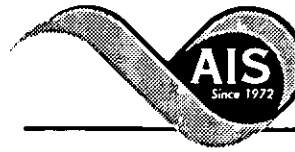




\* 0 0 B R E A K 0 0 \*



ADVANCED  
IMAGING  
SYSTEMS

www.aisimc.com

An Information  
Management Company

# City of Charlotte – Planning Dept. Scanning Rezoning Files

Petition # 88-53

## Document type:

- Applications
- Correspondence
- Department Comments
- Land Use Consistency
  - Mail Info
  - Mapping
  - Other
  - Site Plans



\* 0 0 B R E A K 0 0 \*

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

CONTRACT AMENDMENT AND  
MODIFICATION AGREEMENT

THIS CONTRACT AMENDMENT AND MODIFICATION AGREEMENT, made and entered into this 8th day of April, 1988, by and between MARZELLE J. ROWELL, as Executrix of the Estate of Leon Bradley Jordan; MARZELLE J. ROWELL and husband, BOYCE J. ROWELL; LEON BRADLEY JORDAN, JR., and wife, CATHERINE HUNTER JORDAN; BOBBY RAY JORDAN and wife, WANDA HURSEY JORDAN; and CHRISTINE JORDAN AIKENS and husband, RONALD VANCE AIKENS; all of Mecklenburg County, North Carolina, hereinafter jointly and severally referred to as "Sellers;" and CROW CHARLOTTE RETAIL #3 LIMITED PARTNERSHIP, a Texas limited partnership with its principal office in Charlotte, North Carolina, hereinafter referred to as "Buyer."

Statement of Purpose

The Sellers and the Buyer have heretofore entered into that certain Contract of Sale, dated September 15, 1987, (hereinafter the "Contract") wherein the Sellers agreed to sell and the Buyer agreed to purchase those certain tracts of land being shown on the Mecklenburg County Tax Line Map Book 165, Page 03, Parcels 2 and 7, and Tax Line Map Book 165, Page 03, Parcel 1 (hereinafter called the "Subject Property"). All of the parties to the Contract understood that the Subject Property consisted of approximately eight (8) acres, and that the Contract conditioned the the Buyer's obligation to close on the Buyer being able to get all of the subject property rezoned to uses other than residential. The Buyer proceeded to an investigation of rezoning potential, and determined that only the portion of the subject property lying on the east side of Delta Road Extension was likely to be rezoned, the property on the east side of Delta Road Extension consisting of 3.7062 acres according to a survey by E.S.P. Associates, P.A., Registered Surveyors, dated October 14, 1987 (with this 3.7062 acre property being hereinafter referred to as the "Revised Subject Property"). The contract rights of Buyer have technically expired. The Sellers and the Buyer have negotiated further, and desire to extend, modify and amend the Contract as hereinafter set forth.

NOW, THEREFORE, for and in consideration of the aforesaid Statement of Purpose, the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do hereby agree that the Contract is extended, modified and amended as hereinafter set forth:

1. The description of the Subject Property as shown on said Contract is hereby deleted, and the property as to which

the Buyer is contracting to buy and the Sellers are contracting to sell is known as the Revised Subject Property, consisting of 3.7062 acres, and described on Exhibit "A" attached hereto and incorporated herein by reference.

2. Paragraph 1 of the Contract is hereby deleted and the following is substituted in lieu thereof:

"1. Purchase Price. The purchase price for the Revised Subject Property shall be the sum of \_\_\_\_\_ payable as follows:

(a) \_\_\_\_\_ has heretofore been paid to the Sellers and shall be credited on the purchase price at closing.

(b) Beginning on the first day of March, 1988, and continuing on the first day of each month thereafter, to and including the first day of August, 1988, the Buyer shall monthly pay to Marzelle J. Rowell, Executrix of the Estate of Leon Bradley Jordan, as agent for the Sellers, non-refundable deposits in the sum of \_\_\_\_\_ as additional Earnest Money; which payments shall be applied in reduction of the Purchase Price or otherwise disbursed in accordance with the terms of the Contract, as changed hereby.

(c) The balance of the purchase price shall be payable in certified Charlotte, North Carolina, funds at closing."

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3. Paragraph 2 of the Contract is hereby deleted and the following substituted in lieu thereof:

"2. Survey. The Buyer has delivered to the Sellers a survey of the property acceptable to the Sellers, indicating that the net acreage of the Revised Subject Property is 3.7062 acres."

4. Paragraph 3 of the Contract is hereby deleted and the following substituted in lieu thereof:

"3. Closing. The closing of this transaction shall occur at 2:00 p.m., in the law offices of the Buyer's attorney in Charlotte, North Carolina, on the earlier of the date (hereinafter the "Closing Date") of ~~September 2~~ <sup>OCTOBER 31 1988</sup>, 1988, or no more than thirty (30) days after the date on which the Revised Subject Property is rezoned as provided in Paragarph 8 of the Contract. If closing under said Contract has not occurred by the earlier of the aforesaid applicable Closing Date, then the rights of the Buyer under the Contract shall null, void and of no further force and effect, the Sellers shall be entitled to retain all Earnest Money deposits paid to them, and the rights of the parties under the Contract as hereby changed shall be fully and absolutely ter-

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miated, time being of the essence under the Contract."

5. References in the Contract to "Subject Property" by the Sellers to the Buyer shall henceforth mean the "Revised Subject Property" as shown on Exhibit "A" attached hereto and made a part hereof.

6. Paragraph 15 of the Contract, entitled "Escrow," is hereby deleted.

7. Earnest Money. In the event the Sellers cannot convey marketable title to the Revised Subject Property, the Sellers shall be liable to the Buyer for a full refund of any Earnest Money paid by Buyer to Sellers, this liability being in proportion to the percentage of ownership in the Revised Subject Property of the parties constituting the Sellers, the Sellers being equal tenants in common in the Revised Subject Property. The Buyer agrees that as of October 13, 1987, the Sellers had good marketable title to the Revised Subject Property.\* In this regard, the parties agree that paragraph 7 of the Contract, entitled "Title Defects," is hereby deemed satisfied by the Sellers, except to the extent of title defects, if any, arising in the Revised Subject Property after the date of the aforesaid title examination conducted by Buyer, and the defective title provisions of paragraph 7 of the Contract shall only apply to such subsequently-arising title defects.\*\* Further, the Buyer agrees that at the time of the execution hereof, the Sellers are in compliance with the Contract.

8. Except as amended hereby, the terms, conditions and agreements of the Contract shall remain in full force and effect and be binding upon the parties hereto, even though the Contract might otherwise have technically expired.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

AM  
\* Except for title defects set forth in Addendum A attached hereto. *BRJ RM MK*

*Marzelle J. Rowell* (SEAL)  
Marzelle J. Rowell, Executrix of the Estate of Leon Bradley Jordan

AM  
\*\* and except for title defects set forth in Addendum A attached here to. *CA*

*Marzelle J. Rowell* (SEAL)  
Marzelle J. Rowell

*BRJ RM MK*

*Boyce J. Rowell* (SEAL)  
Boyce J. Rowell

(Signatures Continued)

Leon Bradley Jordan, Jr. (SEAL)  
Leon Bradley Jordan, Jr.

