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by: AMANDA W. GARRETT
REGISTER OF DEEDS
BOOK 460 PAGE 185

PREPARED BY: ALAN S. HICKS
ATTORNEY AT LAW

NORTH CAROLINA
PERSON COUNTY

**PROTECTIVE AND RESTRICTIVE COVENANTS OF
TOM OAKLEY ROAD SUBDIVISION**

THIS AGREEMENT AND COVENANT, made and entered into this the 21st day of October, 2003, by and between Diamond Land Development, LLC, hereinafter referred to as party of the first part; and its successors in title to any portion of those lands hereinafter described, parties of the second part;

WITNESSETH:

THAT WHEREAS, the party of the first part is seized of fee simple title in and to those certain lots or parcels of land lying and being in Flat River Township, Person County, North Carolina and being more particularly described as follows (the "Property):

Being all of what is shown as Tracts 1 through 19, inclusive, on that plat of survey entitled "DIAMOND LAND DEVELOPMENT, LLC", surveyed by Jim Morrow, PLS, dated August 20, 2003 and of record in Plat Cabinet 13, Hanger 447, Person County Registry, which plat is hereby specifically incorporated by reference herein for greater certainty of description.

AND WHEREAS, the party of the first part desires for the beneficial use of the Property, and for the benefit of future purchasers of any portion of the Property, that same shall be developed and for the time hereinafter set out, used exclusively for private residential purposes; to protect the owners of any portion of the Property against such improper use of any other portion of the Property

as will depreciate the value thereof; to guard against the erection thereon of poorly designed or proportioned structures, and structures built of improper or unsuitable materials; to obtain harmonious color schemes, to insure the highest and best development of said Property; and in general to provide adequately for a type and quality of improvement designed to enhance the value of investments made by the purchasers of any portion of the Property;

NOW THEREFORE, in order to carry into effect such purpose, and in order that the Property might afford a maximum beneficial use to any owner of any part thereof for residential purposes, the party of the first part hereby covenants with any future owner of any part of said Property hereinabove described and does place the following restrictions upon the use of any part of said Property by itself or any successor in title, and the said party of the first part and any successors in title shall have title to the same subject to the restrictions upon its use hereby imposed:

1

PROPERTY SUBJECT TO COVENANTS

- a. **Properties Subject.** The Property which is and shall be held, transferred, sold, conveyed and occupied subject to this declaration is located in Flat River Township, Person County, North Carolina and is more particularly described as hereinabove set forth (the "Subdivision"). Only the above described property is hereby made subject to this declaration, provided, however, the party of the first part reserves the right to subject other real property to the restrictions set forth herein as hereinafter set out.
- b. **Annexation of Additional Properties.** The party of the first part may, but is not required to, annex additional lands to become a part of the Property governed by this declaration.
- c. **Supplementary Declaration.** Each addition to the Property herein authorized shall be made by filing of record one or more supplementary declarations with respect to the lands to be then made subject to this declaration, thereby extending the applicability of the Covenants to such lands and subjecting same to all of the provisions hereof. Each such supplementary declaration may contain complimentary additions and modifications of the covenants, conditions and restrictions herein contained as may be necessary to reflect the different character of the added property, provided, however, that any such supplemental declaration shall not revoke or otherwise amend the provisions of this declaration relative to the property hereby made subject thereto.

2

LAND USE AND ARCHITECTURAL CONTROL

- a. **Architectural Review.** No building, fence, wall or other structure or improvement of any nature whatsoever shall be commenced, erected or maintained upon the Property, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of same shall have been submitted to and approved in writing as to harmony or external design and location in relation

