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JUDITH A GIBSON REG OF DEEDS MECK NC  
STATE OF NORTH CAROLINA

FILED FOR REGISTRATION 10/07/98 11:24  
COUNTY OF MECKLENBURG

DECLARATION OF EASEMENTS  
AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS AND RESTRICTIONS (this "Declaration") is made as of this 5<sup>th</sup> day of October, 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 two (2) adjacent tracts of land located on the northeast side of Forest Point Boulevard, in the City of Charlotte, Mecklenburg County, North Carolina, one containing approximately 2.85 acres and shown as "Lot B-1" on that plat recorded in Map Book 29 at Page 217 in the Mecklenburg County Public Registry (the "Plat"), and the other containing approximately 6.73 acres and shown as "Lot B-2" on the Plat. The two tracts are referred to collectively in this Declaration as the "Subject Property," and each legally subdivided portion of the Subject Property that may exist from time to time (including, initially, Lot B-1 and Lot B-2) is referred to in this Declaration as a "Parcel."

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

C. In addition, Declarant desires to establish a permanent relocatable access easement, for the benefit of all Parcels, over the thirty foot (30') wide strip of land located along the common boundary of Lot B-1 and Lot B-2 (the "Access Easement Area"). Declarant also desires to establish cross-utility easements for the benefit of all Parcels, on the terms set forth in this Declaration.

**STATEMENT OF EASEMENTS AND 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 Subject Property the following easements, conditions and restrictions:

1. **Use Restrictions.** Lot B-1 shall be used only for the operation of a hotel, and for the incidental operation of restaurant, and for no other purpose without the prior written consent of Declarant. Declarant may impose additional restrictions on Lot B-2, or any Parcel contained

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within Lot B-2, at the time of conveyance of that Parcel, and so long as Declarant is the owner of fee simple title to any Parcel contained within Lot B-2, it shall have the unilateral right to amend this Declaration for the sole purposes of imposing additional use restrictions on any such Parcel owned by it.

In addition, the Subject Property shall be used only for commercial purposes, and shall not be used in violation of the following restrictions:

(a) No portion of the Subject Property shall be used for warehousing, industrial, manufacturing, school or residential purposes; provided, however, that the operation of a hotel on any Parcel shall not be deemed a violation of this residential restriction.

(b) No portion of the Subject 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 or drug paraphernalia.

(c) No portion of the Subject 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 Subject Property shall be used for the operation of a laundromat, a dry cleaning plant, a veterinary hospital, a funeral parlor or crematorium.

2. **Relocatable Access Easement.** Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement to construct, use, maintain, repair and replace all of the roadways, sidewalks, entrances, exits and curb cuts within the Access Easement Area, for the purpose of providing pedestrian and vehicular access between each Parcel and Forest Point Boulevard. All paved areas within the Access Easement Area shall be constructed and maintained at a uniform grade along common property boundaries, and no barriers, fences or other obstructions shall be erected within the Access Easement Area so as to interfere with the free flow of pedestrian and vehicular traffic between each Parcel and Forest Point Boulevard; provided, however, that the foregoing provisions shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes, or the construction of medians. In addition, each Owner of any portion of the Access Easement Area may block traffic on its Parcel for the time necessary to prevent the creation of prescriptive easement rights, or as may be reasonably required for the purpose of repairing or replacing the roadways, parking areas, and sidewalks on its Parcel. If possible, however, such action shall be taken on a day or at a time when the buildings on the Subject Property would not otherwise be open for business, and in any event only after prior written notice to all other Owners.