Catherine Hunter Jordan (SEAL)  
Catherine Hunter Jordan

Bobby Ray Jordan (SEAL)  
Bobby Ray Jordan

Wanda Hursey Jordan (SEAL)  
Wanda Hursey Jordan

Christine Jordan Aikens (SEAL)  
Christine Jordan Aikens

Ronald Vance Aikens (SEAL)  
Ronald Vance Aikens

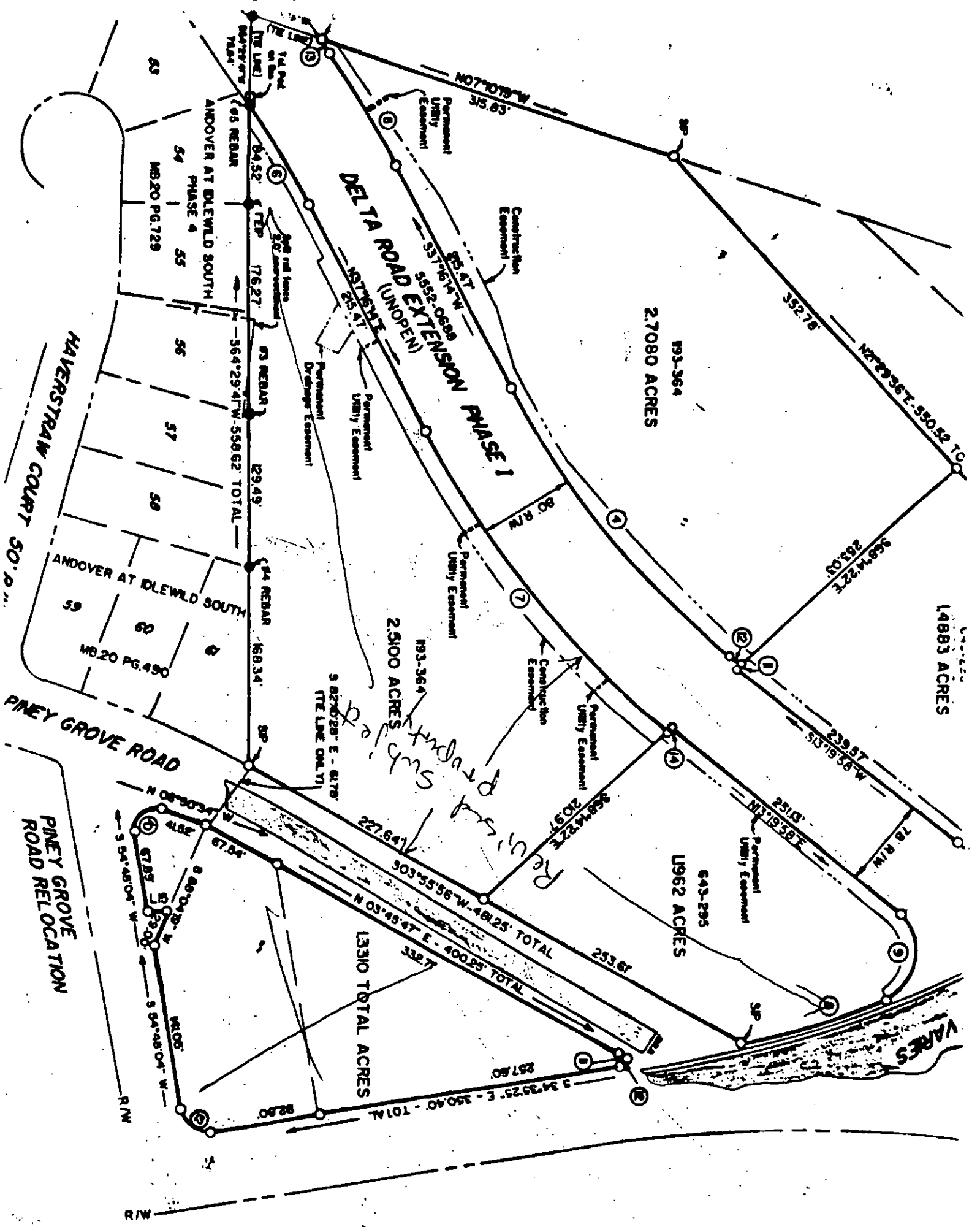
CROW CHARLOTTE RETAIL #3  
LIMITED PARTNERSHIP

By: Charlotte Retail Division  
#1, Inc., its General Partner

By: David S. Miller  
David S. Miller, President

ATTEST:

Joseph F. Mazur  
Assistant Secretary



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EXHIBIT H

*Revised Subplot*

EXHIBIT "A"

1. The Deeds of Trust to William J. Patterson, Trustee, recorded in Book 4764 at page 548 (Bobby Ray Jordan for \$10,000.00), Book 4764 at page 552 (Marzelle J. Rowell for \$10,000.00), Book 4837 at page 338 (Marzelle J. Rowell for \$10,000.00) and Book 4837 at page 340 (Bobby Ray Jordan for \$10,000.00) must be cancelled at the time of closing.
2. The judgment in Book 135 at page 72 against Leon B. Jordan and wife will need to be satisfied and cancelled.
3. Notices with regard to the estate will need to be published and appropriate waivers with regard to the estate and all possible taxes by virtue of the estate will need to be obtained by closing.
4. The appropriate deed and owner's affidavit will need to be obtained at closing.
5. All charges, taxes etc. will need to be pro-rated and paid in accordance with the contract, as of the closing.
- ~~6. Determination of the effect of the construction and utility easements granted by instrument recorded in Book 5552 at Page 692,~~
7. Removal of all encumbrances of record subsequent to title examination on October 8, 1987.

*BJ*  
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*MA*  
*BRJ*



## CHARLOTTE - MECKLENBURG PLANNING COMMISSION

May 24, 1989

Dear Adjacent Property Owner:

A rezoning petition has been filed in our office for property that is located adjacent to yours. The specifics of the petition are listed below and on the attached map. A public hearing with the City Council and the Charlotte-Mecklenburg Planning Commission will be held at the time, date, and place listed below. If you have any concerns about the rezoning, you are encouraged to attend the hearing.

Petitioner: John Usdan, Lemberg  
Syndicate, Charlotte JV

Petition No.: 89-53

Existing Zoning: B-2 = General Business

Proposed Change: B-1SCD = Shopping Center District

Hearing Date: June 19, 1989

Time: 6:00 P.M.

Place: Charlotte-Mecklenburg Government Center, Meeting Chamber,  
600 East Fourth Street.

Anyone desiring to file a written petition of protest intended to invoke the City Council's 3/4 majority vote rule must file such a petition with the City Clerk not later than two working days before the hearing date. For example, for hearings held on Monday, all protest petitions must be filed no later than 5:00 P.M. on the preceding Wednesday. The 3/4 majority rule requires that 3/4 of those eligible to vote among the City Council and Mayor must vote affirmatively in order for a petition to receive approval. For protest petition forms and more information on the 3/4 rule, you may call the City Clerk's Office at 336-2247.

If you have any questions regarding this proposal, please call Laura Simmons or Melony McCullough at 336-2205 between 8:00 A.M. and 5:00 P.M., Monday through Friday.

Sincerely,

William J. McGinnis  
Community Services Planner

WJM:mlj

Attachments



OFFICIAL REZONING APPLICATION  
CITY OF CHARLOTTE

Petition No. 89-53  
Date Filed April 17, 1989  
Received By MCN  
OFFICE USE ONLY

Ownership Information

Property Owner LEMBERG SYNDICATE & CHARLOTTE JOINT VENTURE

Owner's Address 60 East 42nd St, Suite 1814 New York, New York 10165

Date Property Acquired 12/15/87

Deed Reference 5664-0083 Tax Parcel Number #173-012-01A 5801 S. Blvd # 173-012-01B

Location Of Property (address or description) South Boulevard between Emerywood Drive and Archdale Drive See attached legal descripti

Description Of Property

Size (Sq. Ft.-Acres) 14 Acres Street Frontage (ft.) 1407.11 ft.

Current Land Use Property currently developed as a shopping center Retail and branch bank.

Zoning Request

Existing Zoning B-2 Requested Zoning B-1SCD

Purpose of Zoning Change Property owner desires to add to the square foot building area of this development. Present gross building area is 163,300 s.f. As required by code (3066.1)any additional increase in building area calls for rezoning.

Name Of Agent Ralfe Mesrobian, A.I.A.

