

BK 1894 DC 395

sub.
D.J.

RECORDED
AND
VERIFIED
EJT

32293

Filed for record
Date 8-22-2002
Time 11:15 (a.m.) p.m.
JUDY G. PRICE, Register of Deeds
Union County, Monroe, N.C.

STATE OF NORTH CAROLINA

FIRST AMENDMENT TO
DECLARATION OF PROTECTIVE
COVENANTS FOR
OLD HICKORY BUSINESS PARK

COUNTY OF UNION

THIS FIRST AMENDMENT TO DECLARATION OF PROTECTIVE COVENANTS
FOR OLD HICKORY BUSINESS PARK (the "Amendment") is made this 21st day of
August, 2002, by NJV INVESTMENT, LLC, a North Carolina limited liability company,
hereinafter referred to as "Declarant";

WITNESSETH

WHEREAS, the Declaration of Protective Covenants for Old Hickory Business Park was
recorded in the Union County Public Registry in Book 1773, at Page 308 (the "Declaration");
and

Drawn by and Mail to:
Susan K. Irvin
Kennedy Covington Lobdell & Hickman, L.L.P.
Bank of America Corporate Center
Suite 4200
100 North Tryon Street
Charlotte, North Carolina 28202

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WHEREAS, Declarant desires to amend the Declaration in the manner hereinafter set forth; and

WHEREAS, Section 3 of Article IX of the Declaration provides that the Declaration may be amended by an instrument signed by the Owners of at least fifty-one percent (51%) of the Total Votes and by the Declarant, so long as the Declarant still owns any portion of the Properties (unless the context otherwise requires, all defined terms utilized herein shall have the same meaning ascribed to them in the Declaration); and

WHEREAS, Section 3 of Article III of the Declaration provides that notwithstanding any contrary provisions of the Declaration, the Declarant shall be entitled to fifty-one percent (51%) of the Total Votes of Master Association Members until December 31, 2012;

NOW, THEREFORE, the undersigned Declarant does hereby amend the Declaration as follows:

1. Section 2 of Article VII of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 2. Prohibited Uses. No Lot or any portion of the Properties may be occupied or used, directly or indirectly, for the following uses: labor camps; commercial storage of building or construction materials (except temporarily in connection with construction of structures by Owners of Lots as is permitted herein or except as may be ancillary to the permitted primary use of the Lot, so long as such storage is screened in accordance with Section 6 of this Article VII); dry cleaners; smelting of iron, tin, zinc or other ores; refining of petroleum or of petroleum products; flea markets; open air stalls; rodeos; tattoo parlors; sales lots for prefabricated structures; tire recapping plants; farm equipment and implement sales, leasing, service, storage, and similar activities; lumber, planing or sawing mills; pulpwood yards; storage yards (except lumber yards and storage that is ancillary to the permitted primary use of the Lot as permitted); taxidermy; cemeteries (public and private); commercial poultry, livestock, and swine production; cattle feeder lots or fur-bearing animal rearing or breeding farms; abattoirs; junk yards; baling, storage or processing of scrap metal, glass, paper or rags, or storage or processing of wrecked or junked motor vehicles; quarries; race tracks; raceways or dragstrips; truck stops; sanitary landfills or garbage disposal areas; trailer or mobile home parks; any type of outdoor storage not treated in accordance with Section 6 of Article VII; or massage parlor, cinema or bookstore

selling or exhibiting material of a pornographic or adult nature. No Lot or other portion of the Properties shall be used for any business the operation of which would result in the generation, storage or disposal of any flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents or any other substances or materials which are included under or regulated by Environmental Laws (as hereinafter defined) (collectively, "Hazardous Substances"), including, but not limited to, (i) any asbestos or insulation or other material composed of or containing asbestos, or (ii) any hazardous, toxic or dangerous substance, material or waste defined as such in (or for the purposes of) the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Safe Drinking Water Act, 15 U.S.C. § 2601 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*, any so-called state or local "Superfund" or "Superlien" laws, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous substance ("Environmental Laws").

