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FOR REGISTRATION JUDITH A GIBSON  
REGISTER OF DEEDS  
MECKLENBURG COUNTY, NC  
1998 DEC 18 09 43 AM  
BOOK 10123 PAGE 37-44 FEE \$20 00  
INSTRUMENT # 1998198654

STATE OF NORTH CAROLINA

## DECLARATION OF RESTRICTIONS

COUNTY OF MECKLENBURG

THIS DECLARATION OF RESTRICTIONS (this "Declaration"), made as of this ~~14<sup>th</sup>~~ day of December, 1998 by **FAISON-ARROWOOD PROPERTIES LIMITED PARTNERSHIP** ("Declarant"), a North Carolina limited partnership with its principal offices located at 1900 Interstate Tower, 121 West Trade Street, Charlotte, North Carolina 28202

### RECITALS

A Declarant owns a tract of land located on the west side of Forest Point Boulevard in the City of Charlotte, Mecklenburg County, North Carolina, containing approximately 3.39 acres and shown as Lot 13 on that plat recorded in Map Book 30 at Page 213 in the Mecklenburg County Public Registry (the "Property")

B Declarant or other entities affiliated with Declarant have developed other parcels of land owned by them adjacent to the Property as a suburban mixed-use development known as ForestPark. Declarant intends to convey the Property to Bass Resources, Inc. to be developed for purposes compatible with the other uses in ForestPark. In order to insure that the development of the Property will be harmonious with the development of the remainder of the ForestPark development, Declarant desires to subject the Property to the restrictions set forth in this Declaration.

### STATEMENT OF RESTRICTIONS

**NOW, THEREFORE**, in consideration of the covenants set forth in this Declaration and for the purposes set forth above, Declarant hereby imposes and places upon the Property the following conditions and restrictions:

1 **Master Declaration** The Property is subject to the Declaration of Restrictive Covenants for the ForestPark development, dated December 6, 1985 and recorded in Book 5141 at Page 927 in the Mecklenburg County Public Registry, as amended by First Modification dated as of January 1, 1986 and recorded in Book 5162 at Page 397, by Second Modification dated as of May 8, 1998 and recorded in Book 9861 at Page 540 (as amended, the "Master Declaration"), and by Third Modification recorded in Book 10040 at Page 772. The owner of fee simple title (the "Owner") to the Property shall comply with the restrictions set forth in the Master Declaration applicable to the Property.

2 **Use Restrictions** The Property shall be used only for commercial purposes, and shall not be used in violation of the following restrictions:

(a) No portion of the Property shall be used for warehousing, industrial, manufacturing, school or single-family residential purposes, provided, however, that the

operation of a hotel on the Property shall not be deemed a violation of this residential restriction

(b) No portion of the Property shall be used as a flea market or other operation selling used merchandise, a pawn shop, a military surplus store, or for the sale or display of pornographic materials (other than cable television channels or pay-per-view movies shown within rooms in any hotel or motel located on the Property) or drug paraphernalia

(c) No portion of the Property shall be used for the operation of a movie theater, carnival, billiard parlor, video or other game parlor, off-track betting facility, discotheque or dance hall, health spa, massage parlor, exercise studio, or amusement park or any other amusement use including, but not limited to, putt-putt golf, batting cages, go-cart tracks, archery or rifle ranges, playgrounds, or water slides

(d) No portion of the Property shall be used for the operation of a laundromat (other than any laundry services incidental to the operation of hotel or motel), a dry cleaning plant, a veterinary hospital, a funeral parlor or crematorium

3 **Building Plan Approval Requirement** It is the intent of Declarant that the improvements located on the Property blend harmoniously and attractively with the improvements located on the remainder of the ForestPark development. Accordingly, no improvements (including free-standing signs) shall be constructed on any part of the Property, until plans and specifications for those improvements (which plans, in the case of building improvements or signs, shall show exterior elevations, building or sign materials and colors of those materials) have been approved in writing in advance by Declarant. This requirement for prior written approval of plans shall apply with equal force to exterior renovations or additions to, or replacements of, any building improvements or signs located on any part of the Property.

4 **Maintenance Standard** Until such time as buildings or other improvements are constructed on the Property, the Owner shall maintain the Property as a paved, seeded or landscaped area, shall keep the grass mowed to a height of six (6) inches or less, shall promptly remove all trash and debris and generally shall maintain the Property in a safe, neat and clean condition at all times. This maintenance obligation shall specifically include the obligation to keep any paved areas in good condition and repair.

