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REGISTERED NOV/24/1992 10:21AM ANNE A. POWERS REGISTER OF DEEDS MECK. CO. N.C.

DRAWN BY AND MAIL TO:
PERRY PATRICK FARMER & MICHAUX
2200 THE CARILLON
227 W. TRADE ST.
CHARLOTTE, N.C. 28202

RD

STATE OF NORTH CAROLINA

DECLARATION OF LANDSCAPE EASEMENT
AND DEDICATION AGREEMENT
AND CONSENT OF LENDER

COUNTY OF MECKLENBURG

THIS DECLARATION OF LANDSCAPE EASEMENT AND DEDICATION AGREEMENT, made and entered into this 23rd day of November, 1992 by and between CHANCELLOR PARK LIMITED PARTNERSHIP, a North Carolina limited partnership, with its principal office in Charlotte, North Carolina, herein designated "Seller" and THE CROSLAND GROUP, INC. and CONSTRUCTION BRICK AND TILE COMPANY, each a North Carolina corporation with its principal office in Charlotte, North Carolina, herein together designated "Developer";

W I T N E S S E T H:

THAT WHEREAS, Seller is the owner of certain real properties located in Charlotte, Mecklenburg County, North Carolina situated at the intersection of the rights-of-way of East W. T. Harris Boulevard and Chancellor Park Drive, which real properties are more particularly described as being all of Lot 1 of CHANCELLOR PARK as the same is shown on map thereof recorded in Map Book 23 at Page 597 in the Mecklenburg County Public Registry ("Lot 1") and all of Lot 2-A of CHANCELLOR PARK as the same is shown on map thereof recorded in Map Book 25 at Page 150 in the aforesaid Public Registry ("Lot 2-A"); and

WHEREAS, Seller has simultaneously with the recordation hereof conveyed Lot 2 of CHANCELLOR PARK as the same is shown on map thereof recorded in Map Book 25 at Page 150 in the aforesaid Public Registry ("Lot 2") to Developer (Lot 1, Lot 2 and Lot 2-A are hereinafter together called the "Property"); and

WHEREAS, Seller and Developer desire to create landscape easements on, in, over and upon portions of the Property, to provide for the maintenance of the same and impose certain use restrictions on the Property;

NOW, THEREFORE, for and in consideration of the premises and the sum of \$100.00 and other good and valuable consideration, in hand paid, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

- 1. Declaration of Landscape Easement. Seller and Developer, on behalf of themselves, their successors and assigns and any person, firm or corporation hereafter acquiring

title to all or any portion of the Property (whether by deed, foreclosure or deed in lieu of foreclosure or otherwise) hereby declare that a perpetual, non-exclusive easement and right-of-way shall be established for the purposes of installing, maintaining, replacing, repairing, replanting, and re-installing landscape treatments including grass, flowers, shrubbery and trees, and underground irrigation systems in connection therewith, within (a) those areas of the Property immediately adjacent to the rights-of-way of East W. T. Harris Boulevard and Chancellor Park Drive extending from the back of existing curb to an area ten feet (10') behind the right-of-way of said East W. T. Harris Boulevard and Chancellor Park Drive and (b) the medians of the rights-of-way of East W. T. Harris Boulevard and Chancellor Park Drive (hereinafter collectively called the "Landscape Easement").

Each owner of fee simple title to all or any portion of the Property (hereinafter called an "Owner") shall have the right to install, repair and maintain underground utilities within the portions of the Landscape Easement located on said Owner's property; provided, however, any Owner installing such utilities shall do so at its own cost and expense and shall pay or cause to be paid all charges in connection with the continued use thereof. Any damage caused to other utility lines or improvements within the Landscape Easement shall be repaired by the Owner making such installation.

