

DECLARATION OF EASEMENT

THIS DECLARATION OF EASEMENT (the "Agreement") is made as of this 20th day of March, 2001 by DUKE-WEEKS REALTY LIMITED PARTNERSHIP, a North Carolina limited partnership ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of that certain parcel of real property located in Wake County, North Carolina, more particularly described on Exhibit A, attached hereto and made a part hereof, and referred to herein as "Lot 1"; and

WHEREAS, Declarant is the owner of that certain parcel of real property located in Wake County, North Carolina (hereinafter "Lot 2"), more particularly described on Exhibit B, attached hereto and made a part hereof";

WHEREAS, Declarant is the owner of that certain parcel of real property located in Wake County, North Carolina (hereinafter "Lot 3"), more particularly described on Exhibit C, attached hereto and made a part hereof"; Lots 1, 2, and 3 are referred to herein collectively as the "Lots"; and

WHEREAS, Declarant desires to declare and establish for the benefit of each Lot certain rights of access as provided herein.

NOW, THEREFORE, for and in consideration of \$10.00 cash in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, its is hereby declared and established as follows:

1. Cross Access Easement No. 1. Declarant hereby declares and establishes a nonexclusive and perpetual easement and right of access over and upon Lots 1 and 2 in Cross Access Easement No. 1 for ingress, egress, and regress to and from Civic Boulevard and each Lot for the benefit of Lots 1 and 2, the present and future owners of Lot 1 and 2 and their respective tenants, employees, agents, invitees, licensees, successors, heirs and assigns. Cross Access Easement No. 1 is more particularly described on Exhibit D, attached hereto and made a part hereof.

TO HAVE AND TO HOLD, the right, privilege and easement for the purposes stated herein in and upon the aforesaid tract or parcel of land unto the present and future owner of Lot 1 and 2, their heirs, assigns and successors in interest, forever. It being agreed that the easements hereby granted are easements burdening Lot 1 and 2, and running with the title to Lots 1 and 2.

2. Cross Access Easement No. 2. Declarant hereby declares and establishes a nonexclusive and perpetual easement and right of access over and upon Lot 3 in Cross Access Easement No. 2 for ingress, egress, and regress to and from Civic Boulevard and Lot 2 for the benefit of Lot 2, the present and future owners of Lot 2 and their respective tenants, employees,

agents, invitees, licensees, successors, heirs and assigns. Cross Access Easement No. 2 is more particularly described on Exhibit E, attached hereto and made a part hereof.

TO HAVE AND TO HOLD, the right, privilege and easement for the purposes stated herein in and upon the aforesaid tract or parcel of land unto the present and future owner of Lot 2, their heirs, assigns and successors in interest, forever. It being agreed that the easements hereby granted are easements burdening Lot 2, and running with the title to Lots 1, and 2.

3. Maintenance of Easement Area. The Easement Area and any improvements located thereon shall be maintained by the owner of each Lot in accordance with specifications for such maintenance as mandated by applicable law and in a good and workmanlike manner and shall include: (a) maintenance of paved surfaces in a level and smooth condition, (b) removal of all trash and debris, and washing or sweeping as required, (c) removal of snow and ice from paved surfaces and sidewalks, (d) cleaning of light fixtures and relamping as needed, and (e) restriping as required to ensure visibility of stripes. Notwithstanding the foregoing, any repair or replacement to the Easement Area or any improvements located thereon, due to the negligence or willful acts of the owner of Lot 1, 2, or 3, or its tenants, agents, employees, invitees, or independent contractor shall be borne by such owner. Should any portion of a Lot be sold, the successor Owner of any such portion shall be required to bear the obligations (including any and all maintenance obligations hereunder) of its predecessor Owner hereunder in proportion to the ownership interest of the successor Owner in the Lot affected and any such successor Owner shall have all rights and privileges of its predecessor Owner as provided herein.

Should a party hereto fail to conduct its maintenance obligations hereunder, the other party hereto shall have the right to conduct same after written notice to the defaulting party hereunder and failure of the defaulting party to commence performing its obligations hereunder within ten days of its receipt of such notice. The party performing the maintenance obligations on behalf of the defaulting party shall be entitled to reimbursement from the defaulting party for its actual and reasonable costs incurred in performing the maintenance obligations of the defaulting party hereunder. Should a party fail to reimburse the other party for maintenance or repairs within fifteen days after written demand and reasonable evidence of the same, the party making such demand shall be entitled to reimbursement for the costs and expense expended in performing such repairs and maintenance with interest thereon at the maximum contract rate then allowed by law (or in the absence of a maximum contract rate, at eight percent (8%) per annum from the date of the expenditure until reimbursement, together with any reasonable attorneys' fees incurred.