After the development of the Property, the Owner shall maintain or cause to be maintained the Property in a safe, clean and attractive condition, and shall maintain and repair at its expense all improvements on the Property which need repair in order to keep the same in good condition and repair, in compliance with then current zoning laws, building codes and other governmental regulations, and in a condition substantially similar to that existing upon the initial completion of those improvements. This maintenance obligation shall include, without limitation, the following:

(a) Keeping and maintaining the exterior of all buildings and all sidewalks, walkways, roadways and paved parking surfaces in a good, safe, clean and slightly condition,

(b) Removing promptly, to the extent reasonably practicable, snow, ice, surface water and debris,

(c) Keeping all directional signs, pavement signs and striping in the parking areas distinct and legible,

(d) Repairing, replacing and renewing exterior lighting, fixtures, and bulbs, tubes and ballasts therefor as may be necessary,

(e) Caring for and replanting all landscaped and planted areas so as to not allow dead or unsightly plants to remain within the Property, and

(f) Repairing any damage or breakage to utilities located beneath the pavement on the Property, except for utilities that do not serve the Property

If the Owner fails to maintain or cause to be maintained the Property in good order and condition in accordance with the standards set forth above, and such failure continues for a period of thirty (30) days after the Owner has been given written notice specifying the nature of the default (provided, however, that no notice shall be required in an emergency), then Declarant shall have the right to go on the Property and perform the necessary repairs or maintenance at the expense of the Owner. In that event, Declarant shall be deemed to have contracted with the Owner to perform that work, and shall be entitled to file a mechanic's lien against the Property for the reasonable cost of that work, and to recover that cost in an action at law against the Owner, all in accordance with the applicable laws of the State of North Carolina

5 **General Standards** The Owner shall comply with, and shall cause its tenants and subtenants to comply with, Declarant's reasonable requirements with reference to sanitation, handling of trash and debris, loading and unloading of trucks and other vehicles, safety and security against fire, theft, vandalism, personal injury and other hazards. In particular, the Owner shall comply with, and require its tenants and subtenants to comply with, the following obligations

(a) To store all trash and garbage in adequate containers on the Property maintained in a clean and neat condition, and located so as not to be visible to the public and so as not to create any health or fire hazard, and to arrange for regular removal thereof at the Owner's expense

(b) Not to burn any papers, trash or garbage of any kind in or about the Property

(c) Not to distribute any handbills or other advertising matter on or about any part of the Property or on any portion of the Forest Park development outside of the Property

(d) Not to use any sidewalk, walkway or other outside area on the Property for the keeping, displaying, advertising and/or sale of any merchandise or other object

(e) Not to install in or about the Property any exterior amplification or similar devices and/ or not to use in, on or about the Property any advertising medium which may be heard or experienced outside the Property, such as flashing lights, searchlights, loudspeakers, phonographs, television or radio broadcasts

(f) To keep the Property clean, orderly, sanitary and free from objectionable odors and from termites, insects, vermin and other pests, and not to keep any live animals of any kind in, upon or about the Property.

6 **Building Restrictions** No building located on the Property shall have a metal exterior No structure of a temporary nature shall be allowed on the Property at any time, except that the Owner may place a construction trailer on the Property during the period of building construction All buildings constructed upon the Property shall conform to the minimum standards specified by the applicable governmental building codes in effect at the time of such construction, and to all other rules, regulations, requirements, ordinances and laws of any local, state or federal governmental unit(s) or authorities having jurisdiction thereof

7 **Screening and Related Requirements** All storage tanks, trash containers and maintenance facilities located on the Property shall either be housed in closed buildings or otherwise screened from public view in a manner architecturally compatible with the buildings located on the Property

8 **Site Improvement Restrictions** Site improvements (as distinguished from building improvements) constructed on the Property shall comply with the following requirements and restrictions

(a) A buffer strip for landscaping only shall be maintained along the eastern boundary of the Property, in the required setback areas along Forest Point Boulevard, and no above-ground improvements of any type, other than approved signage, shall be erected in the buffer strip

(b) All curbs and gutters shall be poured in place or standard-sized concrete type curbs, no bumper blocks, pre-cast, extruded or asphaltic curbs shall be utilized

(c) There shall be constructed on the Property, prior to opening for business or commencing any other use thereon, and maintained thereon at all times, the greater of (1) one (1) full sized parking space for each hotel room located on that Property, or (2) the number of parking spaces required for the actual use of the Property under applicable zoning ordinances

(d) All utility lines and equipment on the Property shall be entirely underground

(e) Pavement markings, directional signs, and other traffic indicators upon the Property shall be in accordance with the "Manual on Uniform Traffic Control Devices," and shall provide for a reasonable traffic flow scheme

(f) All buffer strips and other undeveloped land areas shall be landscaped with trees, shrubs, or suitable ground cover (which includes grass) in a uniform manner

9 **Sign Restrictions** No signs shall be erected or installed on the Property which violate the following prohibitions

(a) No sign shall be painted on the exterior surface of any building

(b) No rooftop signs of any type shall be permitted. In addition, no building-mounted sign or any portion thereof may project above the parapet wall or top of the exterior wall or building facade upon which it is mounted

(c) All sign cabinets, conductors, transformers, ballasts, attachment devices, wiring and other equipment shall be concealed