to surrounding structures and topography by the party of the first part, or at such time as the party of the first part no longer owns any lots subject to this Declaration, then by a development committee consisting of three persons to be elected annually by the owners of a majority of the lots in the Subdivision (either the party of the first part or the Development Committee being hereinafter referred to as the "Committee"). Once the Committee has been so constituted, a meeting of the owners of the lots in the Subdivision shall be held during the month of May of each year and the members so elected shall be responsible for notifying all other owners of the time and place of the meeting to be held each year. At such meeting the lot owners or their representatives shall be entitled to one vote for each lot owned. Each lot owner shall be entitled to reasonable notice of the meetings. The Committee shall elect one of its members to serve as chairman and to preside over meetings of the Committee and of the lot owners. The Committee shall have the duties and responsibilities hereinafter specified. Members of the Committee shall not be entitled to compensation for services performed pursuant hereto. After the party of the first part relinquishes responsibility for the Subdivision, the Committee shall thereafter perform all functions of the party of the first part as provided for in these Covenants. In the event that the Committee fails to approve or disapprove such design and location within thirty days after said plans and specifications have been submitted to it, approval will not be required and this provision will be deemed to have been fully complied with. Upon giving approval to such plans and specifications, construction shall be started and prosecuted to completion promptly and in strict conformity with such plans as have been previously approved by the Committee, and party of the first part or the Committee shall be entitled to stop any construction which is in violation of the approved plans or any of the other provisions of this Declaration. The Committee shall not be responsible for any structural or other defect in plans or specifications submitted to it or in any structure erected according to such plans and specifications.

b. **Variances.** The Committee shall have power to and may, but shall not be required to, allow adjustments of the conditions and restrictions herein contained in order to overcome practical difficulties and prevent unnecessary hardships in the application of the requirements of this declaration, provided, however, that such is done in conformity with the intent and purposes hereof, and provided also that in every instance such variance or adjustment shall not be materially detrimental or injurious to other property or improvements. Variances and adjustments of height, size and set back requirements may be granted hereunder.

c. **Dwelling Quality and Size.** No dwelling containing less than 1400 square feet of finished heated living area, exclusive of basements, garages, carports, storage areas, breezeways and stoops, shall be erected upon any lot embraced within the aforescribed Property. A ten percent (10%) variance in this minimum dwelling size requirement may be allowed upon prior written approval of the party of the first part, although no obligation to allow such variance upon request is hereby created. All dwellings erected thereon shall be of good standard quality workmanship and the materials used therein shall be of standard and approved quality. No mobile home or manufactured home as defined in G.S. 143-143.9(6) shall be permitted. Off-frame modular homes which otherwise meet all requirements of these Covenants are permitted but must have minimum 6/12 roof pitch.

d. **Building Location.** All buildings shall have a minimum set back of at least forty feet from any public or private road right of way, twenty feet from any side lot line and twenty-five feet from any rear lot line, unless variance of these set back requirements is allowed by written decision of the party of the first part. The party of the first part reserves the right, but not the obligation, to grant such exceptions and to waive minor violations of the set back and side line requirements set forth herein, minor violations being defined as those not in excess of ten percent (10%) of the minimum requirements specified herein. All outbuildings other than attached garages or carports must be located behind an imaginary line constituting a continuation of the rear wall of the main residential dwelling.

e. **Building Completion.** The exterior of all dwellings and other structures must be completed within twelve months after the commencement of construction, except where such completion is impossible or would result in great hardship to the owner or builder due to strikes, fires, national emergency or natural calamities, and written extension has been granted by the party of the first part.

3

EASEMENTS AND RIGHT OF ENTRY

a. **Right-of-Way and Utility Easements.** An easement extending throughout the entire width of all roadways serving lots which are a part of the Property is specifically reserved by the party of the first part for roadway purposes and for public utility and drainage purposes, and the party of the first part does reserve unto itself and its successors, heirs and assigns, the right to go upon such easements for the purpose of maintaining roadways and installing utility services and providing drainage. However, the party of the first part assumes no responsibility for extending utility services to any individual lot hereby restricted. The party of the first part further reserves the right to determine any other location of necessary rights of way or easements for utility purposes, and the right to subject the Property to contract with utility companies for the installation of underground electric cables which may require an initial contribution, and/or the installation of street lighting, which will require a continuing monthly payment to the utility provider by the owners of each lot within the Property. All utility lines serving an individual lot must be placed underground at the expense of the lot owner to the extent that such underground placement is possible consistent with the requirements and regulations of the applicable utility provider. Electrical service will be provided by the party of the first part in the right of way of access roads serving the Property, it being understood that it is the sole responsibility of the individual lot owners to extend same from that point to serve their individual lots. The party of the first part reserves the right to subject the Property to easements for the extension of septic drain line and the location of drain fields off-site relative to any portion of the Property on which a private septic system cannot be completely self-contained under applicable governmental regulations.

