

Melanie Arthur 4P
CARTERET COUNTY
JL Date 10/03/2005 Time 16:29:00
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NORTH CAROLINA, CARTERET COUNTY
This instrument and this certificate are duly filed at
the date and time and in the Book and Page shown
on the first page hereof.

Melanie Arthur, Register of Deeds
By [Signature]
Melanie Arthur, Register of Deeds

✓
B.W. Raw

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT, made as of this 7th day of September, 2005, by and between the Town of Atlantic Beach, North Carolina, a North Carolina municipal corporation in the County of Carteret, State of North Carolina, herein called "City"; and FMB of Atlantic Beach, LLC, a North Carolina Limited Liability Corporation with its principle place of business being in Wilson, North Carolina, herein called "FMB".

WHEREAS, the parties hereto are the owners or other interest holders of adjoining lands situated in Atlantic Beach, North Carolina, in the County of Carteret, the interests of the City being the public rights-of-way of East Drive, Atlantic Boulevard, and West Drive; and the lands of FMB, Inc. being those properties making up the interior of the circle bordered by these street rights-of-way; and

WHEREAS, FMB wishes to construct a wooden walkway and to provide for certain landscaping and other amenities (hereinafter "Improvements") within the rights-of-way of East Drive, Atlantic Boulevard, and West Drive, said Improvements to be used by the public for access to and around the property owned by FMB; and

WHEREAS, FMB recognizes that the proposed Improvements will be partially located in the public rights-of-way and agrees to construct the Improvements in accordance with recognized City standards, in the location identified in the sketch diagram attached hereto as Exhibit A which is incorporated herein by reference, and in such a manner that is does not

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unreasonably interfere with the use of East Drive, Atlantic Boulevard, and West Drive by vehicular traffic, nor any streets that may now feed thereto; and

WHEREAS, City has agreed that FMB may encroach into the rights-of-way of East Drive, Atlantic Boulevard, and West Drive subject to the terms and conditions contained herein:

NOW, THEREFORE, the parties, in consideration of the Improvements to be made by FMB to the rights-of-way as depicted in Exhibit A attached hereto, the parties do hereby agree as follows:

- 1) FMB may Construct the Improvements as depicted in Exhibit A attached hereto and as otherwise determined by the mutual consent of both parties; and
- 2) FMB will construct and maintain the Improvements in such a manner that it will not cause drainage problems (standing water, flooding, erosion etc.) or unreasonably interfere with access to or use of East Drive, Atlantic Boulevard, and West Drive by vehicular traffic; and
- 3) The Improvements shall be remain open for public pedestrian use at all times, except during construction or during temporary periods where the parties may determine that the use of the same poses a public hazard; and
- 4) FMB, its successors and assigns shall be solely responsible for the construction, maintenance and repair of the Improvements and shall make repairs to any damage of the remaining rights-of-way of East Drive, Atlantic Boulevard, and/or West Drive which may be associated with the construction, use or maintenance of the Improvements; and
- 5) FMB, upon 60 day written notice from City, shall remove any portion of the Improvements that encroaches into the rights-of-way of East Drive, Atlantic Boulevard, or West Drive that City deems, in its sole discretion, necessary, expedient, or otherwise proper for the maintenance of water, sewer or drainage facilities, or for any other purpose City may reasonably deem necessary or advisable, and should FMB fail to so act after such notice, City may perform such removal at FMB's cost and do so without obligation to repair or replace any of the Improvements; and
- 6) This Agreement shall not create in FMB any rights, title or interest in the rights-of-way or property of the City, but shall simply constitute a license to FMB allowing the Improvements to be constructed and to remain where they are until City shall require their removal as herein provided.

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- 7) FMB agrees to defend and hold the City harmless from any and all actions, suits, claims, proceedings or investigations against it that relate to the placement of the Improvements contemplated herein within the rights-of-way of East Drive, Atlantic Boulevard, and/or West Drive, including reasonable attorney fees.