2. Private Agreement. The rights, privileges and easements herein granted are for the non-exclusive use, enjoyment and benefit of the Owners, trustees and beneficiaries in deeds of trust encumbering portions of the Property, and for the benefit of licensees, tenants, and invitees of the Owners and such licensees', tenants' and invitees' customers and invitees. This Agreement shall not constitute a dedication to the public nor shall it create a public right-of-way. Except as otherwise provided in this Agreement, such rights and privileges shall be covenants running with the land, shall continue in full force and effect as a right appurtenant to ownership of the Property and shall inure to the benefit of all Owners and the trustees and beneficiaries in all deeds of trust secured by fee simple title to portions of the Property. The Owners, joined in by the trustees and beneficiaries in all deeds of trust secured by fee simple title to portions of the Property, may terminate or modify this Agreement; provided, however, that these rights, privileges and easements shall continue subject to the other provisions of this Agreement, until said written termination or modification has been recorded in the Mecklenburg County Public Registry. Acquisition of all of the Property by one Owner shall not constitute a merger of the rights and obligations set forth herein so long as there is any deed of trust unsatisfied of

record which encumbers fee simple title to any portion of the Property. This Agreement shall not be construed to grant rights to the public in general.

3. Maintenance of Landscape Easement. Developer shall be responsible for the initial installation of landscaping within the Landscape Easement and shall thereafter maintain, repair, replace and replenish all landscaping, vegetation and other materials within the Landscape Easement keeping the areas alive, free of weeds and attractive, including the removal of litter, refuse, waste and debris, mowing of grass and pruning of shrubs, trees and plants as often as is necessary in the reasonable judgment of Developer, regular irrigation of all landscaped areas, the removal and replacement of dead trees, shrubs and plants and resodding or replacing of grass (collectively, the "Maintenance Obligations").

Each Owner shall reimburse Developer for its prorata share of the reasonable cost of the Maintenance Obligations. Developer shall bill each Owner, but not more frequently than quarterly, for its prorata share of the reasonable cost of such maintenance and each Owner shall pay the amount billed by Developer within fifteen (15) days of receipt. Each Owner shall have the right to request such documentation of the costs incurred by Developer as is reasonable. For purposes of this Agreement, each Owner's prorata share shall equal a fraction, the numerator of which shall be the acreage of the property owned by said Owner and the denominator of which shall be 20.857, the entire acreage of the Property.

Upon the failure of any Owner to reimburse Developer for its prorata share of the cost of Maintenance Obligations in accordance with the requirements of the immediately preceding paragraph, then in addition to any other remedies it may have, Developer shall have a lien enforceable in accordance with the provisions of North Carolina Gen. Stat. §44A against the real property and improvements of the defaulting Owner for the unpaid amount together with interest thereon from the date said reimbursement was due at the rate of 8% per annum. Such lien shall be subordinate to the interest of any mortgagee of that portion of the affected Property, irrespective of when their interest attached, and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

In the event that Developer fails to perform the Maintenance Obligations, or any portion thereof, then any Owner or Owners shall give Developer written notice specifying in detail the nature of such failure, and if Developer has not commenced correction of such failure within twenty (20) days of such notice or does not diligently pursue the correction of the same at all times after the commencement of action to correct

the same, then the Owner or Owners giving such notice shall have the right and easement to go upon such portion of the Landscape Easement and repair, maintain or clean the same as reasonably required; provided, however, in the event that within the aforesaid twenty-day notice period, Developer does not agree that such cleaning, repairs or maintenance is necessary or cannot be reasonably performed within the time required due to conditions beyond Developer's control, then Developer may require that the necessity or timing therefor be determined by arbitration in accordance with North Carolina law and the rules of the American Arbitration Association.

Notwithstanding the foregoing, in the event any party, its contractors, agents or employees, causes damage to the landscaping located within the Landscape Easement, or causes the same not to be kept in good condition and repair (including the clearing of construction debris from the Landscape Easement) such party shall be responsible for the repair, maintenance and clean up.

4. No Barriers. No walls, fences or barriers of any sort or kind shall be constructed or maintained on the Landscape Easement, or any portion thereof, which shall prevent or impair the use or exercise of any of the easements granted herein.