b. **Easements of Access.** The party of the first part reserves the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any similar action reasonably necessary to

provide economical and safe installation and service of roadways and utilities.

c. **Right of Entry.** The party of the first part reserves for itself, its successors and assigns, the right to enter upon any lot, such entry to be made by personnel with suitable equipment, for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, or other unsightly growth and for the purpose of building, repairing or otherwise enforcing the provisions of these covenants, which entry shall in no event be deemed to be a trespass.

4

MAINTENANCE

a. **During Construction.** During construction, the contractor or owner must keep the building site reasonably clean. All building debris, stumps, trees and other refuse must be removed from the Property as often as necessary in order to keep same in a neat and attractive condition. Such debris will not be dumped or allowed to remain on any part of the Property.

b. **Buildings and Grounds.** It shall be the responsibility of each property owner to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds tending to substantially decrease the beauty and value of the neighborhood as a whole or the specific area affected. No weeds, underbrush or unsightly growth shall be permitted to grow or remain on any part of any lot and no refuse pile or unsightly accumulation shall be allowed to be placed or suffered to remain upon any portion of the Property. Where lots border on or contain ditches, drainage canals, ponds, swells or streams, the owner thereof shall keep that area, including the slopes down to the edge of the water, mowed and maintained regularly. Washouts or erosion on any portion of the Property shall be properly attended to by the respective owner.

c. **Driveways.** Each Owner shall be separately responsible for the costs of maintaining the private drive serving the individual lots from the state road.

5

PROHIBITED ACTIVITIES

The following restrictions must be observed by the owner of any portion of the Property, and by all guests and invitees:

a. **Nuisance.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the surrounding Property owners.

b. **Commercial Activity.** No business activity, trade or profession of any kind whatsoever

shall be carried on or practiced upon any of the subject Property. No trade materials or inventories shall be stored upon the premises.

c. **Motor Vehicles.** No motor vehicles or equipment of any kind shall be regularly stored upon the premises except in enclosed garages. No motor vehicles may be parked upon the roadway serving the Property in such a manner as to prohibit reasonable use of such roadways for purposes of ingress and egress. No motorized vehicles not validly registered and licensed as required by State law shall be operated within any portion of the Property, and no unlicensed operator may operate any vehicle within any portion of the Property.

d. **Signage.** No signs or billboards shall be erected or maintained on the premises; however, this does not prohibit location of real estate signs upon any lot for the purpose of advertising such lot for sale.

e. **Firearms.** No hunting or the discharge of firearms shall be conducted on any portion of the Property.

6

LAND USE CONTROL

The Property shall be used only for single family residential and related purposes. All dwellings must be owner occupied, unless rental is approved in advance by the party of the first part or the Committee. Use of any portion of the Property shall further be governed as follows:

a. **Accumulation of Water.** No swimming pool or other excavation which may reasonably be expected to contain accumulations of water may be constructed upon any lot without the prior written consent of the party of the first part or the Committee.

b. **Refuse.** No garbage or trash shall be burned, and no portion of the Property shall be used or maintained as a site for the storage of refuse. All garbage, trash or other refuse shall be kept in clean and covered receptacles located either to the rear of the residence or in an enclosed structure, such that same shall not be visible from any public or private road right-of-way. Property owners are required to have all refuse removed from the Property not less frequently than weekly.

c. **Satellite Dishes.** No ground mounted full sized satellite signal receiving dish shall be erected upon any lot without the prior written consent of the party of the first part or the Committee, it being the purpose hereof to insure that same shall not unreasonably interfere with the rights and privileges of other lot owners and that the presence of such a devise is sufficiently screened from view in order to minimize its visibility.

d. **Mail Receptacles.** The design, construction material and quality, color and location of all

mail receptacles must be consistent with the residence and other approved structures to which same is appurtenant, and require the prior approval of the party of the first part or the Committee consistent with Section 2 hereof.

