties agree that the enforcement of the rights and obligations contained in this REOA are such that the utilization of judicial intervention is not financially practicable. The Parties agree that any and all disputes arising out of this REOA shall be resolved by binding arbitration in accordance with N.C.G.S. Sect 1-567 *1 et seq*. Upon the written notification from one or more Parties to the other Parties, any such disputes shall be resolved by binding arbitration to be held within ten (10) days after the issuance of such notice. Such arbitration shall be held in New Hanover County, and the Parties agree that the Duke University Private Adjudication Center shall be selected and authorized to designate the arbitrator. All costs and expenses incurred in the arbitration shall be borne equally by all Parties thereto.

7-02 Interest. Any time a Party or Operator shall not pay any sum payable hereunder to another within five (5) days of the due date, such delinquent Party or Operator shall pay interest on

such amount from the due date to and including the date such payment is received by the Person entitled thereto, at the lesser of.

(a) The highest rate permitted by law to be either paid on such type of obligation by the Person obligated to make such payment or charged the Person to whom such payment is due, whichever is less, or

(b) Three percent (3%) per annum in excess of the prime rate from time to time publicly announced by Wachovia Bank or its successor.

7 03 Notices All notices, demands and requests (collectively, the "Notice") required or permitted to be given under this REOA must be in writing, must be sent by hand delivery, via U S certified mail (return receipt requested), or recognized overnight delivery courier, and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, or (iii) rejected at the then designated address of the Party intended, provided such notice was sent prepaid. The initial addresses of the Parties shall be

New Market, LLC
c/o H David Swain
1111 Military Cutoff Road, Suite 251
Wilmington, NC 28405

New Hanover County
c/o Kemp P Burpeau, Esquire
Deputy County Attorney
Office of the County Attorney
320 Chestnut Street, Room 309
Wilmington, NC 28401

Upon at least ten (10) days' prior written notice, each Person shall have the right to change its address to any other address within the United States of America

7 04 Approval Rights

(a) The Parties intend by this REOA to set forth their entire understanding with respect to the terms covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

(b) Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this REOA shall be given by the Person to whom directed within thirty (30) days of receipt. Each disapproval shall be in writing and the reasons shall be clearly stated. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval if the original notice stated in capitalized letters that failure to respond within the applicable time period will be deemed an approval.

(c) If the Approving Parties' approval is requested, unanimous approval must be given

7.05 Condemnation In the event any portion of the Shopping Center shall be condemned, or conveyed under threat of condemnation, the award shall be paid to the Party owning the land or the improvements taken, and the other Parties hereby waive and release any right to recover any value attributable to the property interest so taken, except that (i) if the taking includes improvements belonging to more than one Party, such as Utility Lines or signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this REOA, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this REOA which does not reduce or diminish the amount paid to the Party owning the land or the improvement taken, the then owner of such other property interest shall have the right to seek an award for the taking thereof. Except to the extent they burden the land taken, no easement or license set forth in this REOA shall expire or terminate based solely upon such taking.

Unless the taking is a "Substantial Taking" (as defined below), the Party owning a Tract affected by a taking (the "Restoring Party") shall be obligated to promptly commence and prosecute with diligence, the making of all repairs, restorations and replacements to all Buildings, Common Areas and Common Utility Lines located on the Tract required to restore such Buildings, Common Areas and Common Utility Lines as close as reasonably possible to the condition as they existed prior to such taking. A "Substantial Taking" shall be taking which results in the loss of ten percent (10%) or more of the leaseable floor area within the Buildings located on a Tract or otherwise makes impractical the continued use of the Tract for its use as of such taking. In the event that a Restoring Party elects not to restore the Buildings on a Tract following a Substantial Taking, such Restoring Party shall nevertheless restore the Common Areas and Common Utility Lines on such Tract to permit, to the extent physically possible, the same level of use and benefit by the other Tracts as prior to the Substantial Taking.

7.06 Casualty

(a) If any Building or other structures or improvements within the Shopping Center shall be damaged by fire or other casualty, then the owner thereof shall promptly repair or restore (i) such damaged Building, structures, and other improvements (except as provided in Section 7.06(b) below), and (ii) all Common Utility Lines and Common Areas located on the portion of such owner's Tract so damaged.