4. Non-Obstruction. The easements herein granted are intended to, and shall be construed to, permit free and unobstructed usage of the easement area as provided herein. Accordingly, no charges may be imposed for such use and no barriers or other obstructions may be placed (except as expressly provided herein).

5. Reservation of Rights. Declarant (for itself and any subsequent owner of Lots 1, 2 and/or 3) hereby reserves (until such time as its ownership of a Lot shall cease at which time the rights of Declarant hereunder with respect to any such Lot shall pass to its successor in interest unless expressly retained by Declarant in a written agreement with any such successor in interest:

(i) any and all rights to the subsurface beneath, and the airspace over Lots 1, 2 and 3, 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 easements granted herein, (ii) full right, power and authority to make such driveway and curb cuts with respect to that portion of such driveways located on each of Lots 1, 2, or 3 and (iii) the right to relocate the Easement Area, and to increase, decrease, or change the configuration of the parking areas, driveways, aisles, and thruways located on Lots 1, 2 and/or 3; provided that at all times each Lot Owner continues to have free and unrestricted access to and from Civic Boulevard to its Lot. Nothing herein is intended to nor shall be construed to create any rights whatsoever for the benefit of the general public in the Lots or in the Easement Area.

6. Condemnation. If all or any portion of a tract of land 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 Lot so taken, shall be payable to the owner of the Lot taken.

7. Indemnity (a) Indemnification. Declarant (for itself and on behalf of subsequent Owners of Lot 1) hereby agrees to defend, indemnify and hold harmless the Owners of Lot 2 and 3 and subsequent Owners of Lots 2 and 3, Declarant (for itself and on behalf of subsequent Owners of Lot 2) hereby agrees to defend, indemnify and hold harmless the Owner of 1 and 3 subsequent Owners of Lots 1 and 3, and Declarant (for itself and on behalf of subsequent Owners of Lot 3) hereby agrees to defend, indemnify and hold harmless the Owners of 1 and 2 and subsequent Owners of Lot 1 and 2 of and from and against any and all claims, expenses, liabilities, losses, damages and costs, including attorneys' fees, arising from the injury to or death of persons or the damage to property as shall occur on their respective Lot(s) of land provided such claim, expense, liability, loss, damage or cost is not a result of the negligent act, the willful act or omission, the intentionally wrongful act or omission or the breach of maintenance and repair obligations hereunder by the party seeking redress.

(b) Insurance. At all times during the construction of any improvements provided herein, each party hereto shall maintain builder's risk insurance for such construction in an amount of not less than \$1,000,000.00.

(c) Liability Insurance. Declarant (for itself and for subsequent Owners of each Lot) hereby agree that for so long as this Agreement shall remain in effect, it shall maintain commercial general liability insurance in the amount of not less than \$2,000,000.00 covering death or injury to persons and damage to property on, in or about its respective Lot(s), including, but not limited to, damage to persons or property due to the operation of the easement granted hereby, promptly upon request by the other party hereto, furnish copies of the liability insurance policies, certificates of insurance or other evidence satisfactory to the requesting party confirming that it is in compliance with this Section. If such copies, certificates or other evidence are not provided within 15 days after request, the requesting party may purchase the insurance required herein on behalf of the other party. Thereupon, the premium therefor,

together with interest at the rate specified in Section 3 hereof from the date the premium was paid by the requesting party until the date reimbursement is made by the other party.

(d) Mutual Release. If Declarant sustains a loss by reason of any casualty which is covered or coverable by the indemnity contained in Section 6 (a) hereof and also by the insurance which it is obligated to obtain under Section 6 (b) hereof then, notwithstanding the indemnity or any rule of law, the party incurring the loss (the "Releasing Owner") hereby releases the other party (the "Owner at Fault") from liability for so much of the loss as is covered (or as would be covered if the Releasing Owner had obtained the insurance so required) by insurance proceeds, and, to such extent, the Releasing Owner shall not have any right of action against the Owner at Fault, nor shall any insurance carrier or other third party have any right by way of assignment, subrogation or otherwise; provided, however, that, if application of the foregoing provisions of this Section 6 (d) would result in

- (i) the invalidation or cancellation of any respect to any Lot pursuant to this Section 6 hereof, then insurance policy maintained with the provisions shall become inoperative, or
- (ii) the premium for any insurance policy maintained with respect to any Lot to be increased above the amount which would otherwise prevail in the absence of the provisions, then the party whose premium would be so increased may give written notice of such fact to the other party and if, within 30 days after the giving of such notice, the other party does not agree to pay the full amount of the premium increase, it shall be deemed to have waived the benefits of this Section 6(d).

