

North Carolina, Henderson County The foregoing certificate(s) of GREGORY D. HUTCHINS, JOSEPH F. POUTRE JR., DORIAN K CALVILLO CAROLE S. BREZEN, ROBERT G. DEBBA, TONYA THKIFT
~~Notary Public~~ (Notaries Public) are certified to be correct, this
instrument presented for registration and recorded in this office
this 11 day of August, 2004
at 12:18pm in book 1193, page 699
Nedra W. Miles Willie Blair
Register of Deeds (Assistant Deputy)

Drafted by: Charles R. Young, Sr., Attorney at Law and Gregory D. Hutchins, Esq.
Return to: Charles R. Young, Sr., Attorney at Law, P.O. Drawer 2428, Hickory, NC 28603

STATE OF NORTH CAROLINA

ROAD RELOCATION, RIGHT OF
WAY, UTILITIES EASEMENT,
TEMPORARY CONSTRUCTION
EASEMENT, AND ROAD
MAINTENANCE AGREEMENT

COUNTY OF HENDERSON

THIS ROAD RELOCATION, RIGHT OF WAY, UTILITIES EASEMENT, TEMPORARY CONSTRUCTION EASEMENT, AND ROAD MAINTENANCE AGREEMENT (this "Agreement"), is made this the ~~3RD~~ day of AUGUST 2004, by and between MARIE-JEANNE E. CADGENE and NARCISSE SUZANNE CADGENE (collectively the "Cadgenes"), FTB PROPERTIES, LLC, a North Carolina limited liability company ("FTB") (the Cadgenes and FTB are collectively referred to herein as the "Grantors"), MARY LOIS PRYOR ("Pryor"), ARNOLD DARRELL MILES and wife, HATTIE CARLAND MILES (collectively the "Miles"), and TILTIN' B, LLC, a North Carolina limited liability company ("Tiltin' B"). The Miles, Pryor and Tiltin' B are collectively referred to herein as the "Adjacent Landowners".

WHEREAS, FTB is the owner of that certain tract of land containing twenty (20) acres as shown on that certain Plat entitled "Plat of Survey for Pepsi-Cola Bottling Company" recorded at Slide 4958 of the Henderson County Registry (the "Plat"), being the same property described in that certain Deed of even date herewith from the Cadgenes to FTB recorded in the Henderson County Registry (the "FTB Tract");

WHEREAS, the Cadgenes are the owners of that certain tract of land lying south of North Carolina Highway 280 and east of Fanning Field Road (SR 1354) containing forty-nine and 45/100ths (49.45) acres, more or less, as more particularly shown on that certain Plat entitled "Plat of Survey for Marie-Jeanne Elizabeth Cadgene and Narcisse Suzanne Cadgene" recorded at Slide 3134, Henderson County Registry ("Cadgene Plat"), less and excepting the FTB Tract described above (the "Cadgene Tract");

WHEREAS, Pryor is the owner of that certain parcel containing twenty-two and 85/100ths (22.85) acres, more or less, as described in that certain Deed recorded in Book 364 at page 585, Henderson County Registry, shown as Tract "W" on Exhibit "A" attached hereto ("Pryor Property"); the Miles are the owners of that certain parcel containing fourteen and 96/100ths (14.96) acres, more or less,

as described in that certain Deed recorded in Book 535 at page 117, Henderson County Registry, shown as Tract "X" on Exhibit "A" attached hereto ("Miles Property"); and Tiltin' B is the owner of those certain parcels containing sixty-five and 36/100ths (65.36) acres, more or less, and six and 35/100ths (6.35) acres, more or less, as described in that certain Deed recorded in Book 1011 at page 291, Henderson County Registry, shown as Tracts "Y" and "Z", respectively, on Exhibit "A" attached hereto (collectively the "Tiltin' B Property"); all of the foregoing parcels owned by the Adjacent Landowners are collectively referred to herein as the "Adjacent Parcels";

WHEREAS, there exists a certain paved drive shown on the Plat as "Brown Ridge Road" but being known as "Miles View Drive" which road crosses into, upon and across the FTB Tract (the "Road"), such road, having never been dedicated for public use nor established by express grant has been utilized by the Adjacent Landowners with the express permission of the Cadgenes for ingress and egress to and from the Adjacent Parcels;

WHEREAS, FTB desires to remove, obliterate, and destroy the Road in the development of the FTB Tract while providing for continued access to the Miles Property and Tiltin' B Property from State Road 1354 ("Fanning Field Road," a.k.a. "Gallop Road") over a new road to be constructed by FTB;

WHEREAS, FTB will construct a new paved road to Department of Transportation standards within the "60' New R/W" area shown on the Plat (the "60' Right of Way") for the mutual use and benefit of the FTB Tract, Cadgene Tract, the Tiltin' B Property, and the Miles Property;

WHEREAS, with the consent of the Cadgenes, and the grant of a temporary construction easement provided herein, FTB will also construct a new paved road extending from the eastern terminus of the 60' Right of Way in an easterly direction to the western boundary of the Tiltin' B Property (the "Cadgene Right of Way") for the mutual use and benefit of the Tiltin' B Property and the Miles Property;

WHEREAS, with the consent of the Adjacent Landowners, and the grant of a temporary construction easement provided herein, FTB will also construct a new paved road within a new 20' right of way (the 20' Right of Way") extending from the eastern terminus of the Cadgene Right of Way located in the western boundary line of the Tiltin' B Property and running in a southeasterly direction approximately 275' to the centerline of the existing paved private drive on the Tiltin' B Property which presently serves as the access road for the Tiltin' B Property and the Miles Property;

WHEREAS, the Grantors desire to provide for the placement of utilities within the 60' Right of Way; and

WHEREAS, the Grantors desire to provide for the shared maintenance of the 60' Right of Way;

NOW THEREFORE, in consideration of Ten Dollars (\$10.00), the covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Revocation and Relinquishment of Road Use Rights.

