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Onslow County, NC
Rebecca L. Pollard Reg. of Deeds

BK 4621 PG 977-984

Drawn by Sam Weather
Mail after recording to: Hugo A Pearce, III 6805 Fairview
Road, Charlotte NC 28210

STATE OF NORTH CAROLINA
COUNTY OF WAKE

**DECLARATION OF
CROSS ACCESS EASEMENT**

THIS DECLARATION OF CROSS ACCESS EASEMENT AGREEMENT ("Easement") is made and entered into as of this 23rd day of May, 2017, by Bogue & Land, LLC a North Carolina LLC and My Hospitality, LLC, a North Carolina LLC (hereinafter the "Declarants").

WITNESSETH:

WHEREAS, Bogue & Land, LLC is the owner of that certain tract of land described in Exhibit "A" attached hereto and incorporated herein by reference, (hereinafter the "**Bogue Tract**") and **My Hospitality, LLC** is the owner of that certain tract of land described as Lot 3, as shown on the plat entitled "Hampton Plaza, Final Plat", recorded in Map Book 25 Page 129, Slide D-317, as revised on the plat recorded in Map Book 25 Page 208, Slide D-396, Onslow County Register of Deeds (hereinafter the "**Hotel Tract**"):

WHEREAS, the Declarants desire to establish a cross access easement to provide access between Western Boulevard (NCSR 1470) and Commerce Road (NCSR 1705), Jacksonville, NC, over and upon the Bogue Tract and the Hotel Tract: and

NOW, THEREFORE, in consideration of the terms and conditions of this Easement, and for other good and valuable consideration and the mutual covenants and promises contained herein, Declarants hereby agree that the Bogue Tract and the Hotel Tract shall be owned, sold, conveyed, transferred, occupied and used subject to the following:

1. Easement. Declarants hereby establish and convey to one another, their tenants, employees, agents, invitees, licensees, successors, heirs and assigns a perpetual nonexclusive easement over and upon the area described on Exhibit B attached hereto (hereinafter the "Easement Area") for purposes of vehicular ingress, egress and regress over and upon the Easement Area.

TO HAVE AND TO HOLD, the right, privilege and easement for the purposes stated herein, in and upon the aforesaid tracts of land unto the parties hereto, their heirs, assigns and successors in interest, forever. It being agreed that the easement hereby granted shall burden and shall be appurtenant to and run with title to land.

2. Relocation of Driveway Improvements. Declarants, or their successors, may agree to relocate the Easement and corresponding Driveway Improvements, by recording an amendment to this

Easement and a plat of survey in the Onslow County Registry showing the revised boundary of the new location of the Easement and Driveway Improvements.

3. Parking. The rights granted hereunder shall not in any manner give Owners of the Hotel Tract, its agents, members, tenants, employees, invitees, licensees, contractors, heirs, successors, and assigns any right to park vehicles upon the Bogue Tract, or vice versa.

4. General Public. Nothing herein is intended to nor shall be construed to create any rights whatsoever for the benefit of the general public in or over the Easement Area.

5. Non-Obstruction. The easements herein granted are intended to, and shall be construed to, permit free and unobstructed usage of the Easement created herein. Accordingly, no charges may be imposed for such use and no barriers or other obstructions may be placed (except as expressly provided herein), and no temporary or permanent parking shall be permitted, anywhere within the Easement Area.

6. Reservation of Rights. Declarants (for themselves and their successors and assigns) hereby reserve any and all rights as owners to the subsurface beneath, and the airspace over, their respective tracts, including the right to use the same, so long as the use is not inconsistent with and does not impede the free and unobstructed use of the Easement Area as permitted by this Easement.

7. Condemnation. If all or any portion of the Easement Area is taken by or under threat of condemnation by any duly constituted governmental authority, the full amount of the condemnation award or payment attributable to the value of the land so taken, including specifically but without limitation that portion of the award or payment attributable to the portion of the Easement Area affected shall be payable to the owner of the tract upon which it is located.

8. Disclaimer of Liability and Indemnity. The easement granted herein is hereby made subject to the condition that each Declarant, and their successors in title, shall not be liable to the other, or their employees, members, agents, patrons or visitors, or to any other person whomsoever, for any injury to person or damage to property on or about the Easement Area, or caused by the Driveway Improvements, excluding any injury to persons or damage to property to the extent caused by the negligence or misconduct of a Declarant, or its employees, members, agents, patrons or visitors.