5. Notice to Trustees and Beneficiaries. In the event of default hereunder, any Owner which proposes to enforce its rights hereunder shall give written notice to the trustees and beneficiaries in all deeds of trust encumbering portions of the Property; provided such trustees and beneficiaries have heretofore furnished such Owner with written notice of the names and addresses of such trustees and beneficiaries. The address of First Union National Bank of North Carolina and Richard F. Dunlap, Jr., Substitute Trustee and Douglas F. Woolley III, Trustee is c/o Charlotte Real Estate Group, CCO-8-0146, Charlotte, North Carolina 28288 and the inclusion of this sentence shall satisfy the requirements of written notice in this paragraph.

6. Indemnity. Except in cases of an Owner's negligence, recklessness or willful misconduct, each party hereto for and on behalf of itself, its successors and assigns, hereby agrees to indemnify and hold harmless the Owner of fee simple title to property encumbered by any easement granted herein in connection with any loss, damages, cost and expenses, including reasonable attorney's fees, incurred by such Owner as a result of such party's or such party's invitees, licensee's, agent's or employee's, use of such easement.

7. Parties Not Partners. It is expressly understood and agreed that the parties hereto are not partners, joint

venturers or associates in the performance of their respective obligations hereunder. No provision of this Agreement shall be construed to impose upon the parties hereto any obligation or restriction not expressly set forth herein.

8. Rights and Remedies. It is expressly understood and agreed that upon a breach of this Agreement by any party hereto, the non-breaching party shall have any and all rights and remedies for such breach at law or in equity provided, except that such non-breaching party shall not be entitled to bring or maintain an action to terminate this Agreement. This Agreement and the rights of the parties hereunder shall be construed and enforced in accordance with the laws of the State of North Carolina.

9. Estoppel Certificates. From time to time upon request in writing from the other party, but not to exceed two (2) times annually, each party agrees to execute, acknowledge and deliver to such other party a statement in writing certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that such party is current in its maintenance obligations under Paragraph 3 hereof and any other factual data relating to this Agreement which such party may reasonably request. The party receiving such request shall execute and deliver such written statement to the requesting party within thirty (30) days of its receipt of such written statement.

10. Use Restrictions. So long as the lease between Chancellor Park Retail Limited Partnership, a North Carolina limited partnership (an affiliate of Developer) and Lowe's Companies, Inc., dated May 6, 1992 remains in full force and effect, Lot 1 and Lot 2-A shall be subject to the following restrictions:

(a) So long as the use of Lot 2-A remains entirely office use, then the parking requirements for said Lot 2-A shall be 3.0 parking spaces for every 1,000 square feet of leased office space, or that ratio required by the appropriate governmental authorities, whichever is greater. In the event that Lot 2-A is ever used for retail purposes, then the parking ratio shall be 4.0 parking spaces per 1,000 square feet of retail space occupied, or that ratio required by the appropriate municipal ordinances, whichever is greater.

(b) In the event that Lot 2-A or Lot 1 is used for retail uses, any buildings located on Lot 2-A or Lot 1, as applicable, may only be used for financial institutions, service shops, offices and retail stores selling retail

merchandise normally carried in shopping centers and other typical shopping center uses. No cafeteria, theatre (except that cafeteria and theatre uses will be permitted on Lot 1), bowling alley, billiard parlor, night club, pornographic materials store, or other place of recreation or amusement or any business serving or selling alcoholic beverages (except sales by the grocery and drug store tenants for off-premises consumption or by a full service restaurant which obtains more than fifty percent (50%) of its gross sales from the sale of food) shall occupy space within Lot 2-A without the prior written consent of Developer. Further, no portion of Lot 2-A or Lot 1 shall be leased, used or occupied for:

- (i) Hardware store over 5,000 square feet;
- (ii) Appliance and/or home electronics store over 3,000 square feet; provided, however, in the event Developer's tenant on Lot 2 ceases to carry such merchandise in its regular product line offered to the general public, then this restriction shall no longer apply to Lot 1;
- (iii) Any lawn and garden center over 3,000 square feet;
- (iv) Any paint and/or decor center over 5,000 square feet;
- (v) Any lumber yard operations; and
- (vi) Any building supply operation such as Home Depot, Builders Square or Home Quarters.

These restrictions or exclusive rights shall also apply to prohibit larger businesses having space in their stores devoted to selling the merchandise described in subparagraphs (i) through (iv) when such space exceeds the limitations of subparagraphs (i) through (iv).