The Grantors hereby revoke the permission granted unto the Adjacent Landowners to utilize the Road for purposes of ingress to and egress from the Adjacent Properties. Upon FTB's completion of the new road within the "60' Right of Way", the "Cadgene Right of Way", and the "20' Right of Way" described in Section 4 of this Agreement, the Adjacent Landowners agree to cease using the Road across the FTB Tract and hereby relinquish, surrender, abandon and waive all rights, if any, to utilize the Road. The Adjacent Landowners hereby further acknowledge that, upon completion of the new road within the

60' Right of Way, the Cadgene Right of Way, and the 20' Right of Way, FTB will remove, obliterate and destroy the Road in the development of the FTB Tract and the Adjacent Landowners hereby consent to the same.

2. Establishment of New Right of Way.

A. 60' Right of Way. The Grantors do hereby grant and convey unto the Miles and Tiltin' B, their respective heirs, successors, and assigns, a permanent, non-exclusive and appurtenant easement for ingress and egress to the Miles Property and the Tiltin' B Property, respectively, through and upon that certain portion of the land of the Grantors, the same being situated in the Mills River Township of Henderson County, North Carolina, more particularly described as follows and hereafter referred to as the "60' Right of Way":

Being a sixty foot (60') right of way and easement, the centerline of which is the northern boundary of the FTB Tract and begins at a #4 rebar located in the eastern margin of State Road 1354 (Fanning Field Road, a.k.a. Gallop Road), said rebar also being located at the northwest corner of the FTB Tract and the southwest corner of the Cadgene Tract, and continuing thence from said beginning point South 84°11'36" East 942.35 feet to a #4 rebar, said rebar being the end of this new 60' right of way, said 60' right of way being shown on that certain plat recorded on Slide 4958 of the Henderson County Registry as the "60' New R/W".

B. Cadgene Right of Way. The Cadgenes further grant and convey unto the Miles and Tiltin' B, their respective heirs, successors, and assigns, a permanent, non-exclusive and appurtenant easement for ingress and egress to the Miles Property and the Tiltin' B Property, respectively, through and upon the southeast portion of the Cadgene Tract, the same being situated in the Mills River Township of Henderson County, North Carolina, more particularly described as follows and hereafter referred to as the "Cadgene Right of Way":

Being a twenty foot (20') right of way and easement, the centerline of which begins at a #4 rebar located at the eastern terminus of the new 60' right-of-way described in Section 2(A) above and shown on that certain plat recorded on Slide 4958 of the Henderson County Registry, and continuing thence from said beginning point South 84°11'36" East approximately 12.00 feet, more or less, to a point in the western boundary line of the Tiltin' B Property described as Tract "Z", herein, said point being the end of this new 20' right-of-way.

C. 20' Right of Way. Tiltin' B hereby grants and conveys unto the Miles, their heirs, successors, and assigns, a permanent, non-exclusive and appurtenant right and easement for ingress and egress through and upon that certain portion of the Tiltin' B Property, the same being situated in the Mills River Township of Henderson County, North Carolina, more particularly described as follows and hereafter referred to as the "20' Right of Way":

Being a twenty foot (20') right of way and easement, the centerline of which begins at a point in the western boundary of the Tiltin' B property described as Tract "Z" herein, said point being the eastern terminus of the new Cadgene Right of Way described in Section 2(B) above, and continuing thence from said beginning point in a southeasterly direction approximately 275.00 feet, more or less, to a point intersecting with the centerline of the existing paved private drive known as "Brown Ridge Road" or "Miles View Drive", and continuing thence with the centerline of said existing paved private drive which provides access to the Miles Property to the eastern boundary of the Tiltin' B Property described as

Tract "Z" herein, and thence continuing across the Tiltin' B Property described as Tract "Y" herein to the western boundary of the Miles Property described as Tract "X" herein. The road as constructed by FTB shall establish and be the agreed upon location of the new road from the western boundary of the Tiltin' B Property to its intersection with the existing paved private drive. The centerline of said new road as constructed by FTB shall be the centerline of that portion of the 20' Right of Way described herein running from the eastern terminus of the Cadgene Right of Way to its intersection with the existing paved private drive.

D. The 60' Right of Way, the Cadgene Right of Way, and the 20' Right of Way are herein referred to collectively as the "New Rights of Way".

3. Non-Dedication.

The parties hereto acknowledge and agree that the creation and grant of any and all easements and rights of way in this Agreement shall not be construed as a dedication or offer of dedication of the respective easements and rights of way to the public for public use.