Name of Petitioner(s) Mr. John Usdan Lemberg Syndicate, Charlotte J

Agent's Address 527 Moravian Lane, Charlotte, N.C. 28207

Address of Petitioner(s) 60 East 42nd St Suite 1814, New York, N.Y. 10165

Telephone Number 332- 3774

Telephone Number (212) 682- 9595

Signature [Handwritten Signature]

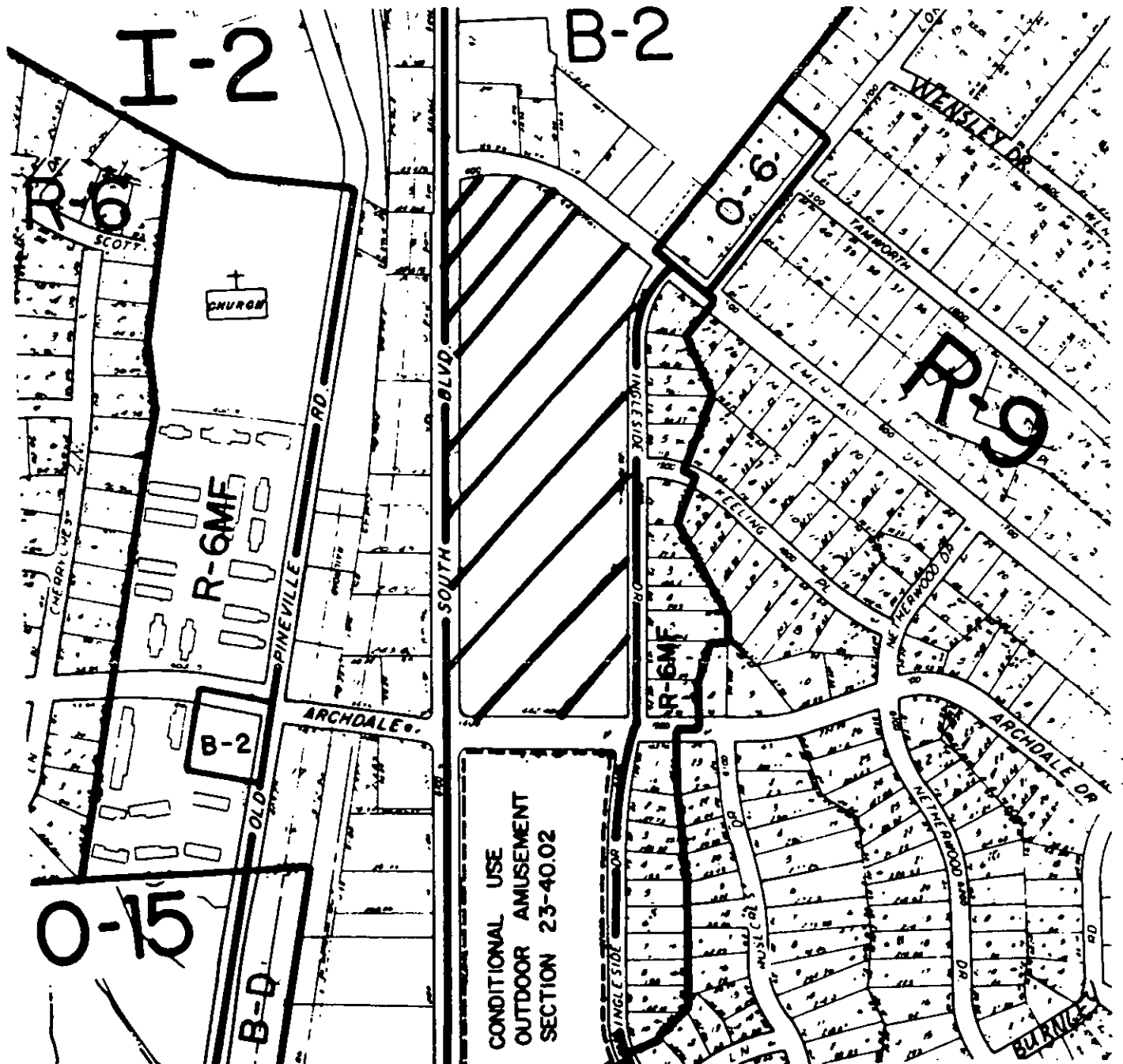
Signature of Property Owner if Other Than Petitioner

PETITIONER Mr. John Usdan, Lamberg Syndicate, Charlotte JV

PETITION NO. 89-53 HEARING DATE June 19, 1989

ZONING CLASSIFICATION, EXISTING B-2 REQUESTED B-1SCD

LOCATION Approximately 14.0 acres located on the east side of South  
soulevard between Archdale Drive and Emerywood Dr.



ZONING MAP NO. 134

SCALE 1" = 400'

PROPERTY PROPOSED FOR CHANGE



STATE OF NORTH CAROLINA

CONTRACT OF SALE

COUNTY OF MECKLENBURG

THIS CONTRACT OF SALE, dated the 15<sup>th</sup> day of September, 1987, by and between MARZELLE J. ROWELL, as Executrix of the Estate of Leon Bradley Jordan; MARZELLE J. ROWELL and husband, BOYCE J. ROWELL; LEON BRADLEY JORDAN, JR. and wife, CATHERINE HUNTER JORDAN; BOBBY RAY JORDAN and wife, WANDA HURSEY JORDAN; and CHRISTINE JORDAN AIKENS and husband, RONALD VANCE AIKENS, all residents of Mecklenburg County, North Carolina, hereinafter jointly referred to as "Sellers"; and CROW CHARLOTTE RETAIL #3, LIMITED PARTNERSHIP, a Texas Limited Partnership with its principal office in Charlotte, North Carolina, hereinafter referred to as "Buyer";

WITNESSETH

THAT, for and in consideration of earnest money in the sum of \_\_\_\_\_ paid by Buyer to Escrow Agent, as provided in paragraph 15 hereof, the receipt of which is hereby acknowledged, the Sellers do hereby agree to sell and convey to Buyer and Buyer agrees to purchase from the Sellers those tracts of land being shown on Mecklenburg County Tax Line Map Book 165 at Page 03, namely: that portion of Parcel 1 remaining after the acquisition of the road right-of-way acquired by the City of Charlotte as shown on the City of Charlotte's Engineering Department Survey of 4/86, a copy of which is attached as Exhibit B), and parcels 2 and 7 in Block 33, as outlined in red on a copy of said Mecklenburg County Tax Line Map attached hereto as Exhibit A, together with all easements and appurtenants with respect thereto (hereafter called "Subject Property"); provided however, Sellers reserve the right to remove all improvements (i.e., structures) from the Subject Property prior to closing; and provided further, that the Sale shall be upon the following terms and conditions:

1. **Purchase Price.** The purchase price for the Subject Property shall be \_\_\_\_\_ per Net Acre (as defined in paragraph 2 hereof) payable as follows:

(a) All amounts paid to Escrow Agent by Buyer as earnest money for this Contract and all interest, if any, earned on the earnest money placed with Escrow Agent shall be applied in reduction of the purchase price, or otherwise in accordance with the terms of this contract.

(b) The balance of the purchase price shall be payable in certified Charlotte, North Carolina funds at closing.

2. **Survey.** The Buyer agrees: to have the Subject Property surveyed at Buyer's expense by a certified Registered Surveyor, and to deliver a copy thereof certified to Sellers within forty-five (45) days after the date of this Contract. Such survey shall show the gross area of the Subject Property reduced only by permanent public road right-of-ways as shown on the official Charlotte/Mecklenburg surveys as of the date of this Contract ("Net Acres"). The Net Acres so determined shall be computed to the nearest 1000th of an acre, and shall be used to compute the Purchase Price of the Subject Property.

3. **Closing.** The closing of this transaction shall occur at 2:00 p.m. in the law offices of Buyer's attorney, in Charlotte, North Carolina, on the date ("Closing Date") determined as follows:

(a) Buyer shall have an "Initial Investigation Period" of thirty (30) days commencing with the date of this Contract. Buyer agrees that during the Initial Investigation Period, Buyer shall, at Buyer's expense, search the title to the Subject Property (including all applicable easements and restrictions of record) as provided in paragraph 7 of this Contract. If Buyer is dissatisfied with any aspect of the property, including the condition of its title, Buyer shall have the right at any time during the Initial Investigation

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Period to terminate this Contract (and have the Escrow Agent return to Buyer Buyer's earnest money deposit of \_\_\_\_\_ by providing written notice of such termination to Sellers and Escrow Agent as provided in Paragraph 13 of this Contract; provided, such notice of termination is postmarked within thirty (30) days after the date of this Contract. If Buyer does not terminate this Contract as herein provided, then Escrow Agent, after the expiration of 30 days from the date of this Contract, shall disburse to Sellers as provided in paragraph 15(a) of this Contract, a nonrefundable payment in the amount of \_\_\_\_\_ and Buyer's Initial Investigation Period of 30 days shall be extended for an additional sixty-five (65) days ("Extended Investigation Period") provided that the Initial Investigation Period (30 days) plus the Extended Investigation Period (65 days) shall not extend beyond midnight of the ninety-fifth (95th) day after the date of this Contract, time being of the essence.