11. Developer's Successors. All rights and obligations reserved by or granted to Developer hereunder shall not be deemed to be personal to Developer but shall rather be appurtenant to and run with the title to Lot 2 and be enforceable by the Owner, from time to time, of said Lot 2.

IN WITNESS WHEREOF, the undersigned have caused these presents to be duly executed under seal the day and year first above written.

SELLER:

CHANCELLOR PARK LIMITED PARTNERSHIP (SEAL)

By: Crosland Investors, Inc.,
General Partner

By: [Signature]
President

By: Huntington Capital, Inc.
(formerly Erwin Properties,
Inc.), General Partner

By: [Signature]
President


DEVELOPER:


THE CROSLAND GROUP, INC.

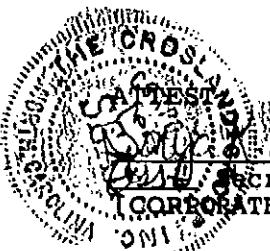
By: [Signature]
President


**CONSTRUCTION BRICK AND
TILE COMPANY**

By: [Signature]
President

 [Signature]
Secretary
[CORPORATE SEAL]

 [Signature]
Secretary
[CORPORATE SEAL]

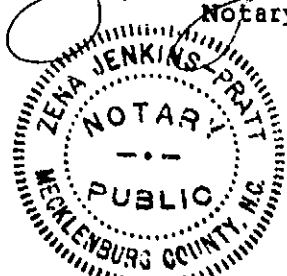
 [Signature]
Secretary
[CORPORATE SEAL]

ATTEST:
 [Signature]
Secretary
[CORPORATE SEAL]

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

This 23rd day of November, 1992, personally came before me, Stephen Vermillion, who being by me duly sworn, says that he is Vice President of Crosland Investors, Inc., general partner of CHANCELLOR PARK LIMITED PARTNERSHIP; that the seal affixed to the foregoing instrument in writing is the corporate seal of said Crosland Investors, Inc.; and that said writing was signed and sealed by him on behalf of said corporation, acting as general partner of CHANCELLOR PARK LIMITED PARTNERSHIP, by authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation, acting as general partner of CHANCELLOR PARK LIMITED PARTNERSHIP.

Zena Jenkins-Pratt
Notary Public



My commission expires:

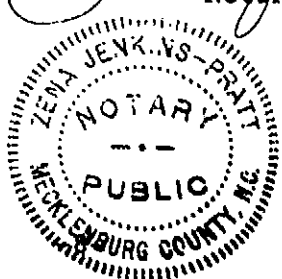
My Commission Expires July 13, 1997

(NOTARIAL SEAL)

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

This 23rd day of November, 1992, personally came before me, Mark Erwin, who being by me duly sworn, says that he is _____ President of Huntington Capital, Inc. (formerly Erwin Properties, Inc.), general partner of CHANCELLOR PARK LIMITED PARTNERSHIP; that the seal affixed to the foregoing instrument in writing is the corporate seal of said Huntington Capital, Inc.; and that said writing was signed and sealed by him on behalf of said corporation, acting as general partner of CHANCELLOR PARK LIMITED PARTNERSHIP, by authority duly given. And the said _____ President acknowledged the said writing to be the act and deed of said corporation, acting as general partner of CHANCELLOR PARK LIMITED PARTNERSHIP.

Zena Jenkins-Pratt
Notary Public



My commission expires:

My Commission Expires July 13, 1997

(NOTARIAL SEAL)

STATE OF NORTH CAROLINA

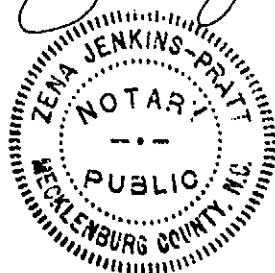
COUNTY OF MECKLENBURG

This 23rd day of November, 1992, personally came before me, Stephen J. Vermillion, who being by me duly sworn, says that he is Vice President of THE CROSLAND GROUP, INC. and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation; that said writing was signed and sealed by him on 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.

WITNESS my hand and notarial seal, this the 23rd day of November, 1992.