4. Construction of New Road and Temporary Construction Easement.

A. Construction of New Road. FTB will construct a new paved road to Department of Transportation standards within the 60' Right of Way for the mutual use and benefit of the FTB Tract, Cadgene Tract, the Tiltin' B Property, and the Miles Property. FTB shall also construct a new paved road within the Cadgene Right of Way and within that portion of the 20' Right of Way beginning at the eastern terminus of the Cadgene Right of Way and continuing approximately 275.00 feet, more or less, to the existing paved private drive known as "Brown Ridge Road" or "Miles View Road" for the mutual use and benefit of the Tiltin' B Property and the Miles Property. FTB shall be solely responsible for and shall pay without contribution from the Cadgenes or the Adjacent Landowners for the design, engineering, permits, approvals, grading, construction, and paving of the new road within the New Rights of Way. FTB agrees to promptly pay for all work and materials utilized in the construction of the new road and the removal of the existing Road and at all times to keep the Cadgene Tract, Miles Property, Tiltin' B Property, and the Pryor Property free from all liens, claims or encumbrances with respect to the construction and development of the new road. FTB shall indemnify, defend and hold harmless the Cadgenes and the Adjacent Landowners from and against all such liens, claims and encumbrances, including the payment of reasonable attorneys fees and court costs incurred by the Cadgenes or Adjacent Landowners.

B. Temporary Construction Easement. The Cadgenes and the Adjacent Landowners acknowledge and understand that the construction of the new road within the New Rights of Way may require extensive grading within and adjacent to the easement areas described herein and each hereby consents to the same. The Cadgenes and the Adjacent Landowners, each solely with respect to the property owned by such party, hereby grants to FTB a temporary construction easement for the construction of the new paved road within the New Rights of Way. This temporary construction easement encompasses a reasonable area adjacent to the New Rights of Way to the extent needed to access the New Rights of Way during construction, and to enable FTB to grade, slope, contour and seed the land disturbed by FTB outside of the New Rights of Way. This temporary construction easement shall automatically terminate one hundred eighty (180) days after the date of recordation of this Agreement without further action by the parties.

5. Road Maintenance Agreement.

A. Maintenance of Cadgene Right of Way and 20' Right of Way. To the extent not

maintained by city, county, or state authorities, Tiltin' B and the Miles, their heirs, successors, and assigns, shall share equally in the costs associated with and be jointly and severally responsible for the repair, maintenance, and replacement of the roads within the Cadgene Right of Way and the 20' Right of Way and shall keep the same in a state of good repair passable in all weather conditions. The parties acknowledge and agree that the Grantors shall have no obligation for the costs of repair, maintenance, and replacement of the road and related improvements lying within the Cadgene Right of Way and the 20' Right of Way.

B. Maintenance of 60' Right of Way. (1) FTB, its successors and assigns, shall be solely responsible for and pay all costs associated with repair, maintenance, and replacement of (a) the road within the 60' Right of Way and shall keep the same in a state of good repair passable in all weather conditions, and (b) of the curbs, sidewalks, ditches, culverts, and stormwater systems constructed within the 60' Right of Way. FTB further covenants and agrees that it and its successors and assigns will maintain the road and all related improvements within the 60' Right of Way to Department of Transportation standards and as required by law. The maintenance of the 60' Right of Way solely by FTB as provided in this Section 5(B)(1) shall commence upon completion of construction of the road within the 60' Right of Way and continue until the first to occur of the events specified in Section 5(B)(2) or Section 5(B)(3).

(2) At such time as the Cadgenes, or their heirs, successors and assigns, commence construction of a building or other permanent structure on the Cadgene Tract, the responsibility and costs of maintaining, repairing and replacing the road, curbs, sidewalks, ditches, culverts, and stormwater systems within the 60' Right of Way shall be shared equally between the owners of the Cadgene Tract and the FTB Tract. If there is more than one owner of the Cadgene Tract, then the owners thereof shall apportion the equal share of such costs allocated against the Cadgene Tract in proportion to the acreage owned by each owner within the Cadgene Tract. Similarly, if there is more than one owner of the FTB Tract, the owners thereof shall apportion the equal share of such costs allocated against the FTB Tract in proportion to the acreage owned by each owner within the FTB Tract.

(3) The road maintenance provisions for the 60' Right of Way specified in this Section 5(B) shall continue until such time as said road or any portion thereof within the 60' Right of Way are maintained by a governmental body, provided that any portion of said road not maintained by a governmental body shall remain subject to this Agreement and be maintained by the owners of the FTB Tract and the Cadgene Tract. The road within the 60' Right of Way may be dedicated to the public only by a unanimous vote of the Road Committee (defined below) taken at a special meeting of the Road Committee called by written notice from any Road Committee member specifically stating that the purpose of the meeting is vote on dedicating the road to the public.