(b) During the Extended Investigation Period, Buyer agrees to obtain any additional contracts for the purchase of any land in addition to the Subject Property necessary for Buyer's contemplated development of the Subject Property; and to determine all remaining aspects as to the feasibility of developing the Subject Property (including, but not limited to, soil condition, access, utilities and the potential for rezoning the Subject Property, etc.) and further, to file a petition for rezoning the Subject Property as provided in paragraph 8 hereof if Buyer determines that its contemplated development is feasible. If Buyer determines in its sole discretion that the development of the Subject Property, as contemplated by it, is not feasible, or that required contract(s) for additional land cannot be obtained, Buyer may terminate this Contract by written notice to Sellers and Escrow Agent at any time during the Extended Investigation Period (i.e., within the thirty-first to the ninety-fifth day after the date of this Contract, and the balance held in escrow shall be paid to Buyer).

(c) Provided this Contract is not terminated as provided in paragraph 3(a) and (b) preceding; and prior to the expiration of the ninety-five (95) days after the date of this Contract Buyer shall have: (i) delivered to Escrow Agent additional cash earnest money in an amount sufficient to increase the total earnest money deposited with Escrow Agent to a sum of not less than \_\_\_\_\_ (ii) filed its zoning change petition with the appropriate governmental officials to effectuate the rezoning process, and (iii) provided appropriate confirmation thereof to Sellers; then Buyer shall have (commencing with the ninety-sixth (96th) day after the date of this Contract) two hundred ten (210) days in which to rezone the Subject Property as provided in paragraph 8 hereof.

(d) Closing shall occur on the thirtieth (30th) day after the day in which the Subject Property is rezoned in accordance with paragraph 8 hereof and the time for appeal of that rezoning has expired ("Final Zoning Date"), subject to the provisions of Item (d) below.

(e) If the Closing Date occurs on a weekend or holiday, the closing shall be delayed to the next succeeding business day.

4. Closing Documentation. At closing Sellers shall execute and deliver to Buyer (i) a \_\_\_\_\_ general warranty \_\_\_\_\_ deed, with revenue stamps attached, conveying valid, insurable, marketable and indefeasible, fee simple title to the Subject Property (subject to the provisions of paragraph 7 hereof) free and clear of all liens and encumbrances except ad valorem real property taxes for the year of sale (to be prorated at Closing), and such other permitted encumbrances as are expressly approved by Buyer in writing ("Permitted Encumbrances"), (ii) an owner's affidavit in form reasonably acceptable to Buyer and Commonwealth Land Title Ins. Company \_\_\_\_\_ affirming that no labor has been performed on the Subject

Further, in the event Buyer fails to file its rezoning petition and/or fails to fund the escrow with an additional \_\_\_\_\_ of earnest money as provided in this subparagraph (c) within the Extended Investigation Period, time being of the essence, this Contract shall automatically terminate, and all monies held by Escrow Agent shall be paid to Sellers.

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Property or materials supplied to the Subject Property within one hundred twenty (120) days prior to closing and that there are no outstanding liens or rights to claim liens against the Subject Property; (iii) any affidavits or indemnities required by Commonwealth to insure over any open estate problems; (iv) a FIRPTA affidavit in form complying with law so that withholding will not be required; (v) an affidavit affirming that on the Closing Date there are no outstanding and unsatisfied judgments, tax liens or bankruptcies against or involving the Sellers and that to the knowledge of the Sellers there are no unrecorded interests in the Subject Property of any kind which are not Permitted Encumbrances; (vi) an opinion of counsel for Sellers in form and substance reasonably satisfactory to Buyer that all of the above-described instruments, as well as any other instrument deliverable by Sellers to Buyer under the terms hereof, have been duly and validly authorized, executed and delivered by Sellers, and that said instruments are binding upon Sellers and vest Sellers' interest in the Subject Property in Buyer in accordance with their terms; and (vii) a statement from Sellers certifying that all of the representations and warranties contained in paragraph 16 hereof, to the best of Sellers' knowledge, are true and correct as of the Closing Date.

5. **Expenses.** Each party hereto shall be responsible for the following expenses:

(a) Buyer shall be responsible for the cost of preparation of a boundary survey by a registered surveyor.

(b) The Sellers shall be responsible for the cost of preparation of its deed and the cost of revenue or deed stamps required to be attached to such deed for recording.

(c) The Buyer shall be responsible for any cost of recording the deed not covered in item (b) above, including, but not limited to, any and all transfer taxes, if any.

(d) The parties hereto will each be responsible for all of their other closing costs, including their respective attorneys' fees.

6. **Ad Valorem Taxes.** City and/or County ad valorem taxes on the Subject Property for the year in which the closing occurs will be prorated to the Closing Date and Buyer shall assume the responsibility of paying those taxes when the tax bill is submitted. Any assessments against the Subject Property shall be paid by Sellers on or prior to Closing.

7. **Title Defects.** Buyer shall <sup>twenty five</sup> have its attorney examine the title to the Subject Property within (25) days from the date of this Contract. Should Buyer's attorney not approve the title to the Subject Property to be received by Buyer, the objecting attorney shall advise the Sellers in writing of the objections to said title (which objections shall not include those matters set forth in paragraph 4 hereof) and Sellers shall have until the last day of Buyer's Initial Investigation Period within which to cure said objections to the satisfactions of the objecting attorney. In the event said objections are not cured or remedied by the last day of Buyer's Initial Investigation Period, then Buyer, at its election, shall have the right to either (i) accept such title subject to the objections, (ii) terminate this Contract, and receive the return of all the sums paid into Escrow and the interest earned thereon, or (iii) cure such objections at Buyer's expense. Provided however, notwithstanding anything to the contrary contained herein, if Buyer fails to terminate this Contract as provided in paragraph 3(a), then Buyer shall be deemed to have accepted the Subject Property; and the condition of the title to the Subject Property in "As Is" condition; (subject only to titled defects arising after Buyer's Initial Investigation Period and to the rezoning requirements set forth in paragraph 8 hereof), and to have waived and released Sellers from all matters which adversely affect Buyer's use of the Subject Property and/or any clouds or defects in, or with respect to, the title to the Subject Property which existed or were discoverable by Buyer within the thirty (30) day Initial Investigation Period.

8. **Zoning.** Since Buyer desires to use the Subject Property for commercial improvements, it is necessary to have the Subject Property rezoned. Sellers hereby grant to Buyer the sole and exclusive right to

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petition for the rezoning of the Subject Property. In the event the Planning Staff will not agree to support such rezoning or any other event occurs which Buyer determines jeopardizes the success of its rezoning efforts, the Buyer shall have the right, in its sole discretion to [REDACTED] terminate this Contract. All expenses of rezoning shall be paid by Buyer. Sellers agree to fully cooperate with Buyer in the processing of the rezoning petition, including execution thereof, if required by the governmental body supervising rezoning. Buyer agrees to submit the rezoning request no later than ninety-five (95) days after the date of this Contract and to use its best efforts to expedite the completion of rezoning. It is agreed and understood, with respect to this Contract and the performance of the parties hereunder, that time is of the essence; and if Buyer is unable to complete the rezoning of the Subject Property to B1CD, or other rezoning classification which will allow shopping center development of the Subject Property of at least 75,000 square feet of leaseable floor space within 210 days after the 95-day Investigation Period(s) set forth in Paragraph 3(a) and 3(b) hereof, then this Contract shall automatically terminate; unless prior to the expiration of said 210 day period: (a) Sellers shall in writing agree to extend the time in which Buyer has to complete the rezoning of the Subject Property; or (b) Buyer in writing waives the rezoning requirements set forth herein and agrees to close on this sale within 30 days after the expiration of said 210 day period.

9. **Broker's Commissions.** Sellers and Buyer represent each to the other that no broker's or real estate commissions are due as a result of the closing of this transaction, except a commission payable to Bob Stulz of Coldwell Banker, which shall be paid by Buyer at Closing. Sellers agree to indemnify and hold harmless Buyer against any cost and expense (including reasonable attorneys' fees and court costs) incurred by Buyer as a result of the untruth of the foregoing representation by Sellers. Buyer agrees to indemnify and hold harmless the Sellers against any cost and expense (including reasonable attorneys' fees and court costs) incurred by Sellers as a result of the untruth of the foregoing representation by Buyer.

10. **Assignment.** The Buyer shall have the right to assign this Contract to any Buyer named herein; and/or to any Trammell Crow Company related partnership; provided, however, notwithstanding the foregoing; and any assignment shall not relieve the Buyer named herein from the performance of Buyer's duties and obligations and/or Buyer's responsibilities and liabilities under this Contract.