This Agreement shall bind and inure to the benefit of the parties and their heirs, personal representatives, successors and assigns. Wherever used herein, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders as the context may require. The laws of the State of North Carolina will govern this Agreement. It constitutes the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

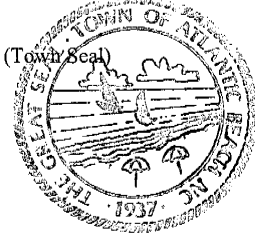
IN TESTIMONY WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

ATTEST:

TOWN OF ATLANTIC BEACH

Sabrina Simpson
Sabrina Simpson, Deputy Town Clerk

By Eddie Dawkins
Eddie Dawkins, Mayor



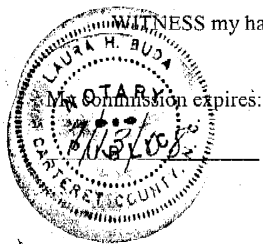
FMB OF ATLANTIC BEACH, LLC

Fred M. Bunn (SEAL)
Fred M. Bunn - President of FMB of
Atlantic Beach, LLC

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STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, Laura H. Buda, a Notary Public, do hereby certify that Sabrina Simpson personally came before me this day and, who being by me duly sworn, says and acknowledged that she is Deputy Town Clerk of the Town of Atlantic Beach, a North Carolina municipal corporation, that she knows the common seal of said Town and is acquainted with the Mayor of said Town, Mr. Eddie Dawkins, and that, by authority duly given and as the act of the Town, the foregoing instrument was signed in her presence, in the Town's name by its Mayor, sealed with the Town's seal, and attested by him as the Mayor.



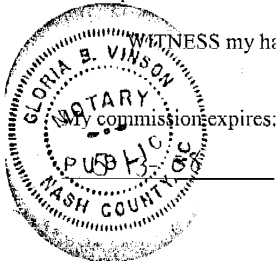
WITNESS my hand and notarial seal, this the 15th day of September, 2005.

Laura H. Buda

Notary Public

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, a Notary Public of the County and State aforesaid do hereby certify that Fred M. Bunn personally appeared before me this date and acknowledged that he is President of FMB of Atlantic Beach, LLC, a North Carolina corporation, and that he duly executed this instrument in the corporation's name as its President.