9. Liens. No term or provision in this Easement shall be deemed or construed in any way as constituting the consent or request of Declarants, express or implied, by inference or otherwise, to any person for the performance of any labor or the furnishing of any materials to the Easement Area, or any part thereof, or as giving Declarants or their successors in title any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to any mechanics', laborers' or materialmen's liens or other liens against the Easement.

10. Miscellaneous.

- (a) Law Governing. This Easement shall be governed by and construed in accordance with the laws of the State of North Carolina. All obligations of the parties hereunder are performable in Onslow County, North Carolina.
- (b) Attorney's Fees. If any litigation is initiated between the owner of the Bogue Tract and the owner of the Hotel Tract relating to this Easement or the subject matter hereof, the party prevailing in such litigation shall be entitled to recover, in addition to all damages allowed by law and other relief, all court costs and reasonable attorney's fees incurred in connection therewith.
- (c) Successors, Heirs and Assigns. This Easement shall be binding upon and shall inure to the benefit of Declarants, and their respective legal representatives, successors, heirs and assigns.

- (d) Entire Agreement: Amendment or Termination: This Easement contains the entire agreement relating to the subject matter hereof and all prior agreements relative hereto which are not contained herein are terminated. This Easement may not be amended orally but only by setting same forth in a document duly executed by the then owners of the tracts and duly recorded in the Office of the Onslow County, North Carolina Register of Deeds. Any alleged amendment or termination which is not so documented and recorded shall not be effective.
- (e) Severability. This Easement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Easement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain between the parties as expressed herein, the remainder of this Easement and the application of such provision to other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.
- (f) Compliance Certificate. Upon the written request of any party hereto or the holder of any first lien deed of trust or first lien mortgage on any tract, Declarants or their successors in title shall execute, have acknowledged and deliver a certificate stating whether, to the knowledge of the signatory party, the requesting party is otherwise in compliance with this Easement. Such statement shall act as a waiver of any claim by the person furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrance or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the person furnishing it to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such person to disclose correct and/or relevant information.
- (g) Waiver. This Easement may not be waived orally or impliedly, but only by written document executed by the party against which such waiver is sought. Neither the failure of a party to complain of any violation of this Easement, regardless of how long such failure continues, nor the failure of a party to invoke (or the election by a party not to invoke) any right, remedy or recourse for a violation hereof, shall extinguish, waive or in any way diminish the rights, remedies and recourses of the party with respect to such violation. No waiver by a party of any provision of this Easement shall be deemed to be a waiver of any other provision hereof.
- (h) Reconfiguration of the Tracts. This Easement shall not be terminated, waived or otherwise altered in the event that either tract or both are recombined, subdivided or otherwise reconfigured.
- (i) Liability: Subsequent Sale. Upon the divestiture (voluntarily or involuntarily) of the legal and beneficial title of an owner hereunder to its tract of land, the said owner shall thereupon be relieved of all liability under this Easement which accrues after the date of divestiture.
- (j) Equitable Relief. If Owners of either tract breach or threaten to breach this Easement, the non-breaching party may suffer irreparable harm as a consequence thereof which may be difficult to quantify. Accordingly, in the event of any breach or threatened breach of this Easement, the non-breaching party shall be entitled to seek and obtain, in addition to such other legal or equitable relief injunction against such breach or threatened breach.

- (k) Due Execution: Authority: Binding Effect. The undersigned hereby warrants and represents that (i) it has full right, power and authority to execute and deliver this Easement on behalf of the party indicated, (ii) that this Easement has been duly executed and delivered on behalf of the party indicated and (iii) this Easement constitutes the valid and binding agreement of the party so indicated.
- (l) No Merger. If the Bogue Tract and the Hotel Tract are owned at any time by the same entity, the easements provided herein shall not merge.

(signatures appear on succeeding pages)

IN WITNESS WHEREOF, Declarants have executed this Agreement as of the day and year first above written.

DECLARANTS:

Bogue & Land, LLC

Madhusudan L. Surti (SEAL)
Madhusudan L. Surti

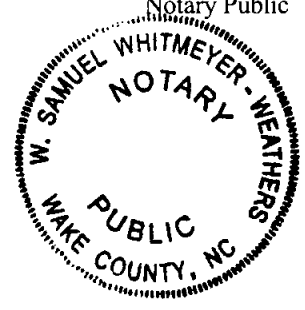
Hansa M. Surti (SEAL)
Hansa Surti

STATE OF NORTH CAROLINA, COUNTY OF Wake
I, W. Samuel Whitmeyer-Weathers, a Notary Public of said County and State aforesaid, certify that **Madhusudan L. Surti** and **Hansa Surti**, being all of the Members of **Bogue & Land, LLC**, personally came before me this day and acknowledged the voluntary execution of the foregoing instrument on behalf of the LLC.