2. Section 3 of Article VII of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 3. Compliance with Environmental Laws. Each Owner shall comply with all applicable Environmental Laws. Each Owner shall keep or cause the Properties to be kept free from Hazardous Substances (except those substances used by any Owner in the ordinary course of his respective business and except in compliance with all Environmental Laws and where such could not reasonably be expected to give rise to liability under Environmental Laws) and in compliance with all Environmental Laws. Owners shall not install or use any underground storage tanks ("USTs") (except in the ordinary course of such Owner's respective business and in a manner and under conditions that would not violate or give rise to any obligation to take remedial or other action under any applicable Environmental Laws), shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances on the Properties in quantities or conditions that would violate or give rise to any obligation to take remedial or other action under any applicable Environmental Laws. Without limiting the generality of the foregoing, during the term of this Declaration, no Owner shall install or permit to be installed in the Properties any asbestos or asbestos-containing materials. An Owner shall remedy or cause to be remedied in a timely manner (and in any event within the time period permitted by applicable Environmental Laws) any violation of Environmental Laws by such Owner or any condition that could give rise to liability under Environmental Laws resulting from the acts or omissions of such Owner, its officers, directors, members, agents invitees concerning (i) the Properties or (ii) other affected property. In the event any Owner fails to perform any of such Owner's obligations set out in this Section 3, the Association may, but shall not be

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obligated to, cause the Properties to be freed from any Hazardous Substances or otherwise brought into conformance with Environmental Laws, and the Association shall be deemed to have contracted with the Owner for such work and materials, and shall be entitled to file a mechanic's lien against the Owner's Property for the Owner's share of the cost of such work and materials, together with interest thereon, with all rights incident thereto, all in accordance with Chapter 44A of the North Carolina General Statutes and with Article V, Section 8 herein. Owners hereby grant to the Association and its agents and employees access to the Properties and a license to remove any items deemed by the Association to be Hazardous Substances and to do all things the Association shall deem necessary to bring the Properties into conformance with Environmental Laws.

3. Section 6 of Article VII of the Declaration is hereby amended by deleting in its entirety the phrase "kept in the open or" which appears in the second line.

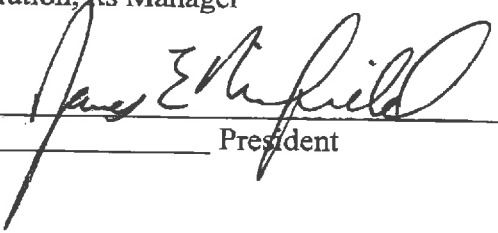
4. Declarant hereby acknowledges and agrees that in all other respects the Declaration shall remain unchanged and in full force and effect and the Declaration, as amended herein, is hereby ratified, affirmed and approved.

IN WITNESS WHEREOF, the undersigned Declarant has caused these presents to be duly executed under seal by authority duly given as of the day and year first above written.

DECLARANT:

NJV INVESTMENT, LLC, a North Carolina limited liability company

By: ITF Commercial, Inc., a North Carolina corporation, its Manager

By: 
President

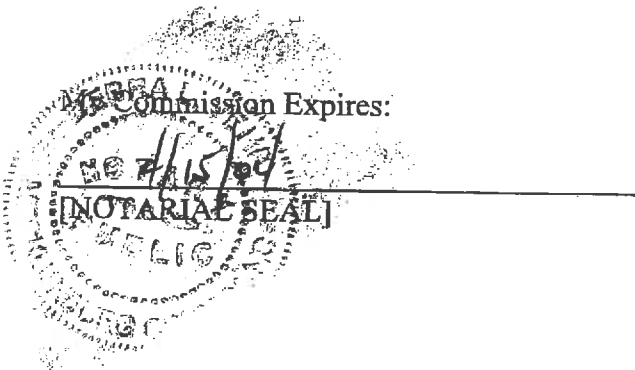
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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Debra L. Vean, a Notary Public of the County and State aforesaid, certify that James E. Merrield personally came before me this day and acknowledged that he is ___ President of ITF Commercial, Inc., a North Carolina corporation, Manager of NJV Investment, LLC, a North Carolina limited liability company, and that by authority duly given and as the act of the corporation, as manager of NJV Investment, LLC, the foregoing instrument was signed in its name by its _____ President.

Witness my hand and official stamp or seal, this 14 day of August, 2002.