(b) If the insurance proceeds are not made available to a Party by any first mortgagee upon the fee interest in such Tract (the "First Mortgagee") or if such insurance proceeds shall be insufficient to make such repairs, such Party shall have no obligation to repair or restore its Building, structures, and other improvements, but such non-rebuilding Party shall promptly demolish the damaged Building, structures or improvements, clear its Tract of debris and hazardous conditions so that such Tract shall be clean, safe and sightly, and turn such damaged area into a grassed or paved area. The non-rebuilding Party shall remain obligated, however, to complete the repair and restoration of all Common Utility Lines and Common Areas as required under Section 7.06(a) above.

(c) All restored, repaired or new Buildings constructed within the Shopping Center after a casualty shall have substantially the same general appearance, design criteria, type and quality and be in as good a condition as existed before the damage or destruction.

7 07 Binding Effect The terms of this REOA and all easements granted hereunder shall constitute covenants running with the land and shall bind the real estate described herein and inure to the benefit of and be binding upon the signatories hereto and their respective successors and assigns who become Parties hereunder This REOA is not intended to supersede, modify, amend, or otherwise change the provisions of any prior instrument affecting the land burdened hereby

7 08 Negation of Partnership None of the terms or provisions of this REOA shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party, unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged

7 09 Not a Public Dedication Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third party Person, nor shall any third party Person be deemed to be a beneficiary of any of the provisions contained herein

7.10 Excusable Delays. Whenever performance is required of any Person hereunder, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform, provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Person, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused The provisions of this section shall not operate to excuse any Person from the prompt payment of any monies required by this REOA

7 11 Mitigation of Damages In all situations arising out of this REOA, all Parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party Each Party hereto shall take all reasonable measures to effectuate the provisions of this REOA

7 12 REOA Shall Continue Notwithstanding Breach. It is expressly agreed that no breach of this REOA shall (i) entitle any Party to cancel, rescind, or otherwise terminate this REOA, or (ii) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of the Shopping Center. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach

7 13 No Waiver The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions No waiver by any Party of any default under this REOA shall be effective or binding on such Party unless made in writing by such Party and

no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this REOA shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this REOA.

ARTICLE VIII

TERM

8 01 Term of this REOA This REOA shall be effective as of the date first above written and shall continue in full force and effect until 11 59 p m on December 31 immediately succeeding the 51st anniversary of the execution of this REOA, provided, however, that the easements referred to in Article III hereof which are specified as being perpetual or as continuing beyond the term of this REOA shall continue in force and effect as provided therein. Upon termination of this REOA, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this REOA, except as related to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this REOA shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising from or to be performed under this REOA prior to the date of such termination.

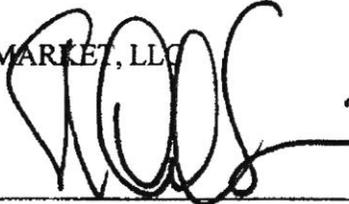
IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written

(See Separate Signature Pages Attached Hereto)

SEPARATE SIGNATURE PAGE TO
COMPREHENSIVE RECIPROCAL EASEMENT
AND OPERATION AGREEMENT

NEW MARKET, LLC

BY



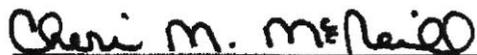
Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, the undersigned, a Notary Public of the aforesaid County and State, certify that H DAVID SWAIN personally appeared before me this day and acknowledged that he is a Member/Manager of NEW MARKET, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the limited liability company, the foregoing instrument was signed by him as its Member/Manager

WITNESS my hand and official seal this 24th day of March, 2003



Notary Public

My Commission Expires:

9-13-03

[Notary Seal/Stamp]



SEPARATE SIGNATURE PAGE TO
COMPREHENSIVE RECIPROCAL EASEMENT
AND OPERATION AGREEMENT



ATTEST

Luce F. Harrell

County Clerk

NEW HANOVER COUNTY

BY *Ileen O'Neal*

County Manager

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, the undersigned, a Notary Public of the aforesaid County and State, certify that *Luce F. Harrell* personally appeared before me this day and acknowledged that he is the ~~County Manager~~ ^{Clerk to the Board} of NEW HANOVER COUNTY, a county politic, and that by authority duly given and as the act of the County, the foregoing instrument was signed by him as its County Manager and attested to by the New Hanover County Clerk