Declarant for itself and on behalf of subsequent Owners of each respective Lot, hereby represents and warrants unto the other that:

- (x) no insurance policy maintained by it with respect to its Lot(s) contains any provision which would result in the invalidation or cancellation of the insurance coverage or an increase in the premium therefor merely because of the provisions of this Section 6 (d) and
- (xx) it will use its reasonable efforts to obtain and maintain policies of insurance with respect to its Lot(s) of land which do not contain any such invalidation, cancellation or escalation provisions.

Nothing contained in this Section 6 (d) shall be construed to impose any other or greater liability upon any Owner than would have existed in the absence of this Section 6 (d).

8. Miscellaneous.

(a) Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall either be mailed by first class mail, postage prepaid, registered or certified

with return receipt requested, or delivered in person to the intended addressee, or sent by prepaid telegram followed by confirmatory letter. Notice so mailed shall be effective upon the expiration of three business days after its deposit. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the address of Declarant shall be 1800 Perimeter Park Drive, Suite 200, Morrisville, NC 27560, Attention: Robert G. Cutlip. Any party hereto shall have the continuing right to change its address for notice hereunder to any other location by the giving of 15 days' notice to each party hereto in the manner set forth above. If no address is known for a party hereto, notice shall be sufficient if sent to the address provided in the records of the Wake County Tax Collector for that Lot.

(b) Law Governing. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. All obligations hereunder are performable in Wake County, North Carolina.

(c) Attorneys' Fees. If any litigation is initiated or defended by the owner of a Lot against the owner of another Lot relating to this Agreement 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 attorneys' fees incurred in connection therewith.

(d) Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of Declarant and its respective legal representatives, successors, heirs, and assigns in ownership of the Lots, however further subdivided, or reconfigured.

(e) Entire Agreement; Amendment or Termination. This Agreement contains the entire agreement relating to the subject matter hereof and all prior agreements relative hereto which are not contained herein are terminated. This Agreement may not be amended orally but only by setting same forth in a document duly executed by the then owners of the Lots, and duly recorded in the Registry of Wake County, North Carolina. Any alleged amendment or termination which is not so documented and recorded shall not be effective.

(f) Exhibits. The Exhibits attached hereto are hereby incorporated herein for any and all purposes.

(g) Severability. This Agreement 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 Agreement 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 expressed herein, the remainder of this Agreement 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.

(h) No Public Dedication; No Third Party Beneficiaries or Consents. This Agreement is not intended, and shall not be construed (a) as a dedication to the public of any interests in the Easement Area, (b) to give any member of the public, or any party other than as provided herein,

any right whatsoever herein or therein or (c) to require any consent or other action of any other party other than as expressly provided herein to any amendment to or waiver of any provision of this Agreement.

(i) Compliance Certificate. Upon the written request of the owner of a Lot or the holder of any first lien deed of trust or first lien mortgage on any Lot, any such owner 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 Agreement.

(j) Number and Gender, Captions and References. As the context of this Agreement may require, pronouns shall include all persons, the singular number shall include the plural and the neuter shall include the masculine and the feminine gender. Section and subsection headings in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define any section or subsection hereof. Whenever the word "hereof", "herein", "hereunder" or a word of similar import is used in this Agreement, it shall be construed as referring to this Agreement in its entirety rather than to a particular section or provision, unless the context specifically indicates to the contrary. Any reference to a particular "section" shall be construed as referring to the indicated section of this Agreement.

(k) Waiver. This Agreement 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 Agreement, 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 Agreement shall be deemed to be a waiver of any other provision hereof.

(l) Liability; Subsequent Sale. Upon the divestiture (voluntarily or involuntarily) of the legal and beneficial title of an owner hereunder to its Lot to a new owner, the prior owner of such Lot shall thereupon be relieved of all liability under this Agreement which accrues after the date of divestiture. The preceding sentence shall not, in any way and to any extent, apply to relieve Declarant of the accrual of interest on any sum which the divesting owner became required to pay prior to divestiture, or impair the other owner's lien against the Lot disposed of for sums due by the divesting owner, or affect the obligation of the subsequent owner for any liabilities accruing after the date of divestiture.

(m) Equitable Relief. If the owner of a Lot breaches or threatens to breach this Agreement, 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 Agreement, the non-breaching party shall be entitled to seek and obtain, in addition to such other legal or equitable relief as may be available, specific performance of the other party's obligations under this Agreement and/or an injunction against such breach or threatened breach.

(n) Due Execution; Authority; Binding Effect. The undersigned hereby warrant and represent that (i) they have full right, power and authority to execute and deliver this Agreement

on behalf of the party indicated, (ii) that this Agreement has been duly executed and delivered on behalf of the party indicated and (iii) this Agreement constitutes the valid and binding agreement of the party so indicated.

(o) Counterparts. This Agreement shall be executed on the date and year above first written in one or more counterparts, each of which shall be an original and all of which taken together shall be one and the same instrument.

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IN WITNESS WHEREOF, this Agreement was executed under seal as of the day and year first above written.