(4) Each owner of property within the FTB Tract and each owner of property within the Cadgene Tract shall each select one designee to be a member of a separate Road Committee for the 60' Right of Way. The Road Committee shall reasonably determine the need for maintenance, replacement, and repair of the road and related improvements within the 60' Right of Way, are hereby authorized to contract for such work, and shall have the right to assess the costs thereof to the owners of the FTB Tract and the Cadgene Tract as provided herein. The FTB Tract shall have in the aggregate voting rights equal to 50% of the aggregate voting rights on the Road Committee. The Cadgene Tract shall have in the aggregate voting rights equal to 50% of the aggregate voting rights on the Road Committee. If there is more than one owner of the Cadgene Tract or the FTB Tract, then each owner's designated member of the Road Committee shall have voting rights determined by the proportion of such owner's property acreage compared to the total acreage within the FTB Tract or Cadgene Tract of which they are a part. All action of the Road Committee shall be taken in a reasonable manner, in good faith, and by affirmative vote of a majority of all outstanding Road Committee voting rights. The Road Committee shall notify each owner

of property within the Cadgene Tract and the FTB Tract of the assessment required to be paid for road maintenance ("Assessment"). An Assessment shall be paid by the owners within thirty (30) days of the invoice thereof ("Due Date"). If any owner shall fail to pay the Assessment by the Due Date, then upon such work being performed, a lien may be filed in the Henderson County Clerk of Superior Court's Office against the property owner failing to pay such Assessment, and such lien may be foreclosed in the manner provided by the North Carolina General Statutes. If a lien is filed and an action commenced to foreclose it, the defendant in such action shall be liable for the Assessment, reasonable attorneys fees, court costs, a late fee equal to fifteen percent (15%) of the Assessment, and all other damages recoverable in such action. It is further stipulated and agreed that the owners of the Cadgene Tract and the FTB Tract, their heirs, successors or assigns, may enforce this Agreement by injunction and that this shall not be in exclusion of, but in addition to, all other remedies available in law or equity.

6. Cross Conveyance of Utilities Easements.

FTB and the Cadgenes do each hereby give, grant, bargain, and convey unto the other and specifically reserve unto themselves, their heirs, successors and assigns, a permanent, non-exclusive and appurtenant utilities easement for the construction, placement, operation, maintenance, repair, and replacement of utilities services within the 60' Right of Way. FTB and the Cadgenes specifically reserve the right to tap on to such utilities as are constructed within said 60' Right of Way area by the other Grantor. The Grantors agree to provide prior notice of and reasonably cooperate with the other party in the location, construction, operation, maintenance, repair, and replacement of utilities within said 60' Right of Way area. For purposes of this Section 6, "utilities" shall mean all reasonably necessary water, sewer, electrical power, natural gas, cable, fiber optic, and other customary utilities services for an industrial or commercial property.

7. Restriction on Additional Rights of Way Across the FTB Tract.

FTB, for itself and its successors and assigns, agrees that except for the easements and rights of way specifically described in this Agreement, FTB and any subsequent owners of the FTB Tract shall not grant to any person or entity any right of way or easement for ingress, egress and regress over the FTB Tract without the prior written consent of all owners of the Cadgene Tract, which consent by the Cadgene Tract owners may be withheld, delayed or conditioned in the sole and absolute discretion of the Cadgene Tract owners.

8. Binding Effect.

This Agreement and the rights, benefits and burdens as established herein shall be binding upon and inure to the benefit of the parties, their heirs, personal representatives, successors and assigns.

9. Cul-de-sac.

At the eastern end of the 60' Right of Way, FTB agrees to construct a cul-de-sac adjacent to which the Miles and the owners of the Tiltin' B Property may locate their mailboxes.

10. Telephone Line Easement.

Grantors with respect to the 60' Right of Way, the Cadgenes with respect to the Cadgene Right of Way, and Tiltin' B with respect to the 20' Right of Way do each hereby grant and convey unto the Miles and Tiltin' B, their respective heirs, successors, and assigns, a permanent, non-exclusive and appurtenant easement for the placement of an underground (but not an above ground) telephone line within the 60' Right of Way, the Cadgene Right of Way and the 20' Right of Way.

TO HAVE TO HOLD, said rights of way, easements, utilities easements, and road maintenance agreements as specified herein, unto the party to whom granted, its or their heirs, successors and assigns, forever.