11. **Entire Agreement.** The parties hereto acknowledge that this Contract contains the entire agreement between the parties and time is of the essence with respect to the dates of performance by the parties hereto.

12. **Successors and Assigns.** This Contract shall be binding on the parties hereto, their heirs, successors and assigns.

13. **Notices.** All notices or elections or payments (including additional earnest money payments) required or permitted to be given, served, or made by any party hereto upon or to any other party shall be deemed given, served or made in accordance with the provisions of this Contract, if said notice, election or payment is mailed to Sellers or Buyer, as the case may be, in a sealed wrapper by United States registered or certified mail, return receipt requested, postage prepaid, properly addressed as follows:

if to the Buyer: Crow Charlotte Retail #3, Limited Partnership  
c/o Trammell Crow Company  
1400 Charlotte Plaza  
Charlotte, North Carolina 28244  
ATTN: David Miller

with copies to: R. Beverly R. Webb, Esquire  
Moore & Van Allen  
3000 NCNB Plaza  
Charlotte, North Carolina 28280

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C.H.G.

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if to the Sellers: Mrs. Marzelle J. Rowell  
7434 Idlewild Road  
Charlotte, North Carolina 28212

with copies to: William J. Patterson, Esquire  
Suite One, 701 East Trade Street  
Charlotte, North Carolina 28202

Lloyd F. Baucom, Esquire  
1512 East Fourth Street  
Charlotte, North Carolina 28204

if to the Escrow Agent: Commonwealth Land Title Insurance Company  
790 Charlotte Plaza  
Charlotte, NC 28244  
Attention: Hunter Meachum

Each such mailed notice, communication or payment shall be deemed to have been given to, served upon, or made to, the party to which addressed on the date the same is deposited in the United States registered or certified mail, return receipt requested, postage prepaid, properly addressed in the manner above provided. Any party hereto may change its address for service hereunder by delivering written notice of said change to the other party hereunder, in the manner above specified ten (10) days prior to the effective date of such change.

14. **Controlling Law.** This Contract has been made and entered into under the laws of the State of North Carolina, and said laws should control the interpretation hereof.

15. **Escrow.** Commonwealth Land Title Ins. Co., of N.C. in Charlotte, North Carolina, is appointed Escrow Agent to receive, hold, and disburse the earnest money paid or payable by Buyer pursuant to the terms hereof, in accordance with the following terms and conditions:

(a) **Escrow Disbursement(s).** Provided this Contract has not been terminated, and as long as it shall remain in effect as herein provided, Escrow Agent shall disburse and pay to Sellers additional nonrefundable payments of \_\_\_\_\_ ch, commencing on the ninety-sixth (96th) day after the date of this Contract and continuing every thirty (30) days thereafter. All escrow disbursements shall be made payable to Marzelle J. Rowell, Executrix of the Estate of Leon Bradley Jordan as agent for Sellers, and said Executrix agrees to distribute from the estate, forty percent (40%) of each such payment received pro rata to the heirs of the estate (Sellers) to cover their income tax liability with respect to the payments from the Escrow Agent under this Contract, which said heirs (Sellers) agree to report pro rata on their personal federal and state income tax returns.

(b) In the event of termination of this Contract as the result of a default by Sellers which is not cured within ten (10) days after written notice thereof to Sellers, all amounts remaining in escrow shall be returned to Buyer.

(c) In the event of default by Buyer which is not cured within ten (10) days after written notice thereof to Buyer, or termination by Buyer or automatic termination as permitted herein prior to the Final Zoning Date, Escrow Agent shall deliver to Sellers the amount earned under (a) above and to Buyer the balance of the Escrow, with interest prorated on the basis of the respective amounts distributed to Buyer and Sellers.

(d) In the event of default by Buyer after the occurrence of the Final Zoning Date, Escrow Agent shall deliver all Earnest Money placed in Escrow and all interest earned thereon to Sellers.

(e) In the event the purchase and sale contemplated hereby is closed, Escrow Agent is instructed to deliver all amounts held by it in Escrow and any interest earned thereon to Sellers to be treated as a credit against the purchase price.

L.B.J.  
C.H.G.

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BR AD MR  
BD WA

(f) The earnest money delivered to Escrow Agent hereunder shall be deposited by Escrow Agent in a passbook or Money Market account at NCB National Bank of North Carolina, Charlotte Main office. Buyer agrees to report and pay tax on all interest earned by amounts deposited in the Escrow whether or not actually received by Buyer, and to provide Escrow Agent with Buyer's Taxpayer Identification number which Escrow Agent shall use on all accounts established by Escrow Agent under this Contract.

(g) Escrow Agent shall have no liability hereunder for any act or omission which it takes or fails to take in good faith.

(h) In the event Escrow Agent is required to institute or participate in litigation as a result of this escrow, the parties hereto shall be jointly and severally obligated to reimburse it for costs and expenses (including reasonable attorneys' fees) actually incurred by it.

(i) All fees of Escrow Agent shall be paid by Buyer.

Escrow Agent has executed this Purchase and Sale Agreement to acknowledge his acceptance of the escrow created hereby and his receipt of the initial \$10,000.00 of earnest money.

16. Representation and Warranties by Sellers. Sellers represent and warrant to Buyer that:

(a) Sellers have all requisite power and authority to execute this Contract of Sale, the closing instruments listed in paragraph 4 hereof, and all other instruments required to be delivered by Sellers under the terms of this Contract.

(b) The conveyance of the Subject Property pursuant hereto, to the best of the knowledge of Sellers, will not violate any private restriction or agreement or, any applicable statute, ordinance, governmental restriction or regulation.

(c) There are no liabilities which encumber the Subject Property, and no contracts or commitments relating to the Subject Property, other than ad valorem property taxes, restrictions, easements, and rights-of-way of record, or as otherwise disclosed in this Contract.

(d) The Sellers have received no notice of any action, litigation, pending or threatened condemnation or other proceeding of any kind pending against the Sellers which relates to or affects the Subject Property, except: the public road right-of-way shown on Exhibit B, and the construction easements shown on Exhibits C and D relative to the Delta Road Extension.

(e) There are no hazardous or controlled wastes, other toxic substances or underground storage tanks which are subject to government regulation located on the Subject Property.

(f) Sellers, on the Closing Date, will have complied with all of its obligations required to be performed by that date, unless such compliance has been waived in writing by Buyer, and all warranties made hereunder shall be true and correct on the Closing Date.

Sellers hereby agree that the truthfulness of each of said representations and warranties and of all other representations and warranties herein made is a condition precedent to the performance by Buyer of its obligations hereunder, and all of said representations and warranties shall be deemed to be repeated at closing. Upon the material breach of any thereof, or in the event any of the conditions precedent to closing as described herein have not been satisfied or waived as of the Closing Date, or upon the material breach by Sellers of any representation, warranty, condition or provision hereof, Buyer, as its sole and exclusive remedies, may, prior to the Closing Date, terminate this Contract, declare it null and void, and receive back all earnest money heretofore deposited in escrow, together

LBJ 6 CT RMA  
C/HJ BJG SR M/R



with any interest earned thereon, or institute an action for specific performance within three (3) months of Sellers' default.

17. **Construction of Terms.** Where appropriate, any word denoting the singular shall be deemed to denote the plural, and vice versa. Where appropriate, any word denoting or referring to one gender shall be deemed to include the other gender.

18. **Sellers' Remedies.** In the event Buyer defaults under the terms hereof, the sole remedies of Sellers shall be to receive and retain the earnest money delivered into escrow and the interest earned thereon as liquidated damages and/or to institute an action for specific performance by Buyer within three (3) months of Buyer's default.

19. **Acceptance of Offer.** In the event this Contract is not executed and returned to Buyer by September 15, 1987, the offer created by the execution of this Contract by Buyer and delivery of same to Sellers shall terminate and all earnest money shall be returned to Buyer by Escrow Agent.

20. **Additional Information.** Within seven (7) days after the date of this Contract, Sellers agree to deliver to Buyer, at no charge, copies of all surveys, soil tests, site development plans, topographical surveys, title insurance policies, and similar information pertaining to the Subject Property, if any, in Sellers' possession or the possession of his attorneys or agents.

21. **Duplicate Copies.** This Contract has been executed in 4 original copies, each of which shall constitute an original fully enforceable Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Contract of Sale to be executed as of the day and year first above written.