The Owner of Lot B-1 shall have the right and easement to construct all roadways, sidewalks, curb cuts, entrances, exits, medians, utilities and related improvements within the

Access Easement Area, provided that all such construction work is performed in accordance with plans and specifications approved in advance by Declarant that comply with the applicable requirements of the City of Charlotte, Mecklenburg County, and/or the North Carolina Department of Transportation. In connection with its construction work, the Owner of Lot B-1 shall comply with all applicable laws, regulations and ordinances, including appropriate erosion control ordinances of Mecklenburg County, and shall indemnify, defend and hold the Owner(s) of the Access Easement Area harmless from and against any and all claims, damages, losses and expenses (including, without limitation, court costs and attorneys' fees) that may be caused or occasioned by the Owner of Lot B-1, its agents, employees or contractors, in connection with its construction work. The Owner of Lot B-1 shall promptly discharge or bond (within thirty (30) days after receipt of notice of filing) any and all liens filed against any other Parcel or any portion thereof as a result of or relating to any construction undertaken by or on behalf of it under this Section.

Any Owner of a Parcel on which the Access Easement Area is located shall have the right to relocate the Access Easement Area to a location elsewhere on its Parcel, provided that each of the following conditions is satisfied:

(a) Such Owner (the "Relocating Owner") shall obtain the written approval of each other Owner of plans and specifications for the proposed relocation, which approval will not be unreasonably withheld, delayed or conditioned

(b) The new location of the Access Easement Area shall connect to each developed Parcel at the point of any existing curb cut or driveway providing access from that Parcel to the Access Easement Area. The relocated Access Easement Area shall provide reasonably direct two-way paved access from each other Parcel to Forest Point Boulevard.

(c) The Relocating Owner shall construct at its expense a paved roadway and associated improvements (including curbs, gutters, and necessary drainage structures) in the new location of at least equal quality to the improvements existing at the time of such relocation. The construction work shall be performed in a manner that minimizes the disruption of any business located on the other Parcels, and in particular continuous two-way paved access from each Parcel to either Forest Point Boulevard must be maintained at all times.

(d) The Relocating Owner shall grant to the other Owners an easement over the new location of the Access Easement Area, containing the same terms and conditions as those contained in this Declaration, at which time the other Owners will release the access easement over the existing location of the Access Easement Area, it being agreed that such grant and release may be accomplished by an amendment to this Declaration.

Nothing in this Section 2 shall be deemed to grant to the Owner of any Parcel any rights to use the parking areas located on the Subject Property outside of its Parcel for the parking of motor vehicles, or to grant to the owner of any property outside of the Subject Property any

rights to use the parking areas located on the Subject Property for the parking of motor vehicles, nor shall it be deemed to grant to any party the right to park motor vehicles on any portion of the Subject Property not striped with parking spaces, such as roadways, entrances and exits, fire lanes and parking aisles.

3. **Maintenance of Access Easement Area.** Each Owner of any portion of the Access Easement Area shall maintain at its expense the paved roadway and related improvements (the "Roadway Improvements") located on the portion of the Access Easement Area within its Parcel, subject to reimbursement from the other Owners for certain expenses, as provided below. The maintenance obligation of each party under this Section 3 shall include, but is not limited to, the following: (a) maintaining the pavement in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or an equal substitute; (b) removing all papers, ice and snow, mud and sand, debris, filth and refuse, and thoroughly sweeping the Roadway Improvements to the extent necessary to keep the Access Easement Area in a clean and orderly condition; and (c) placing, keeping in repair and replacing as necessary all traffic control signs, pavement markings and lines.

If any Owner fails to maintain the Roadway Improvements located on its Parcel in good condition and repair as required above, and if such failure continues for a period of thirty (30) days after such party has been given notice of the failure (provided, however, that no notice shall be required in the event of an emergency), then any other Owner shall have the right to go on the Access Easement Area to perform any necessary repairs or maintenance at its own expense, subject to reimbursement from the other Owners for certain expenses, as provided below.