e. **Outdoor Clothes Drying.** Clotheslines and other similar devices shall be located so as not to be visible from all public or private road rights-of-way.

f. **Fuel Storage.** No fuel tanks or other similar storage receptacles may be exposed to view. Any such receptacles may be installed only in an accessory building with a screened area, or buried underground.

g. **Recreation Equipment.** All recreation equipment, including, but not limited to, swings, picnic tables, grills, sand boxes, playpens and toys shall be located to the rear of the residence and must be maintained in a neat and orderly manner.

h. **Driveways.** All driveways installed to reach any portion of the Property must use a pipe of sufficient size and length to meet North Carolina Department of Transportation standards then in effect for connection to a public road.

7

TEMPORARY OR APPURTENANT STRUCTURES

No structure of temporary character, whether trailer, basement, tent, shack or barn shall be erected or placed on any lot covered by these covenants. Any building of any kind detached from the main residence must receive the prior written approval of the party of the first part or the Committee. No detached building of any kind shall be used at any time for human habitation, either temporarily or permanently.

8

ANIMALS

No animals or poultry of any kind, other than household pets, may be kept or maintained on any part of the said Property. Household pets, not exceeding two (2), may be kept, provided: (i) they are not kept, bred, or maintained for any commercial purpose; (ii) when outside the residence they are either within a fenced enclosure or are restrained by a leash held by a responsible person, not simply tethered to an inanimate object; and (iii) they are not allowed to become a nuisance, whether by the making of noise, constituting a threat to persons or property, or otherwise. Any outside kennel or other structure designed to shelter a permitted animal must be within a fenced enclosure which complies with the provisions of Section 2 hereof and must be approved and constructed as provided for in Sections 4 and 7 hereof.

PARKING

Adequate off street parking shall be provided by the owner of each lot for the parking of the automobiles of such owner or the residents of any dwelling constructed thereon. All cars shall be parked in a driveway, carport or garage. No oversized commercial vehicles shall be allowed on any portion of the Property. Any boats, campers and utility trailers shall be placed in a garage, carport or in the rear yard.

VIOLATIONS OF COVENANTS

a. **Enforcement.** The party of the first part, the Committee or any other owner of any portion of the Property shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed pursuant to the provisions of these covenants. In addition, the party of the first part or the

Committee shall have the right, but not the obligation, whenever there exists on any portion of the Property any condition which is in violation of this declaration, to summarily abate or remove same at the expense of the owner if, after 30 days prior written notice of such violation, it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass, and the party taking such abatement or removal action shall be entitled to recover the reasonable costs thereof from the violating party. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the continuing right to do so thereafter. The person or persons against whom any enforcement action shall also be required to pay all reasonable expenses incurred by those bringing the enforcement action, including reasonable attorney fees, which expenses may be taxed as a part of the costs awarded in any legal action, or may be recovered pursuant to all legal remedies allowed for the collection of debts.

b. **Subordination of Lien.** The lien which may be created for the expense of abatement or removal of any condition in violation of these covenants shall be subordinate and inferior to any mortgage then or thereafter encumbering such lot.

GENERAL PROVISIONS

a. **Duration and Amendment.** The covenants and restrictions herein contained shall run with and shall be binding upon the Property for a term of twenty (20) years from the date of recordation of this document, after which time same shall be automatically extended for successive periods of ten (10) years unless an instrument signed by not less than 75% of the

owners of the Property has been recorded, agreeing to change these covenants in whole or in part.

b. **Binding Effect.** The provisions of these covenants, both negative and affirmative and including, without limitation, the covenant to pay assessments, shall be binding upon and shall inure to the benefit of each lot and the owner of each lot, their heirs, successors and assigns.

c. **Severability.** Invalidation of any one or more of the provisions of these covenants by judgment or court order shall in no way affect any of the other provisions hereof, all of which shall remain in full force and effect.

d. **Headings.** Headings are inserted only for convenience of reference and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular paragraphs to which they refer.

e. **Construction.** In all cases, the provisions of these covenants shall be construed together and shall be given that interpretation or construction which will best allow for strict enforcement and, if necessary, the provisions hereof shall be so extended or enlarged by implication as to make them fully effective consistent with the intent hereof.

f. **Waiver.** No failure or neglect on the part of any party entitled to enforce any of the provisions hereof, to demand or insist upon the observance thereof or to proceed for the restraint of violation thereof shall be deemed a waiver of any such violation. Nor shall a waiver or variance from any of the provisions hereof on any one occasion be in any way deemed a waiver of right to enforce the same or any other provision hereof on any other occasion.