WITNESS my hand and official seal this 25th day of March, 2003

Kimberleigh G. Caswell
Notary Public

My Commission Expires



EXHIBITS

Exhibit A New Market Tracts
Exhibit B County Tract

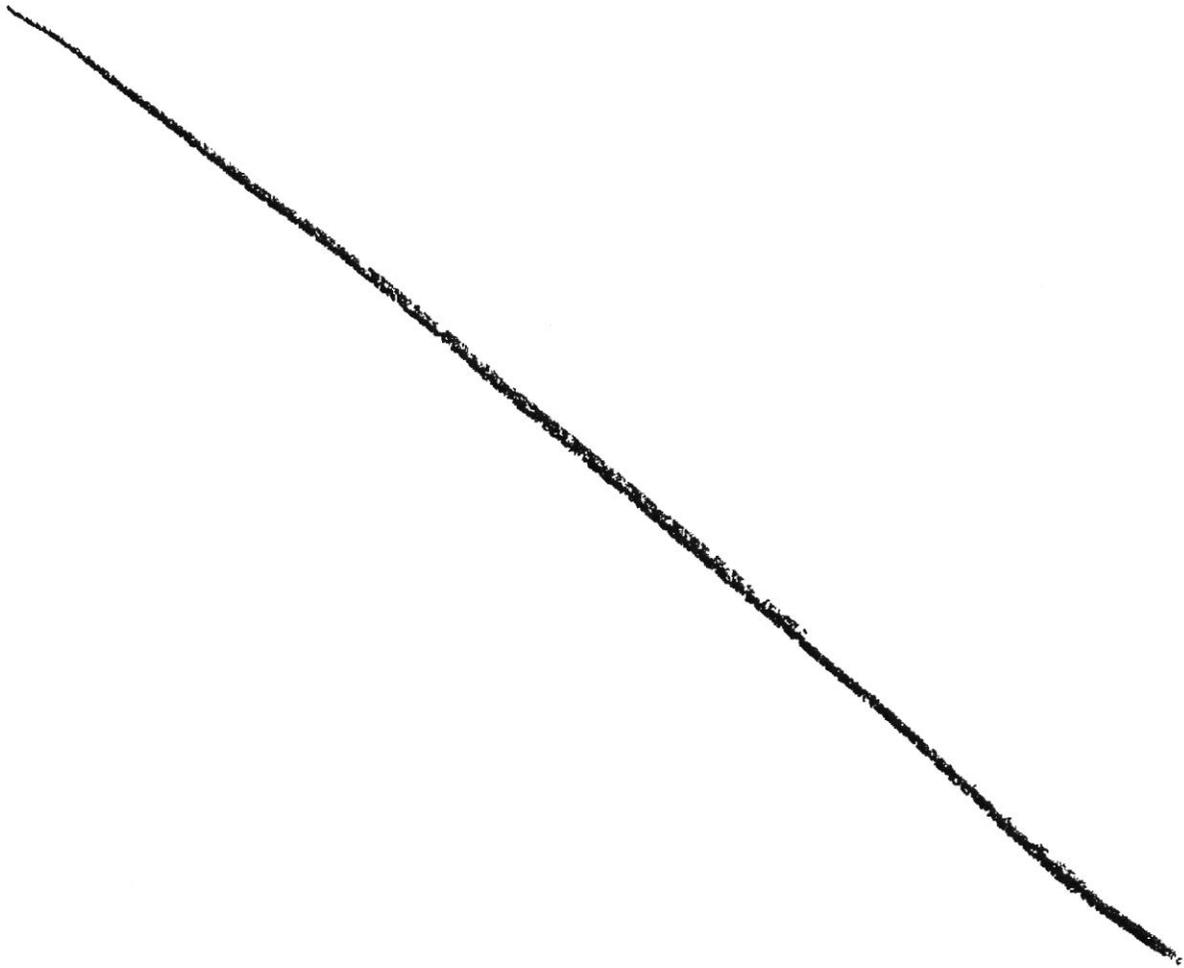


EXHIBIT A

BEING KNOWN AND DESIGNATED AS Parcels 1, 2, 3, 4 and 5 of Wilmington Market Place as recorded in Map Book 28, Pages 29-31 (less and except any portions of said parcels previously conveyed to third parties by New Market, LLC)