WITNESS my hand and official seal, this the 23 day of May, 2017.

[Signature]
Notary Public

My Commission expires: 11/19/19



DECLARANTS:

My Hospitality, LLC

Madhusudan L. Surti (SEAL)
Madhusudan L. Surti

Hansa M. Surti (SEAL)
Hansa Surti

STATE OF NORTH CAROLINA, COUNTY OF Wake
I, W. Samuel Whitmeyer-Weathers, a Notary Public of said County and State aforesaid, certify that **Madhusudan L. Surti** and **Hansa Surti**, being all of the Members of **My Hospitality, LLC**, personally came before me this day and acknowledged the voluntary execution of the foregoing instrument on behalf of the LLC.

WITNESS my hand and official seal, this the 23rd day of May, 2017.

W. Samuel Whitmeyer-Weathers
Notary Public

My Commission expires: 11/19/19

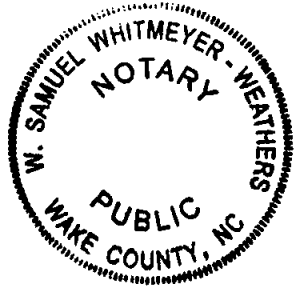


Exhibit "A"

Beginning at an existing iron stake in the Northeastern right of way line of Western Boulevard (NCSR 1470), Jacksonville, Onslow County, NC, said beginning point being located N 39 deg. 42 min. 26 sec. W 1474.45 feet from NCGS "College"; running thence N 48 deg. 03 min. 05 sec. W 100.24 feet to an existing iron stake, a common corner with Lot 2 as shown on the map recorded in Map Book 34 page 14 Onslow County Registry; running thence N 47 deg. 56 min. 50 sec. E 249.85 feet to an existing iron stake, a common corner with Lot 3 as shown on the map recorded in Map Book 25 Page 208 Onslow County Registry; running thence along a common line with the said Lot 3, S 48 deg. 09 min. 58 sec E 100.24 feet to an existing iron stake; running thence S 47 deg. 56 min. 36 sec. W 250.05 feet to an existing iron stake in the northeastern right of way line of Western Boulevard, the point and place of beginning, all as shown on the survey prepared 01/02/2003 by Lanier Surveying Company, and entitled "Physical Survey For Madhusudan L. Surti".

Exhibit "B"

24 FOOT CROSS ACCESS EASEMENT

The twenty-four foot ingress-egress easement runs from the northeastern right of way of Western Boulevard (NCSR 1470), Jacksonville, Onslow County, NC, through the Bogue & Land, LLC Property Tract as described in Deed Book 3897 Page 145 and the My Hospitality, LLC Tract as described in Deed Book 3897 Page 144, to the Western right of way line of Commerce Road (NCSR 1705), and is centered on a centerline more particularly described as follows:

Being a twenty-four foot wide ingress-egress easement centered on a centerline having a beginning point which is located S 48 deg. 03 min. 05 sec E 50.64 feet along the northeastern right of way line of Western Boulevard (NCSR 1470), Jacksonville, NC, from the southeastern-most corner of Lot 2, as shown on the map recorded in Map Book 34 Page 14; running thence from said beginning point along the centerline of the ingress-egress easement, the following courses and distances:

Running thence N 27 deg. 51 min. 22 sec. E 56.36 feet to a point; running thence N 47 deg. 56 min. 50 sec. E 194.95 feet to a point in the common line of Bogue & Land, LLC and My Hospitality, LLC; running thence N 47 deg. 56 min. 50 sec. E 33.75 feet to a point; running thence S 48 deg. 02 min. 51 sec. E 407.90 feet to a point; running thence S 85 deg. 20 min. 46 sec. E 29.30 feet to a point in the western right of way line of Commerce Road, Jacksonville, NC, said right of way being the terminus of the ingress-egress easement and being located N 02 deg. 21 min. 09 sec. E 66.42 feet from the southeastern corner of the My Hospitality Tract, all as shown on the survey prepared 01/02/2003 by Lanier Surveying Company, and entitled "Physical Survey For Madhusudan L. Surti".