**SELLERS:**

*Marzelle J. Rowell* (SEAL)  
Marzelle J. Rowell, Executrix of the  
Estate of Leon Bradley Jordan

*Marzelle J. Rowell* (SEAL)  
Marzelle J. Rowell

*Boyce J. Rowell* (SEAL)  
Boyce J. Rowell

*Leon Bradley Jordan, Jr.* (SEAL)  
Leon Bradley Jordan, Jr.

*Catherine H. Jordan* (SEAL)  
Catherine Hunter Jordan

*Bobby Ray Jordan* (SEAL)  
Bobby/Ray Jordan

*Wanda Hursey Jordan* (SEAL)  
Wanda Hursey Jordan

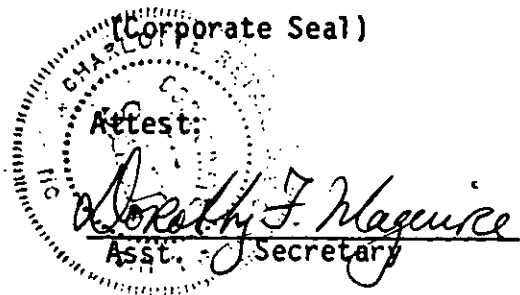
*Christine Jordan Aikens* (SEAL)  
Christine Jordan Aikens

CA RM # SF MK  
BR

Ronald V. Aikens (SEAL)  
Ronald Vance Aikens

BUYER:  
CROW CHARLOTTE RETAIL #3 Limited Partnership  
By: Charlotte Retail Division #1, Inc.,  
its General Partner

By: David S. Miller  
David S. Miller, President



COMMONWEALTH LAND TITLE INSURANCE COMPANY  
OF NORTH CAROLINA, INC.

By: L. Hunter Meacham Jr. (SEAL)  
V.P.

Sept. 21, 1987.

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Carolyn L. Holland, a Notary Public in and for ~~Mecklenburg~~ Gaston County and State, ~~of NC~~ of NC hereby certify that MARZELLE J. ROWELL, as Executrix of the Estate of Leon Bradley Jordan, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 15th day of September, 1987.

Carolyn L. Holland  
Notary Public - Gaston County

My Commission Expires:

3/21/90

(NOTARIAL SEAL)

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Carolyn L. Holland, a Notary Public in and for ~~Mecklenburg~~ Gaston County and State, ~~of NC~~ of NC hereby certify that MARZELLE J. ROWELL personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 15th day of September, 1987.

Carolyn L. Holland  
Notary Public - Gaston County

My Commission Expires:

3/21/90

(Notarial Seal)

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Carolyn L. Holland, a Notary Public in and for ~~Mecklenburg~~ Gaston County and State, ~~of NC~~ of NC hereby certify that BOYCE J. ROWELL personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 15th day of September, 1987.

Carolyn L. Holland  
Notary Public - Gaston County

My Commission Expires:

3/21/90

(Notarial Seal)

STATE OF North Carolina

COUNTY OF MECKLENBURG

I, Kathryn D. Wilson, a Notary Public in and for said County and State, do hereby certify that LEON BRADLEY JORDAN, JR. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 17 day of September, 1987.

Kathryn D. Wilson  
Notary Public

My Commission Expires:  
6.27.91

(Notarial Seal)

STATE OF North Carolina

COUNTY OF Mecklenburg

I, Kathryn D. Wilson, a Notary Public in and for said County and State, do hereby certify that CATHERINE HUNTER JORDAN personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 17 day of September, 1987.

Kathryn D. Wilson  
Notary Public

My Commission Expires:  
8.27.91

(Notarial Seal)

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Carolyn L. Holland, a Notary Public in and for ~~Mecklenburg~~ <sup>Gaston</sup> County and State, do hereby certify that BOBBY RAY JORDAN personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 15th day of September, 1987.

Carolyn L. Holland  
Notary Public - Gaston County

My Commission Expires:  
3/21/90

(Notarial Seal)

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Gaston Carolyn L. Holland, a Notary Public in and for ~~Mecklenburg~~ Gaston County and State, do hereby certify that WANDA HURSEY JORDAN personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 15th day of September, 19 87.

Carolyn L. Holland  
Notary Public - Gaston County

My Commission Expires:

3/21/90

(Notarial Seal)

STATE OF North Carolina

COUNTY OF Mecklenburg

I, Kathryn D. Wilson, a Notary Public in and for said County and State, do hereby certify that CHRISTINE JORDAN AIKENS personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 17 day of September, 19 87.

Kathryn D. Wilson  
Notary Public

My Commission Expires:

8.27.91

(Notarial Seal)

STATE OF North Carolina

COUNTY OF Mecklenburg

I, Kathryn D. Wilson, a Notary Public in and for said County and State, do hereby certify that RONALD VANCE AIKENS personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this 17 day of September, 19 87.

Kathryn D. Wilson  
Notary Public

My Commission Expires:

8.27.91

(Notarial Seal)

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 10<sup>th</sup> day of September, 1987, personally came before me David S. Miller, who, being by me duly sworn, says that he is the President of Crow Charlotte Retail Division #1, Inc., and that the seal affixed to the foregoing instrument in writing is the corporate seal of the company, and that the said writing was signed and sealed by him, in behalf of said corporation, by its authority duly given. And the said President acknowledged the said writing to be the act and deed of said corporation.

Charles S. Miller  
Notary Public

My Commission Expires:

March 6 1990

(Notarial Seal)

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

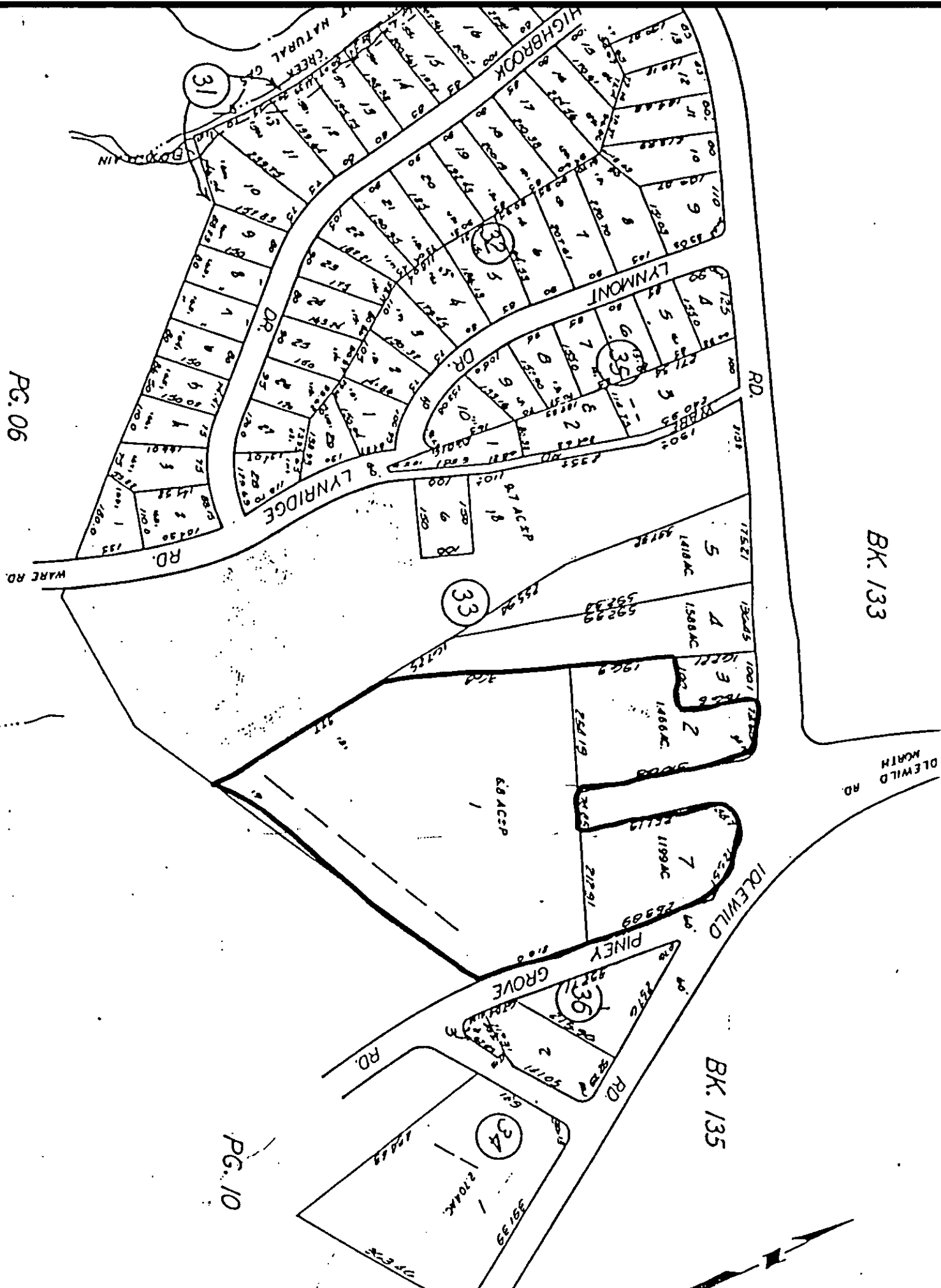
This 21 day of September, 1987, personally came before me L. Hunter Meacham, Jr. who, being by me duly sworn, says that he is the Vice President of COMMONWEALTH LAND TITLE INS. COMPANY OF N.C., ESCROW AGENT and that the seal affixed to the foregoing instrument in writing is the corporate seal of the company, and that the said writing was signed and sealed by him, in behalf of said corporation, by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation.