DUKE-WEEKS REALTY LIMITED
PARTNERSHIP (SEAL), an Indiana limited
partnership doing business in North Carolina as
Duke-Weeks Realty of Indiana Limited Partnership

By: DUKE WEEKS REALTY CORPORATION,
an Indiana corporation, its general partner

By: [Signature]
Print Name: Andrew Kelton
Title: Senior VP

STATE OF NORTH CAROLINA, WAKE COUNTY

FRANKLIN

I, ETON R. EVERETT, a Notary Public of ~~the~~ County and State aforesaid, certify
that ANDREW KELTON, as SR. VP of Duke-Weeks Realty Corporation, the
general partner of Duke-Weeks Realty Limited Partnership, personally appeared before me this
day and acknowledged the execution of the foregoing instrument as the his act and deed as
SR VP of the general partner of said limited partnership. Witness my hand and official
stamp or seal, this 2nd day of APRIL, 2001.

My commission expires: 12-17-2001

[Signature]
Notary Public

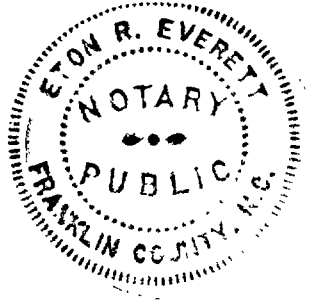


EXHIBIT A

LOT 1

BEING Lot 1 as shown on plat recorded in Book of Maps 2001, Page 575, Wake County Registry.

EXHIBIT B

LOT 2

BEING Lot 2 as shown on plat recorded in Book of Maps 2001, Page 575, Wake County Registry.

EXHIBIT C

LOT 3

BEING Lot 3 as shown on plat recorded in Book of Maps 2001, Page 575, Wake County Registry.

EXHIBIT D**CROSS ACCESS EASEMENT NO. 1**

BEGINNING AT A POINT, said point being located North 90°00'00" West a distance of 229.21 feet from where the right-of-way of Civic Blvd turns into the right-of-way of Business Park Drive, said point also being the southwest corner of the dedicated right-of-way of Business Park Drive and being set in the northern property line of Lot 2 Walnut Creek Business Park;

Thence along the northern property line of Lot 2, North 90°00'00" West, 243.96 feet to a point; Thence with a new line, North 00°00'00" East, 60.00 feet to a point; Thence, North 90°00'00" East, 243.96 feet to a point, said point being the northwest corner of the dedicated right-of-way of Business Park Drive; Thence along said right-of-way, South 00°00'00" West, 60.00 feet to a point, said **POINT AND PLACE OF BEGINNING**.

CONTAINING: 14,637.41 square feet or 0.3360 acres of land, more or less. Property is subject to the Variable Right-of-Way of Business Park Drive and all covenants and agreements of record.

EXHIBIT E**CROSS ACCESS EASEMENT NO. 2**

BEGINNING AT A POINT, said point being an iron pipe set in the westerly right-of-way of Civic Blvd and also being the common property corner of Lot 1 and Lot 2 Walnut Creek Business Park.

Thence from said point of beginning along the westerly right-of way of Civic Blvd, South 01°30'09" West, 3.71 feet to a point; Thence along a curve to the right, said curve having a central angle of 1°46'26", and having a radius of 365.00 feet, an arc length of 11.30 feet, and being subtended by a chord bearing of South 02°23'22" West and chord distance of 11.30 feet to a point; Thence leaving said right-of-way with a new line, North 89°59'59" West, 597.90 feet to a point; Thence, North 00°00'00" East, 30.00 feet to a point; Thence, South 89°59'59" East, 598.86 feet to a new point, said point being set in the westerly right-of-way of Civic Blvd and the easterly property line of Lot 2; Thence with said right-of-way, South 01°30'09" West, 15.01 feet to a new iron pipe, said pipe being the common corner of Lots 1 & 2, the **POINT AND PLACE OF BEGINNING**. Said easement being a 30.00 foot wide cross-access easement centered on the common property line of Lot 1 & Lot 2, said centerline of easement extending North 89°59'59" West, 598.47 feet along said common property line of Lot 1 & Lot 2 from an existing iron pipe set in the western right-of-way of Civic Blvd.

CONTAINING: 17,953.30 square feet or 0.4122 acres of land, more or less. Property is subject to the Variable Right-of-Way of Civic Blvd and all covenants and agreements of record.

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 006664 Page : 02123 - 02136

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina - Wake County

The foregoing certificate ___ of _____

_____ *Elton R. Everett* _____

_____ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: *[Signature]*
Assistant/Deputy Register of Deeds

This Customer Group
_____ # of Time Stamps Needed

This Document
_____ 14 _____
New Time Stamp
of Pages