Zena Jenkins-Pratt
Notary Public

My commission expires:
My Commission Expires July 13, 1997
(NOTARIAL SEAL)



STATE OF NORTH CAROLINA

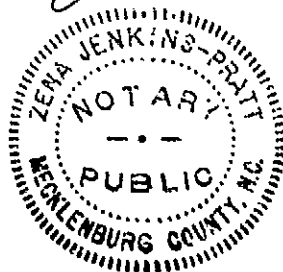
COUNTY OF MECKLENBURG

This 23rd day of November, 1992, personally came before me, Mark Lewis JOHN S. STREPPER who being by me duly sworn, says that he is _____ President of CONSTRUCTION BRICK AND TILE COMPANY and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation; that said writing was signed and sealed by him on 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.

WITNESS my hand and notarial seal, this the 23rd day of November, 1992.

Zena Jenkins-Pratt
Notary Public

My commission expires:
My Commission Expires July 13, 1997
(NOTARIAL SEAL)



CONSENT OF LENDER

FIRST UNION NATIONAL BANK OF NORTH CAROLINA, owner and holder of a note secured by that certain Deed of Trust and Security Agreement recorded in Book 6166 at Page 513 in the Mecklenburg County Public Registry and DOUGLAS F. WOOLLEY III, Trustee under said Deed of Trust hereby agree that they have consented to the terms and provisions of the Declaration of Landscape Easement and Dedication Agreement to which this Consent is attached (hereinafter called the "Agreement"); that any subsequent foreclosure of the Deed of Trust secured by the property described therein shall not extinguish this Agreement but shall merely vest in the purchaser at the foreclosure sale the rights and duties set forth herein; that all present and future owners of any of the property described in the Agreement shall be entitled to the full rights and easements to the extent the same are granted herein; and that upon payment of the loan secured by the Deed of Trust, the rights of First Union Bank of North Carolina and Douglas F. Woolley III (or such successor trustee as permitted by the Deed of Trust) under the Deed of Trust set forth in this Agreement shall terminate.

IN WITNESS WHEREOF, the undersigned have duly executed these presents under seal as of this the 20 day of November, 1992.

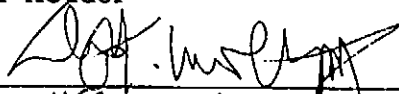
FIRST UNION NATIONAL BANK
OF NORTH CAROLINA,
Owner and Holder

ATTEST:

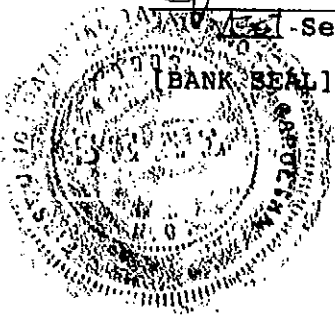


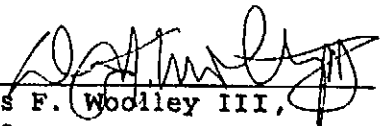
Secretary

By:



VICE President





Douglas F. Woolley III, (SEAL)
Trustee

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 20th day of November, 1992, personally came before me, Douglas F. Woolley III, who being by me duly sworn says that he is the vice President of FIRST UNION NATIONAL BANK OF NORTH CAROLINA, that the seal affixed to the foregoing instrument in writing is the bank seal of said banking association, and that said writing was signed and sealed by him (her) in behalf of said banking association by its authority duly given. And the said vice President acknowledged the said writing to be the act and deed of said banking association.

Linda Cates
Notary Public

My Commission Expires: 11-19-93

[NOTARIAL SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Linda Cates, a Notary Public for said County and State, do hereby certify that Douglas F. Woolley III, Trustee, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal, this the 20th day of November, 1992.

Linda Cates
Notary Public

My Commission expires: 11-2-93

[NOTARIAL SEAL]

State of North Carolina, County of Mecklenburg

The foregoing Certificate(s) of Zena Jenkins-Pratt + Linda Cates

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.

ANNE A. POWERS, REGISTER OF DEEDS

By Wayl A. Elmora Deputy - Register of Deeds