Vicky M. Shiftell  
Notary Public

My Commission Expires:

7/14/90

(Notarial Seal)



PG. 06

BK. 133

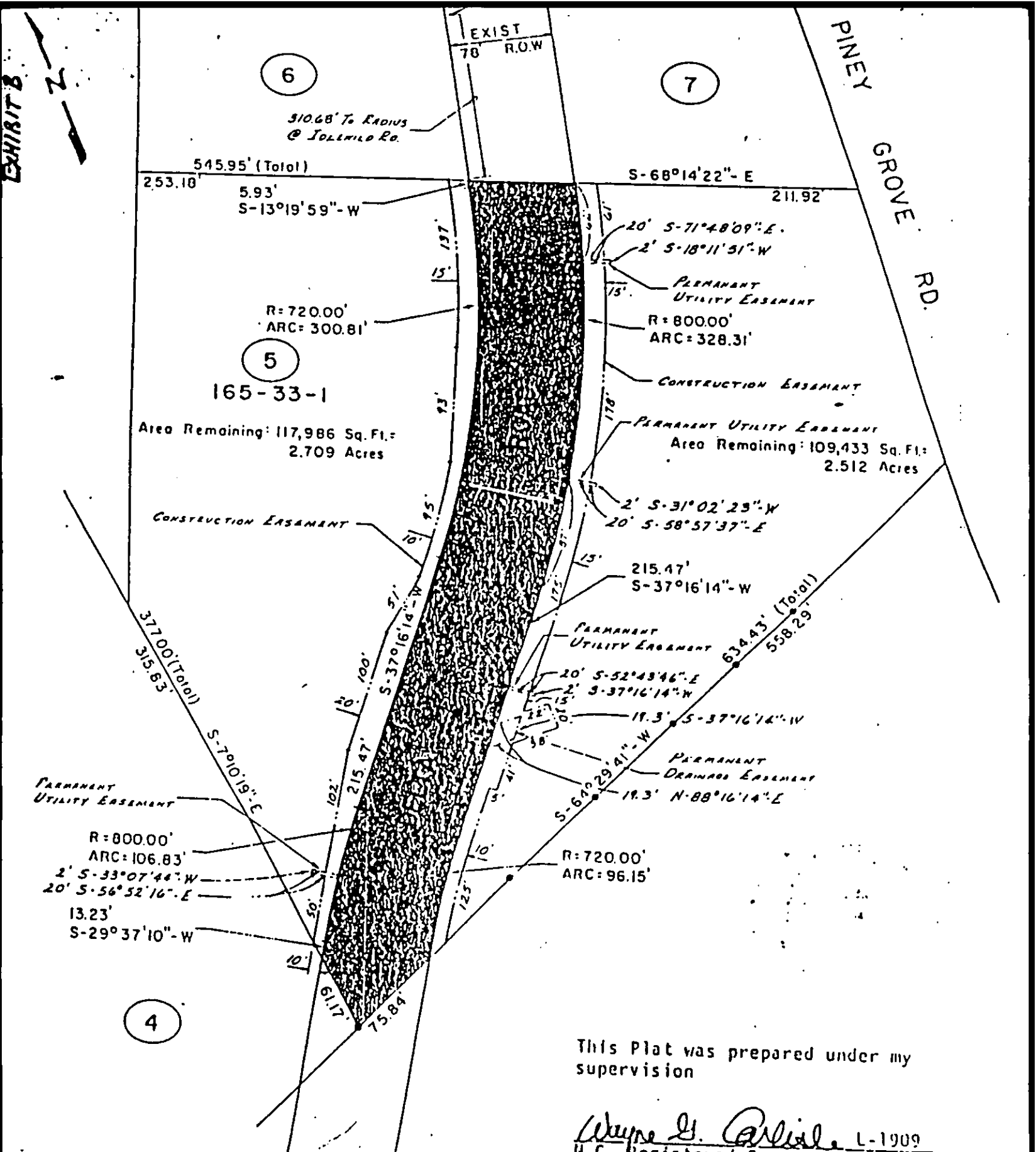
PG. 10

BK. 135

EXHIBIT A

TAX LINE MAP BOOK 165 PAGE

*MR. B. R. H. B. J.*



This Plat was prepared under my supervision

*Wayne G. Carline* L-1909  
H.C. Registered Surveyor Reg. No.

NOTE: Iron pins shown • were located by actual survey.  $\triangle$  denotes iron pins that are actual property corners.

This plat was prepared for the purpose of obtaining right-of-way only and is not intended to be boundary survey of the property shown.

Bearings are based on DEED 4804-827

TOTAL AREA: 280,908 SQ. FT. = 6.449 ACRES  
 AREA TAKEN: 53,489 SQ. FT. = 1.228 ACRES  
 AREA REMAINING: 227,419 SQ. FT. = 5.221 ACRES  
 DRAINAGE EASEMENT: 290 SQ. FT.  
 CONSTRUCTION EASEMENT: 18,090 SQ. FT.  
 UTILITY EASEMENT: 160 SQ. FT.