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

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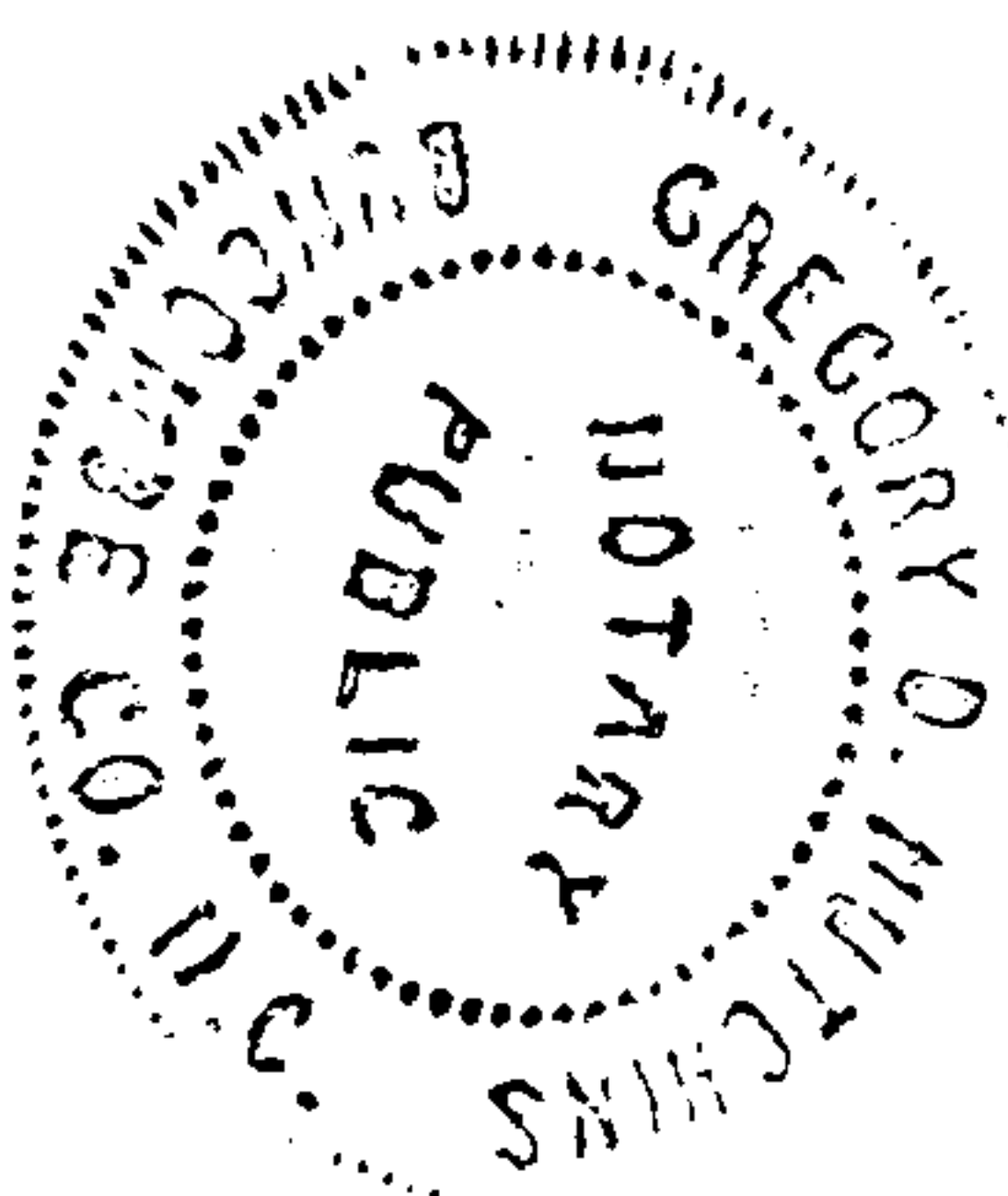
FTB PROPERTIES, LLC

By: [Signature]
_____, Manager

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public in and for said County and State, certify that LEE TEETER, Manager of **FTB PROPERTIES, LLC** personally appeared before me this day and acknowledged that by authority duly given and as the act of the company, the foregoing instrument was signed and duly executed in its name.

WITNESS my hand and notarial seal this 3rd day of AUGUST, 2004.



Gregory D. Hutchins
Notary Public
My Commission Expires: 3/3/08

CADGENES:

 Marie-Jeanne Elizabeth Cadgene (SEAL)

Narcisse Suzanne Cadgene
 Narcisse Suzanne Cadgene (SEAL)

STATE OF _____
 COUNTY OF _____

I, a Notary Public in and for said County and State, do hereby certify that **MARIE-JEANNE ELIZABETH CADGENE** personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

WITNESS my hand and notarial seal this ____ day of _____, 2004.

 Notary Public
 My Commission Expires: _____

STATE OF new York
 COUNTY OF Greene

I, a Notary Public in and for said County and State, do hereby certify that **NARCISSE SUZANNE CADGENE** personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

WITNESS my hand and notarial seal this 4 day of August, 2004.

Joseph F. Poutre, Jr.
 Notary Public
 My Commission Expires: 08/02/2005

JOSEPH F. POUTRE, JR.
 Notary Public in the State of New York
 Qualified in Greene County
 Commission Expires: 08/02/2005

CADGENES:

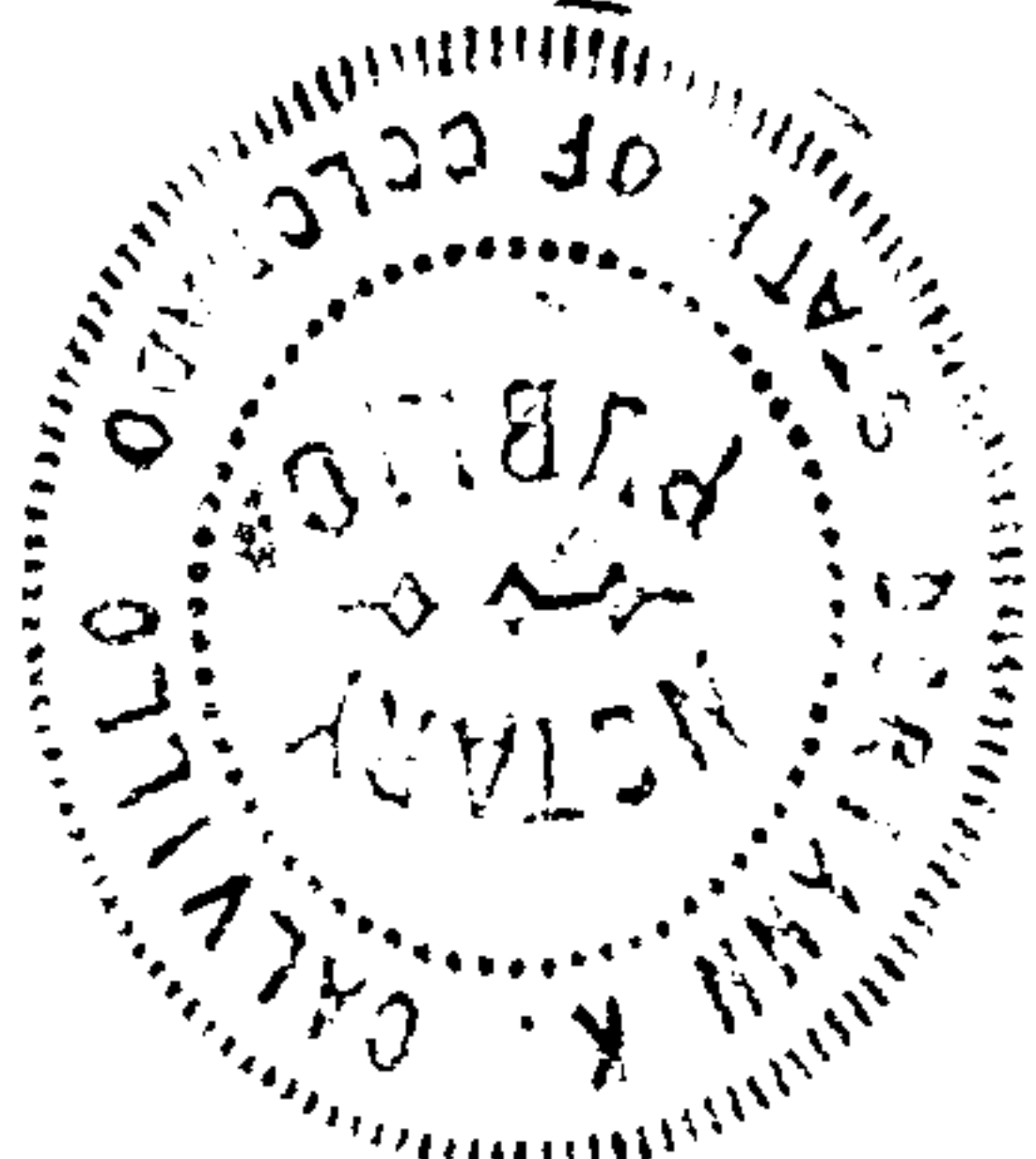
Marie Jeanne E. Cadgene (SEAL)
Marie-Jeanne E Cadgene

_____(SEAL)
Narcisse Suzanne Cadgene

STATE OF Colorado
COUNTY OF San Miguel

I, a Notary Public in and for said County and State, do hereby certify that MARIE-JEANNE E. CADGENE personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

WITNESS my hand and notarial seal this 5th day of August, 2004.



Dennis K. Calvillo
Notary Public
My Commission Expires: 08/09/07

STATE OF _____
COUNTY OF _____

I, a Notary Public in and for said County and State, do hereby certify that NARCISSE SUZANNE CADGENE personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

WITNESS my hand and notarial seal this ____ day of _____, 2004.