Debra L. Vean
NOTARY PUBLIC



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CONSENT OF LENDER

(Deed of Trust recorded in Book 1721 at Page 467)

FIRST CHARTER BANK, (the "Lender"), owner and holder of that certain Promissory Note (the "Note") in the original principal amount of three million three hundred thousand and 00/100 Dollars (\$3,300,000.00) dated December 20, 2001, and executed by Old Hickory, LLC, a North Carolina limited liability company, which Note is secured by that certain Deed of Trust (the "Deed of Trust") from Old Hickory, LLC to Robert G. Fox, Jr., Trustee (the "Trustee"), conveying a security interest in a parcel of land described therein, which Deed of Trust is recorded in Book 1721 at Page 467 in the Union County, North Carolina Public Registry ("Registry"), does hereby consent to the foregoing First Amendment to Declaration of Protective Covenants for Old Hickory Business Park (the "First Amendment") and the imposition of the provisions thereof on the real property encumbered by the Deed of Trust; and said Lender does hereby consent and agree that from and after the date hereof, the provisions and matters set forth in said First Amendment shall be superior to the lien of said Deed of Trust. The said Trustee also joins in and executes this Consent of Lender as Trustee under said Deed of Trust for the purposes hereinabove set forth.

IN WITNESS WHEREOF, the undersigned have caused this Consent of Lender to be duly executed and sealed as of the 20th of August, 2002.

TRUSTEE:

[Signature] [SEAL]
Robert G. Fox, Jr.

LENDER:

FIRST CHARTER BANK

By: [Signature]
Its: SVP
Name: DARREN RADSON

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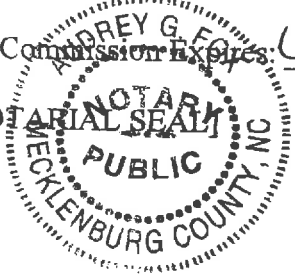
STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Andres G. Fox, a Notary Public for said County and State, do hereby certify that Robert G. Fox, Jr. personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 20 day of August, 2002.

Andres G. Fox
Notary Public

My Commission Expires: 4-23-2005

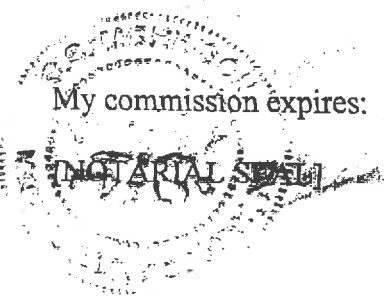


STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, C.S. Morrison, a Notary Public of the County and State aforesaid, certify that Darren Radson personally came before me this day and acknowledged that he is a Senior Vice President of First Charter Bank, a North Carolina banking corporation, and that he as Senior Vice President, being authorized to do so, executed the foregoing instrument on behalf of said banking corporation.

C.S. Morrison
Notary Public

My commission expires: My Commission Expires 2-5-2005



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CONSENT OF LENDER

(Wraparound Mortgage recorded in Book 1823 at Page 688)

OLD HICKORY, LLC, (the "Lender"), owner and holder of that certain Wraparound Note (the "Note") dated December 28, 2001 which is secured by that certain Wraparound Mortgage (the "Mortgage") from NJV Investment, LLC to Old Hickory, LLC (the "Mortgagee"), conveying a security interest in a parcel of land described therein, which Mortgage is recorded in Book 1823 at Page 688 in the Union County, North Carolina Public Registry ("Registry"), does hereby consent to the foregoing First Amendment to Declaration of Protective Covenants for Old Hickory Business Park (the "First Amendment") and the imposition of the provisions thereof on the real property encumbered by the Mortgage; and said Lender does hereby consent and agree that from and after the date hereof, the provisions and matters set forth in said First Amendment shall be superior to the lien of said Mortgage.

IN WITNESS WHEREOF, the undersigned have caused this Consent of Lender to be duly executed and sealed as of the 14 of August, 2002.

MORTGAGEE:**OLD HICKORY, LLC**By: James E. Merryfield, ManagerBy: Crosland, Inc. ManagerIts: Vice PresidentName: James E. Merryfield

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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

I, Debra L. Vehr, a Notary Public of the County and State aforesaid, certify that James E. Merrifield personally came before me this day and acknowledged that he is a Vice President of Crosland Inc a North Carolina corporation, the Manager of Old Hickory, LLC and that he as Vice President, being authorized to do so, executed the foregoing instrument on behalf of said corporation.

Debra L. Vehr

Notary Public

My commission expires:

4/15/04

[NOTARIAL SEAL]

NORTH CAROLINA-UNION COUNTY

The foregoing certificate(s) of
Debra L. Vehr, Audrey
H. Fox, and C. S.
Morrison

Notary (ies) Public

are certified

to be correct.

JUDY G. PRICE: REGISTER OF DEEDS

BY: Verena Ciocca
ASST./DEPT.