Deed Reference 1193-364

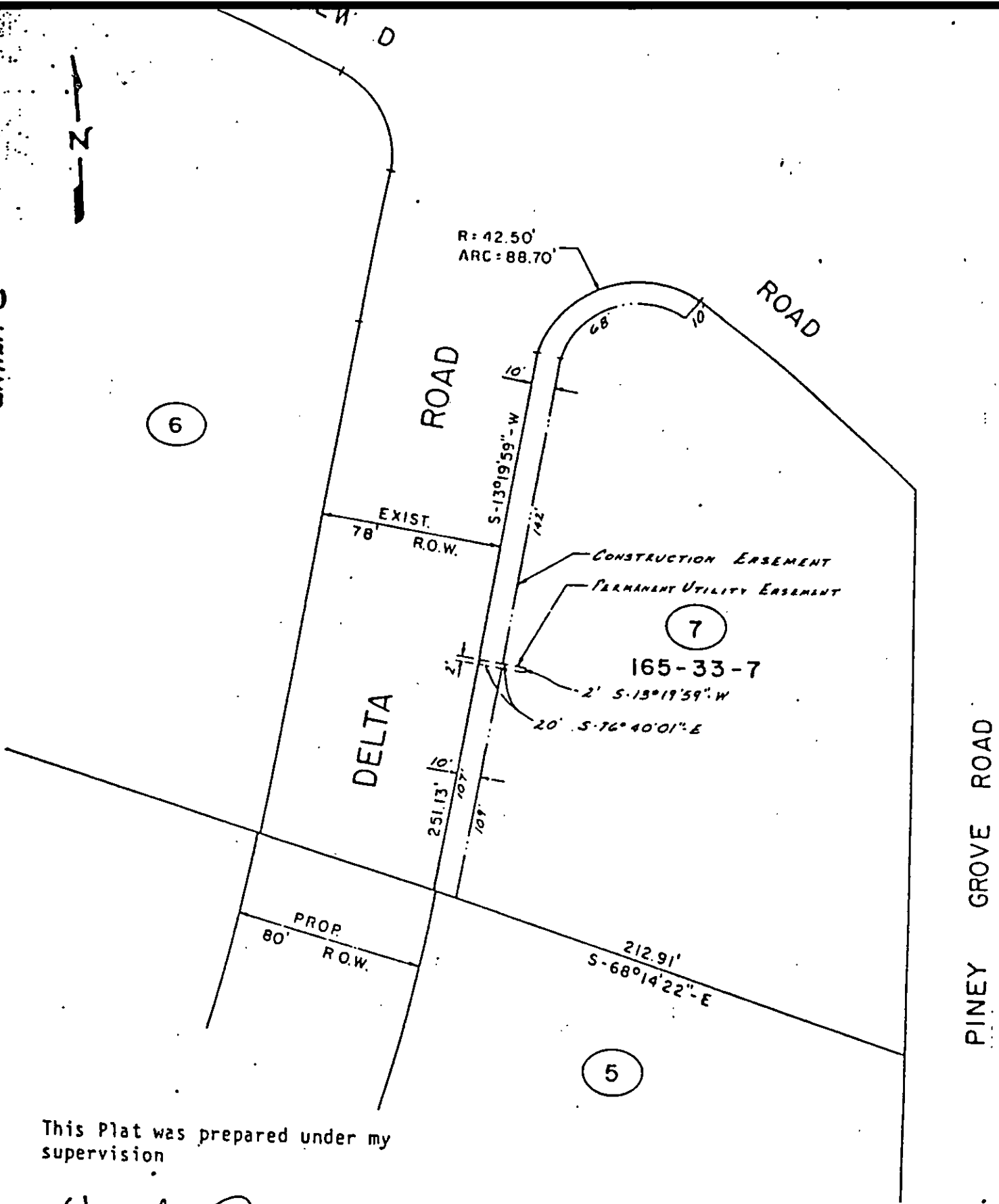
*MR  
BJR  
A  
SM*

EXHIBIT 'B'

CHARLOTTE ENGINEERING DEPARTMENT	
REVISIONS	210 20 92-01-155
DELTA ROAD EXTENSION PHASE I	
PROPERTY OF LEON BRADLEY JORDAN, SR.	
DRAWN BY: PRC	5011
ENG'D BY: RJS	5
DATE: APRIL 1992	07
SURVEY SUPERVISOR:	0



EXHIBIT C



This Plat was prepared under my supervision

*Wayne G. Orlis* L-1909  
N.C. Registered Surveyor Reg. No.

NOTE: Iron pins shown were located by actual survey.  $\triangle$  denotes iron pins that are actual property corners.

This plat was prepared for the purpose of obtaining easements only and is not intended to be boundary survey of the property shown.

Bearings are based on DEED 4804-827

UTILITY EASEMENT: 40 SQ. FT.  
CONSTRUCTION EASEMENT: 3,283 SQ. FT.



EXHIBIT C

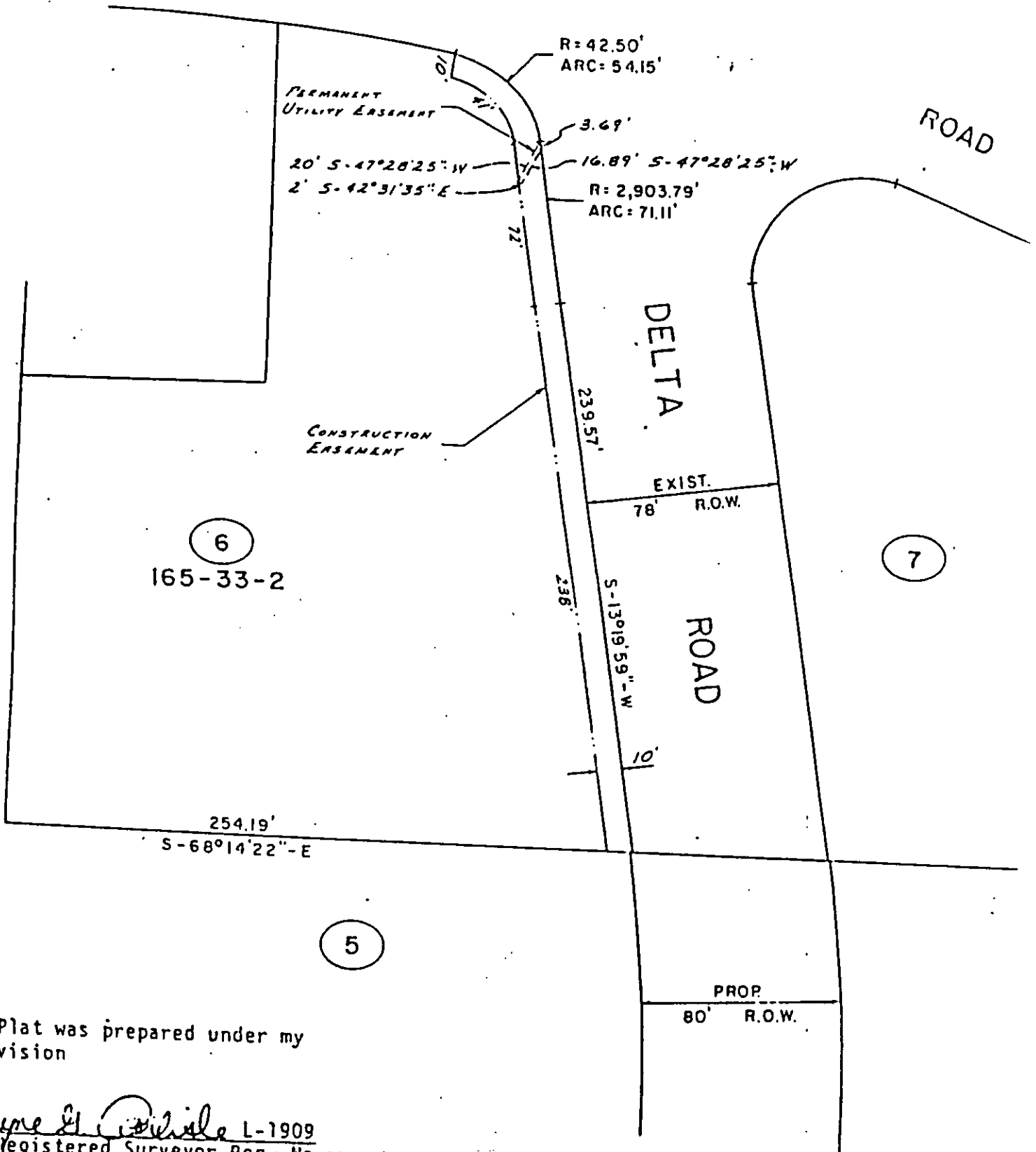
*mt*  
*BR*  
*A 69*  
*18/86*

Deed Reference 643-295

<b>CHARLOTTE</b> ENGINEERING DEPARTMENT		JOB NO 512-81-155
DELTA ROAD EXTENSION PHASE I		FILE NO
PROPERTY OF LEON BRADLEY JORDAN		SHEET 7
REVISIONS  DRAWN BY <i>PRC</i> CHECKED BY <i>2/23</i> SURVEY SUPERVISOR <i>W. G. Orlis</i>	DATE <b>APRIL, 1986</b> SCALE 1" = 60'	OF 21

IDLEWILD

ROAD



6  
165-33-2

7

5

This Plat was prepared under my supervision

*Wayne H. Coville* L-1909  
N.C. Registered Surveyor Reg. No.

NOTE: Iron pins shown • were located by actual survey.  $\triangle$  denotes iron pins that are actual property corners.

This plat was prepared for the purpose of obtaining easements only and is not intended to be boundary survey of the property shown.

Bearings are based on DEED 4804-827


CONSTRUCTION EASEMENT: 3,543 SQ. FT.  
UTILITY EASEMENT: 37 SQ. FT.

EXHIBIT 'D'



*mR*  
*BA*  
*Le H*  
*W*

Deed Reference 643-295

 <b>CHARLOTTE</b> ENGINEERING DEPARTMENT		JOB NO 312-81-155
REVISIONS	<b>DELTA ROAD EXTENSION PHASE I</b>	FILE NO
DRAWN BY <i>PRC</i> CHECKED BY <i>WJS</i>	<b>PROPERTY OF LEON BRADLEY JORDAN</b>	SHEET <b>6</b>
APPROVED BY _____ SURVEY SUPERVISOR		DATE <b>APR 11 1966</b>