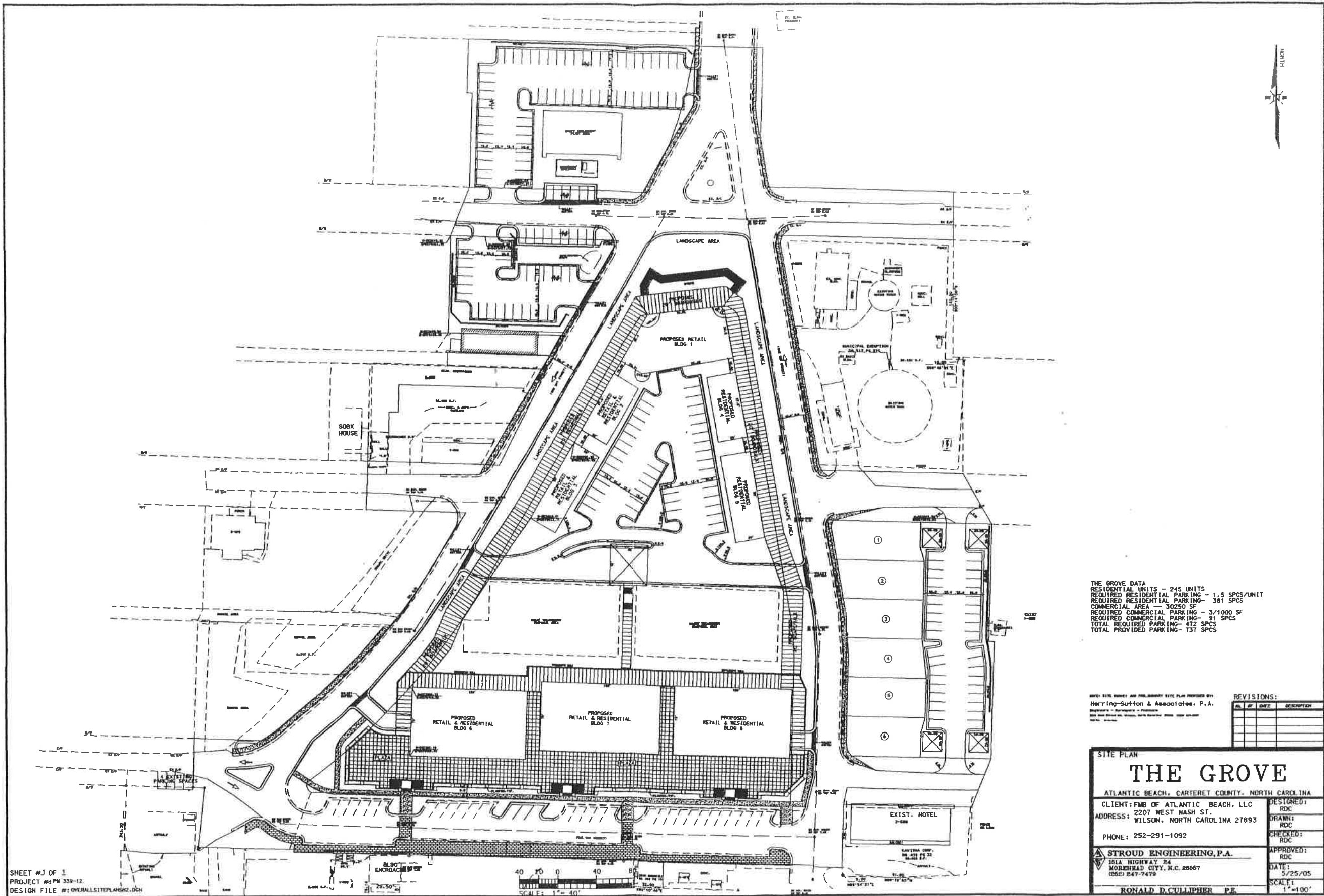


WITNESS my hand and Notarial Seal, this the 7th day of September, 2005.

Gloria B. Vinson

Notary Public

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THE GROVE DATA
 RESIDENTIAL UNITS - 245 UNITS
 REQUIRED RESIDENTIAL PARKING - 1.5 SPCS/UNIT
 REQUIRED RESIDENTIAL PARKING - 368 SPCS
 COMMERCIAL AREA - 30250 SF
 REQUIRED COMMERCIAL PARKING - 3/1000 SF
 REQUIRED COMMERCIAL PARKING - 31 SPCS
 TOTAL REQUIRED PARKING - 412 SPCS
 TOTAL PROVIDED PARKING - 137 SPCS

DATE: 5/11/05
 HERRING-SUTTON & ASSOCIATES, P.A.
 ENGINEERS - SURVEYORS - PLANNERS
 2207 WEST WASH. ST., WILSON, N.C. 27893
 TEL: 252-291-1092

REVISIONS:		
NO.	DATE	DESCRIPTION

SITE PLAN

THE GROVE

ATLANTIC BEACH, CARTERET COUNTY, NORTH CAROLINA

CLIENT: FMB OF ATLANTIC BEACH, LLC
 ADDRESS: 2207 WEST WASH ST.
 WILSON, NORTH CAROLINA 27893
 PHONE: 252-291-1092

DESIGNED: RDC
 DRAWN: RDC
 CHECKED: RDC
 APPROVED: RDC
 DATE: 5/25/05
 SCALE: 1"=100'

STROUD ENGINEERING, P.A.
 101A HIGHWAY 24
 MOBEHRAD CITY, N.C. 28667
 (855) 247-7479

RONALD D. CULLIPHER, P.E.

SHEET #J OF 1
 PROJECT #2 PM 339-12
 DESIGN FILE #2 OVERALLSITEPLANS2.DGN