IN WITNESS WHEREOF, the party of the first part has caused the duly authorized execution hereof, this the day and year first above written.

DIAMOND LAND DEVELOPMENT, LLC

BY Willis L. Parker, Manager (SEAL)
Willis L. Parker, Manager

BY C. Derwin Charles, Manager (SEAL)
C. Derwin Charles, Manager

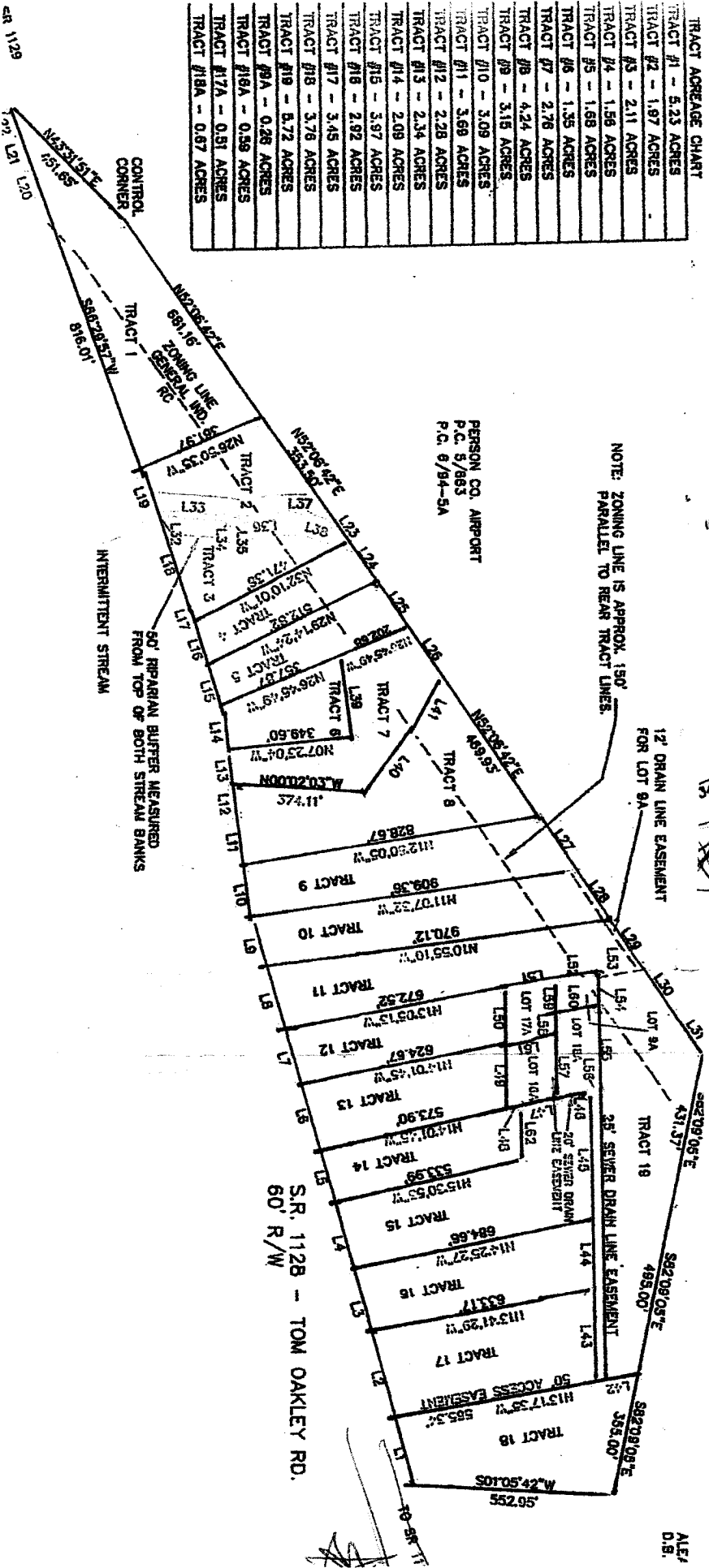
LINE	LENGTH	BEARING
L1	195.00	S70°06'08"W
L2	250.00	S70°06'08"W
L3	190.00	S70°25'36"W
L4	193.91	S72°06'19"W
L5	172.30	S71°26'28"W
L6	183.18	S69°37'33"W
L7	170.00	S68°45'43"W
L8	181.82	S70°53'22"W
L9	142.00	S73°53'06"W
L10	145.00	S77°05'48"W
L11	150.03	S78°35'43"W
L12	82.91	S78°35'43"W
L13	187.09	S78°35'43"W
L14	110.00	S78°35'43"W
L15	127.05	S71°54'11"W
L16	127.54	S69°25'14"W
L17	44.60	S68°34'42"W
L18	285.88	S66°29'57"W
L19	120.00	S66°29'57"W
L20	99.95	S67°49'09"W
L21	99.82	S71°02'57"W
L22	81.50	S70°28'11"W
L23	60.00	N52°06'42"E
L24	191.87	N52°06'42"E
L25	150.59	N52°06'42"E
L26	175.64	N52°06'42"E
L27	190.00	N52°06'42"E
L28	162.84	N52°06'42"E
L29	158.76	N52°06'42"E
L30	166.13	N52°06'42"E
L31	146.79	N52°06'42"E
L32	12.88	N23°30'03"W
L33	181.04	N01°36'42"E
L34	23.11	N24°07'16"E
L35	10.30	N22°42'34"W
L36	150.68	N08°48'27"W