4. **Sharing of Maintenance Costs.** If any Owner undertakes maintenance work on the Roadway Improvements located on the Access Easement Area as provided in Section 3 above, then provided that any necessary maintenance work is undertaken by the low bidder of at least two (2) responsible contractors, each Owner of each other Parcel shall share the cost of that maintenance in the same proportion that the acreage of their Parcel bears to the total acreage of the Subject Property. If any Owner (a "Defaulting Owner") fails to pay its pro rata share of the cost of maintaining the Roadway Improvements within thirty (30) days after written demand by the Owner performing the work (the "Maintaining Owner"), accompanied by copies of the bids for such work from at least two (2) contractors and an invoice for such work from the contractor rendering the low bid, the Maintaining Owner shall be entitled to file a mechanic's lien against the of the Defaulting Owner in the amount of such invoice, together with interest thereon at the lesser of twelve percent (12%) per annum or the highest rate of interest permitted by law, from the date such invoice is paid by the Maintaining Owner until the Maintaining Owner is repaid by the Defaulting Owner, and recover that amount plus interest in an action at law, all in accordance with the applicable provisions of the North Carolina General Statutes. In addition, the Maintaining Owner shall have any other remedy available to it at law or in equity for such default.

5. **Utility Easements.** Each Owner shall have a non-exclusive easement appurtenant to its Parcel over and across the remainder of the Subject Property for the purpose of installation, maintenance, repair and use of underground utilities (including storm sewer pipes, but not including any storm water detention rights) serving its Parcel; provided, however, that such

utilities shall not be located under any building improvements located on the Subject Property, or in such a fashion as to interfere with the use and appearance of the Subject Property. If, pursuant to the terms of this Section 5, any Owner or ground lessee installs an underground utility across the Parcel of a second Owner, the installing Owner or ground lessee shall: (a) relocate that utility at its expense if such relocation is required as a result of construction by the Owner of the Parcel across which the utility is installed; (b) maintain or cause to be maintained that utility line and all related improvements; (c) repair at its expense any damage to improvements or landscaping caused by such installation and maintenance; and (d) perform such installation and maintenance in a manner so as to minimize any disruption of business on the Parcel on which the utility is located.

6. **Building Plan Approval Requirement.** It is the intent of Declarant that the improvements located on the Subject 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 Subject Property, and no landscaping shall be placed on any portion of the Subject Property, until plans and specifications for those improvements and/or landscaping (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 to or replacements of building improvements or signs located on any part of the Subject Property.

7. **Maintenance Standard.** Until such time as buildings or other improvements are constructed on its Parcel, the Owner of that Parcel shall maintain that Parcel 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 its Parcel 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 each Parcel, the Owner shall maintain or cause to be maintained its Parcel in a safe, clean and attractive condition, and shall maintain and repair at its expense all improvements on its Parcel 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 (specifically including paved areas and related improvements within the Access Easement Area) in a good, safe, clean and sightly 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 its Parcel; and

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

If the maintenance described above is to be undertaken by a ground lessee of any Parcel, the Owner of that Parcel shall notify the Owners of the other Parcels of the name and address of the ground lessee. If any Owner or ground lessee fails to maintain or cause to be maintained its Parcel 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 that Owner or ground lessee (the "Responsible Owner") has been given written notice specifying the nature of the default (provided, however, that no notice shall be required in an emergency), then any other Owner of all or part of the Subject Property shall have the right to go on the Parcel of the Responsible Owner and perform the necessary repairs or maintenance at the expense of the Responsible Owner. Any party performing maintenance or repair work on the Parcel of a Responsible Owner under this Section 7 shall be deemed to have contracted with the Responsible Owner to perform that work, and shall be entitled to file a mechanic's lien against the interest of the Responsible Owner in its Parcel for the reasonable cost of that work, and to recover that cost in an action at law against the Responsible Owner, all in accordance with the applicable laws of the State of North Carolina.

8. **General Standards**. The Owner of each Parcel 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, each 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 its Parcel 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 its Parcel.

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

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

(e) Not to install in or about its Parcel any exterior amplification or similar devices and/ or not to use in, on or about its Parcel any advertising medium which may be heard or experienced outside its Parcel, such as flashing lights, searchlights, loudspeakers, phonographs, television or radio broadcasts. Notwithstanding the foregoing, so long as any Parcel is being used for restaurant purposes, a "customer call" system that is not audible more than one hundred feet from any building located on that Parcel shall not be deemed a violation of this Section 8(e).

(f) To keep its Parcel 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 its Parcel.