Notary Public
My Commission Expires: _____

TILTIN' B, LLC

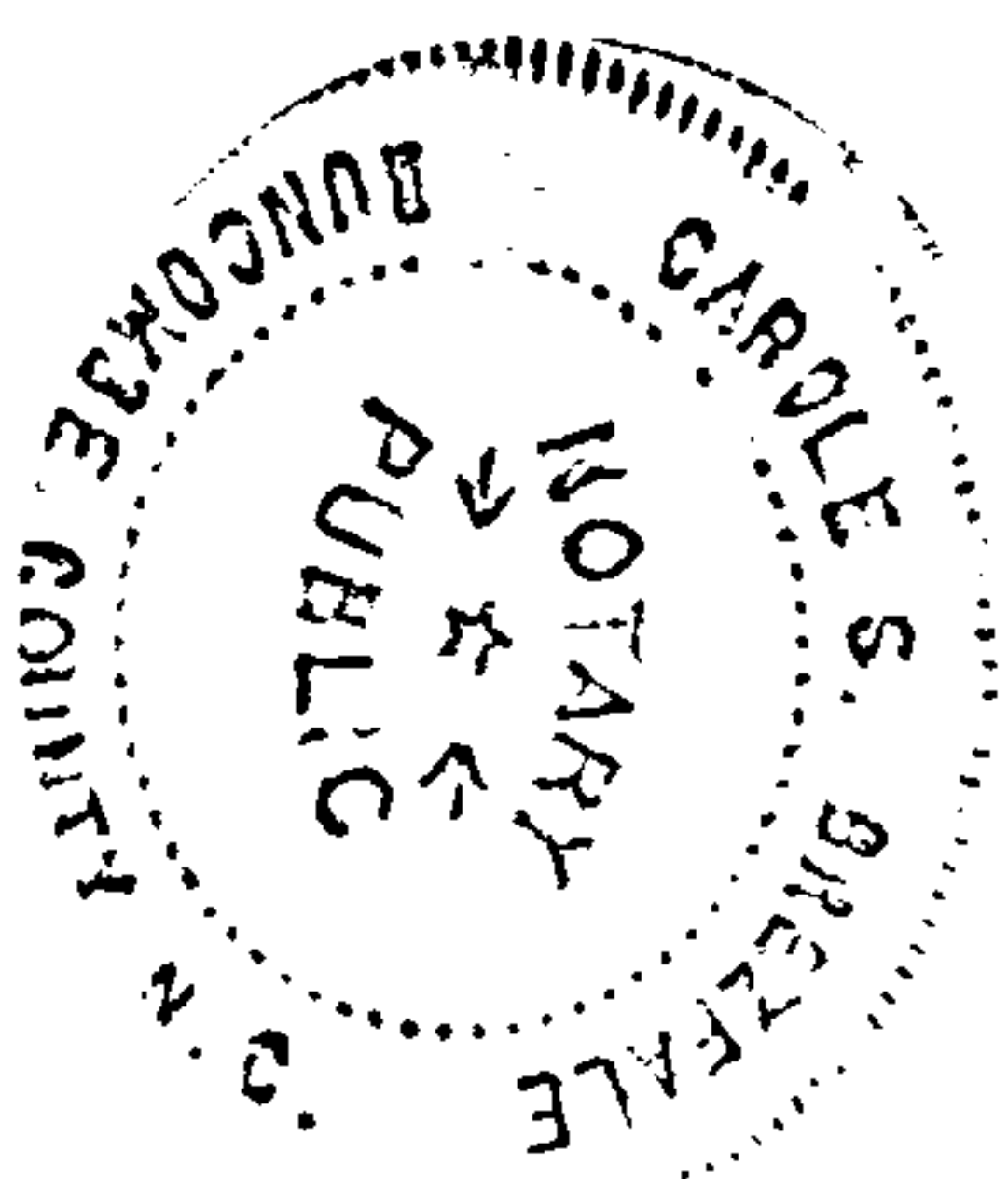
Elbert S. Brown
By: _____

_____, Manager

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

I, a Notary Public in and for said County and State, certify that Elbert S. Brown, Manager of TILTIN' B, LLC personally appeared before me this day and acknowledged that by authority duly given and as the act of the company, the foregoing instrument was signed and duly executed in its name.

WITNESS my hand and notarial seal this 9th day of August, 2004.

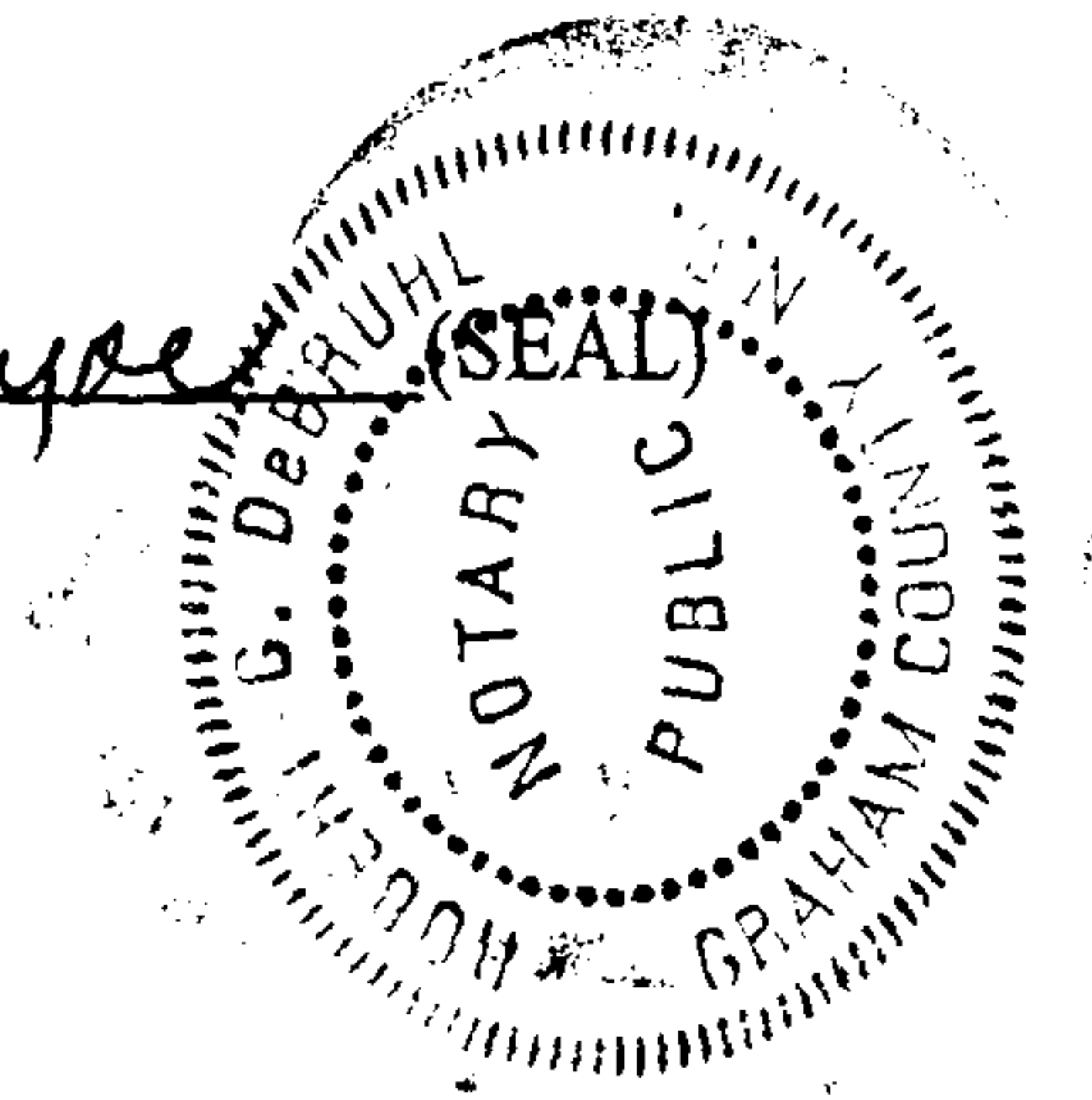


Charles S. Brezeale
Notary Public

My Commission Expires: May 12, 2005

PRYOR:

Mary Lois Pryor
Mary Lois Pryor



STATE OF NORTH CAROLINA
COUNTY OF Graham

I, a Notary Public in and for said County and State, do hereby certify that **MARY LOIS PRYOR** personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

WITNESS my hand and notarial seal this 6th day of August, 2004.

Robert G. Bull
Notary Public
My Commission Expires: 2/15/2009

MILES:

Arnold Darrell Miles (SEAL)
Arnold Darrell Miles

Hattie Carland Miles
Hattie Carland Miles

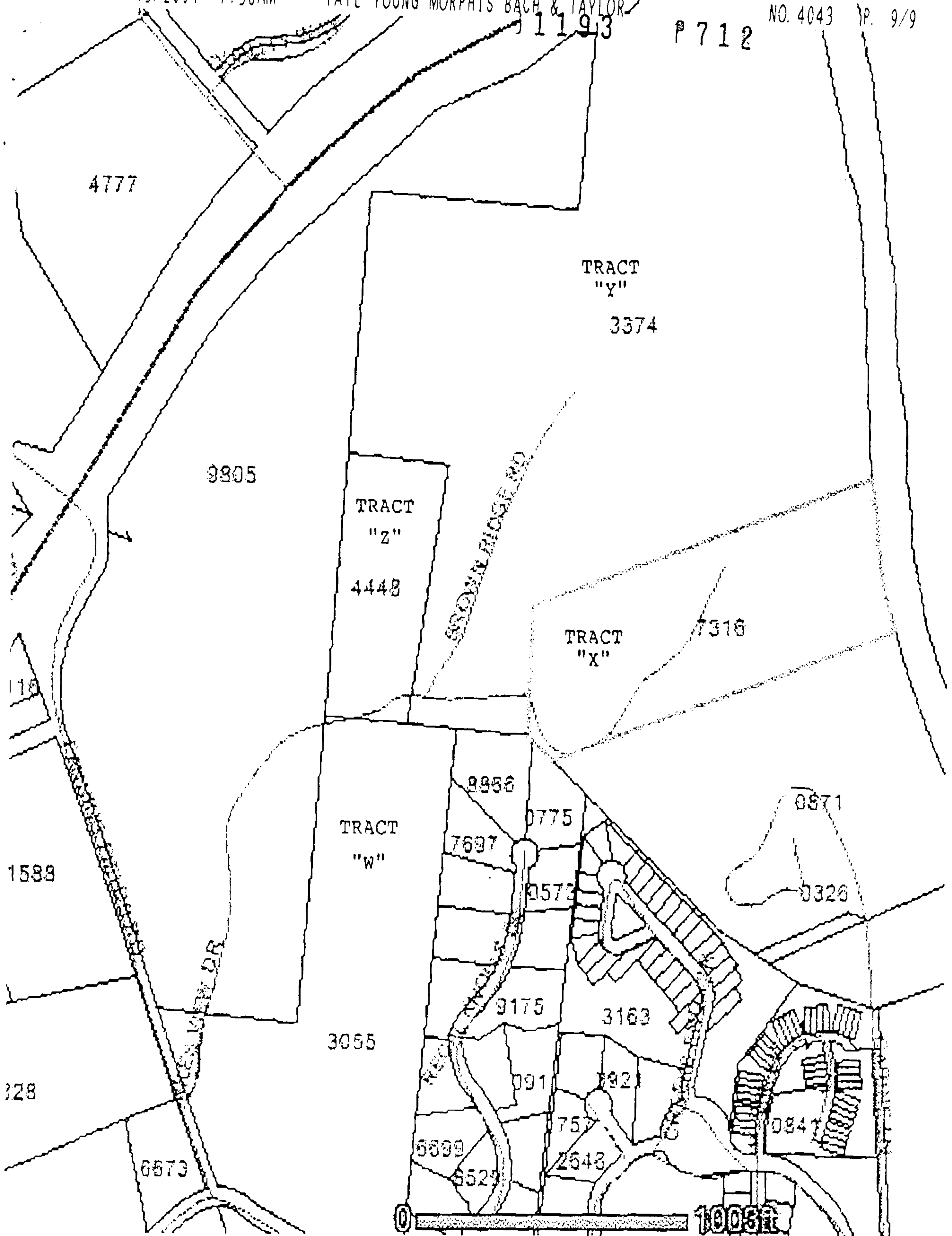


STATE OF NORTH CAROLINA
COUNTY OF Henderson

I, a Notary Public in and for said County and State, do hereby certify that **ARNOLD DARRELL MILES** and wife, **HATTIE CARLAND MILES** personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes expressed therein.

WITNESS my hand and notarial seal this 3rd day of August, 2004.

Yonea Thift
Notary Public
My Commission Expires: 1-26-2005



This map is not a Certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.

EXHIBIT
A