L37	42.53	N00°05'35"E
L38	80.80	N16°34'57"E
L39	229.33	S77°40'54"W
L40	221.62	N55°43'26"W
L41	157.93	S65°05'50"W
L42	180.73	N13°17'35"W
L43	295.74	S85°29'27"W
L44	200.32	S85°29'27"W
L45	365.55	S85°29'27"W
L46	96.49	S14°10'45"E
L47	181.40	S14°10'45"E
L48	46.56	S14°10'45"E
L49	184.60	S85°29'27"W
L50	168.47	S85°29'27"W
L51	141.58	N13°05'13"W
L52	121.52	N13°05'13"W
L53	121.77	N13°05'13"W
L54	100.00	N85°29'27"E
L55	248.68	N85°29'27"E
L56	28.35	S14°10'45"E
L57	184.60	S85°29'27"W
L58	58.11	S85°29'27"W
L59	100.00	S85°29'27"W
L60	121.52	N13°05'13"W

BY FOR:
 INT, LLC
 103
 /SHIP
 .C.

DATE
 0.8.

TRACT AVERAGE CHART

TRACT #1 - 5.23 ACRES
TRACT #2 - 1.87 ACRES
TRACT #3 - 2.11 ACRES
TRACT #4 - 1.56 ACRES
TRACT #5 - 1.68 ACRES
TRACT #6 - 1.35 ACRES
TRACT #7 - 2.78 ACRES
TRACT #8 - 4.24 ACRES
TRACT #9 - 3.15 ACRES
TRACT #10 - 3.08 ACRES
TRACT #11 - 3.69 ACRES
TRACT #12 - 2.28 ACRES
TRACT #13 - 2.34 ACRES
TRACT #14 - 2.08 ACRES
TRACT #15 - 3.97 ACRES
TRACT #16 - 2.92 ACRES
TRACT #17 - 3.45 ACRES
TRACT #18 - 3.76 ACRES
TRACT #19 - 5.72 ACRES
TRACT #20 - 0.28 ACRES
TRACT #21 - 0.36 ACRES
TRACT #22 - 0.51 ACRES
TRACT #23 - 0.87 ACRES



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