9. **Building Restrictions.** No building located on the Subject Property shall have a metal exterior. No structure of a temporary nature shall be allowed on the Subject Property at any time, except that each Owner may place a construction trailer on its Parcel during the period of building construction. All buildings constructed upon the Subject 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.

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

11. **Site Improvement Restrictions.** Site improvements (as distinguished from building improvements) constructed on any Parcel shall comply with the following requirements and restrictions:

(a) A buffer strip for landscaping only shall be maintained along the boundaries of the Subject Property, in the required setback areas along Forest Point Boulevard, and in the area identified as "75' Buffer" on the Plat, 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 each Parcel, prior to opening for business or commencing any other use thereon, and maintained thereon at all times, the greater of: (1) five (5) full size parking spaces for each 1,000 square feet of floor area of the buildings on that Parcel, or (2) the number of parking spaces required for the actual use of that Parcel (such as hotel or restaurant use) under applicable zoning ordinances.

(d) All utility lines and equipment shall be entirely underground.

(e) No on-site septic system or sanitary sewer treatment facility will be permitted on any Parcel.

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

(g) 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.

12. **Sign Restrictions.** No signs shall be erected or installed on the Subject 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 of each Parcel may install one (1) permanently affixed pylon or monument sign structure on its Parcel not in excess of six feet (6') in height, with a sign panel not in excess of sixty (60) square feet in size.

13. **Casualty Damage.** If any building or other improvement located on the Subject 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.

14. **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 that term is defined in that document entitled "Declaration of Restrictive Covenants" dated December 6, 1985 and recorded in Book 5141 at Page 927 in the Mecklenburg County Public Registry, as amended by First Modification dated January 1, 1986 and recorded in Book 5162 at Page 397, and by Second Modification dated May 8, 1998 and recorded in Book 9681 at Page 540), the right of approval shall be exercised by the designated successor to Declarant under the terms of that Declaration.

15. **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 14), all Owners of all or any portion of the Subject Property, and the holders of all first lien deeds of trust encumbering all or any portion of the Subject Property, and recorded in the Mecklenburg County Public Registry.

16. **Binding Effect** It is understood that this Declaration is a covenant running with the Subject 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 Subject Property.

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

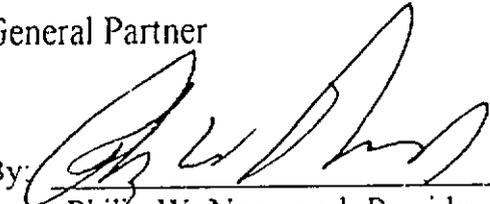
18. **Private Agreement** This Declaration shall not be construed to grant any rights to the public in general.

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

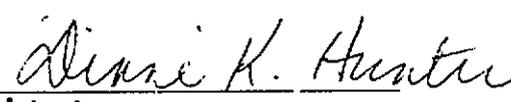
By: FAISON-CHARLOTTE PROPERTIES  
LIMITED PARTNERSHIP, a North  
Carolina limited partnership, General Partner

By: FAISON & ASSOCIATES, INC.,  
General Partner

By:   
Philip W. Norwood, President



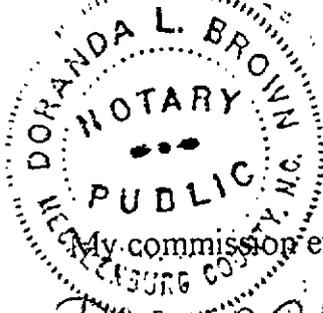
Attest:

  
**Assistant** Secretary

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 8 day of October, 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-ARWOOD 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.



My commission expires:

Dec 10 2002

[NOTARIAL SEAL]

Doranda S. Brown  
Notary Public

State of North Carolina, County of Mecklenburg

The foregoing certificate(s) of Doranda L. Brown

Notary(ies) Public is/are certified to be correct. DATE: OCT 07 1998

JUDITH A. GIBSON, REGISTER OF DEEDS By: Dorothy McClelland Deputy Register of Deeds  
RD98-598