(d) No sign shall be permitted which violates the sign control ordinances or other statutes of the City of Charlotte

(e) No free-standing signs may be erected except for traffic control signs, and, if permitted by the sign control ordinances of the City of Charlotte, the Owner may install one (1) permanently affixed monument sign structure on the Property not in excess of six feet (6') in height, with a sign panel not in excess of sixty (60) square feet in size

10 **Casualty Damage** If any building or other improvement located on the Property is damaged or destroyed by fire or other casualty, then the Owner of such building or improvement shall have the option to rebuild or not to rebuild. If the Owner elects not to rebuild, it shall promptly demolish the destroyed or damaged building or improvement, clean up any and all rubbish and debris, level the area, landscape and grade or pave the area, and thereafter maintain its property in a good, clean, safe and presentable condition. Promptly after any such fire or other casualty and until the foregoing rebuilding, landscaping, or paving, as the case may be, is completed, the Owner shall (a) screen the damaged or destroyed areas with a solid plyboard wall not less than eight feet (8') in height and painted a solid color, and (b) not allow debris, dirt or construction materials to accumulate or remain outside the plyboard wall

11 **Successor to Declarant** If approval of Declarant is required under the terms of this Declaration, and Declarant no longer owns any interest in any portion of the Properties (as defined in the Master Declaration), the right of approval shall be exercised by the designated successor to Declarant under the terms of the Master Declaration

12 **Amendment to Declaration** This Declaration may be amended only by a written agreement executed by Declarant (or its successor pursuant to the terms of Section 11), all Owners of all or any portion of the Property, and the holders of all first lien deeds of trust encumbering all or any portion of the Property, and recorded in the Mecklenburg County Public Registry

13 **Binding Effect** It is understood that this Declaration is a covenant running with the Property and each portion thereof and that this Declaration shall be binding upon and inure to the benefit of all assignees, transferees, heirs and assigns of Declarant and any other party that may hereafter acquire any right in and to all or any part of the Property

14 **Remedies for Breach** The terms and conditions of this Declaration shall be enforceable by Declarant (or its successor pursuant to the terms of Section 11), by actions for specific performance or injunction, in addition to any other remedies available at law

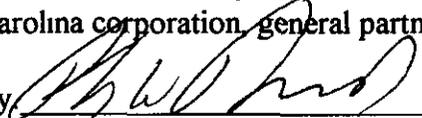
15 **Private Agreement** This Declaration shall not be construed to grant any rights to the public in general

IN WITNESS WHEREOF, Declarant has executed this Declaration under seal as of the day and year first above written

**FAISON-ARROWOOD PROPERTIES  
LIMITED PARTNERSHIP**, a North Carolina  
limited partnership (SEAL)

By **FAISON-CHARLOTTE PROPERTIES  
LIMITED PARTNERSHIP**, a North Carolina  
limited partnership, General Partner (SEAL)

By **Faison & Associates, Inc.**, a North  
Carolina corporation, general partner

By   
Philip W Norwood  
President



Attest

  
ASST Secretary

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

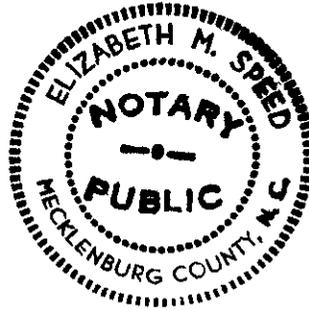
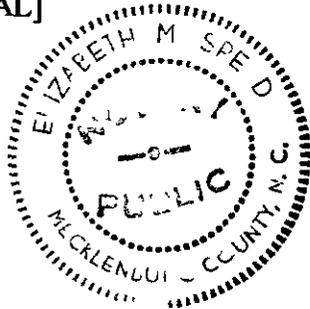
This 14<sup>th</sup> day of December, 1998 personally came before me, Philip W Norwood, who, being by me duly sworn, says that he is the President of FAISON & ASSOCIATES, INC , General Partner of FAISON-CHARLOTTE PROPERTIES LIMITED PARTNERSHIP, General Partner of FAISON-ARROWOOD PROPERTIES LIMITED PARTNERSHIP, and that the seal affixed to the foregoing instrument in writing is the corporate seal of the company, and that 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, on behalf of said partnerships

  
Notary Public

My commission expires

5-1-2000

[NOTARIAL SEAL]





JUDITH A. GIBSON  
REGISTER OF DEEDS , MECKLENBURG COUNTY  
COUNTY & COURTS OFFICE BUILDING  
720 EAST FOURTH STREET  
CHARLOTTE NC 28202

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Deputy. KEITH TAYLOR

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State of North Carolina, County of Mecklenburg

The foregoing certificate of ELIZABETH M SPEED Notary is certified to be correct This 18TH of December 1998

JUDITH A. GIBSON, REGISTER OF DEEDS By: Keith Taylor  
Deputy/Assistant Register of Deeds



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