EXHIBIT B

TRACT 1

BEGINNING at a point being located on the northerly right-of-way of Market Place Drive and being the southwesterly corner of the property owned by New Hanover County, as recorded in Deed Book 3392, Page 655, running thence South 84° 51' 50" West 167 78 feet to a point, running thence along a curve to the left having a chord distance of 15 54 feet South 83° 33' 18" West to a point, running thence North 05° 32' 40" West 271 77 feet to a point, running thence South 84° 32' 12" West 9 94 feet to a point; running thence North 05° 27' 48" West 9 89 feet to a point, running thence North 05° 27' 48" West 24 40 feet to a point, running thence North 84° 32' 11" East 0.51 feet to a point; running thence North 05° 27' 48" West 76 51 feet to a point, running thence South 84° 37' 34" West 102 58 feet to a point, running thence South 05° 34' 13" East 0 35 feet to a point, running thence North 50° 25' 51" West 6 05 feet to a point; running thence South 82° 12' 45" West 2 05 feet to a point, running thence North 05° 33' 27" West 22 06 feet to a point, running thence North 84° 26' 33" East 2 00 feet to a point, running thence North 39° 26' 33" East 6 10 feet to a point, running thence South 05° 34' 17" East 0 40 feet to a point, running thence North 84° 32' 09" East 102 63 feet to a point, running thence North 05° 28' 50" West 133.19 feet to a point, running thence North 84° 31' 10" East 12 07 feet to a point, running thence North 05° 32' 50" East 91 78 feet to a point, running thence North 18° 16' 20" East 79 57 feet to a point, running thence North 05° 32' 50" West 11 20 feet to a point, running thence North 31° 33' 41" West 182 22 feet to a point; running thence North 36° 43' 09" West 20 35 feet to a point, running thence North 39° 28' 14" East 30 00 feet to a point, running thence South 50° 31' 46" East 30 00 feet to a point, running thence South 43° 05' 25" East 78 81 feet to a point, running thence North 83° 44' 13" East 33.24 feet to a point, running thence North 06° 15' 47" West 143 42 feet to a point located in the southerly boundary of Lot 2 of Fisherville, recorded in Map Book 67, Page 101, running thence with the southerly boundary of said lot, North 84° 25' 53" East 232 68 feet to a point located at the southeast corner of said Lot 2, running thence South 05° 38' 40" East 185 00 feet to a point, running thence South 84° 25' 53" West 131.88 feet to a point, running thence South 05° 28' 50" East 370 81 feet to a point, running thence South 50° 28' 51" East 20 76 feet to a point, running thence South 05° 28' 50" East 32 96 feet to a point; running thence South 39° 31' 09" West 20 76 feet to a point, running thence South 05° 28' 50" East 84 36 feet to a point; running thence North 84° 31' 10" East 16 54 feet to a point, running thence South 05° 28' 50" East 282 51 feet to a point and place of BEGINNING, as shown on a survey entitled "Map of Reconfiguration of Previously Divided Lot for New Market, LLC" dated January 3, 2003, prepared by Sherwin D Cribb and being recorded in Map Book 43, Page 368, New Hanover County Registry of Deeds

TRACT 2

Parcel No 6 as reflected on Map Book 28, Pages 29-31 and being the same property conveyed to New Hanover County in Deed Book 3392, Page 655



REBECCA T CHRISTIAN
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

.....
Filed For Registration: 03/25/2003 03 53:24 PM
Book: RE 3704 Page. 155-176
Document No.: 2003016940
ESMNT 22 PGS \$74.00

Recorder: MARVIS ANN STORER

.....
State of North Carolina, County of New Hanover

The foregoing certificate of CHERI M MCNEILL , KYMBERLIEGH G CROWELL Notaries are certified to be correct. This 25TH of March 2003

REBECCA T CHRISTIAN , REGISTER OF DEEDS

By: *Marvis Ann Storer*
Deputy/Assistant Register of Deeds

.....
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