

JUDITH A GIBSON REG OF DEEDS HECK NC

STATE OF NORTH CAROLINA

FILED FOR REGISTRATION 05/18/98 12:01

DECLARATION OF RESTRICTIONS

COUNTY OF MECKLENBURG

THIS DECLARATION OF RESTRICTIONS (this "Declaration"), made as of this 12th day of May, 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 Pine Drive in the City of Charlotte, Mecklenburg County, North Carolina, containing approximately 2.315 acres and shown as Lot 4 on that plat recorded in Map Book 27 at Page 371 in the Mecklenburg County Public Registry (the "Property"). Each legally subdivided portion of the Property 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 Property as a suburban mixed-use development known as ForestPark. Declarant intends to convey the Property to Bob Evans Farms, 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 Subject Property the following conditions and restrictions:

1. **Master Declaration.** The Property is subject to the Declaration of Restrictive Covenants for the Forest Park 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 and by Second Modification dated as of May 8, 1998 and recorded in Book 4651 at Page 540 (as amended, the "Master Declaration"). The Property also is subject to a Declaration of Use Restrictions for the benefit of Prime Hospitality Corp., dated March 18, 1996 and recorded in Book 8501 at Page 859 in the Mecklenburg County Public Registry (the "Use Restriction"). The owner of fee simple title (the "Owner") to any Parcel shall comply with the restrictions set forth in the Master Declaration and the Use Restriction applicable to its Parcel.

2. **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 Forest Park development. Accordingly, no improvements (including free-standing signs) shall be constructed on any part of the Property, and no landscaping shall be placed on any portion of the Subject, 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 Property

3. **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 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 Declarant or any other Owner of all or part of the 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 3 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.

4. **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 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 the Property is being used for restaurant purposes, a "customer call" system that is not audible more than one hundred feet from any building located on the Property shall not be deemed a violation of this Section 4(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.

5. **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 each Owner may place a construction trailer on its Parcel 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.

6. **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.

7. **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 western, northern and eastern boundaries of the Property, in the required setback areas along Arrowridge Boulevard, Arrowood Road, and Forest Pine Drive 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 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.

8. **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 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.

9. **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.

10. **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.

11. **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 10), 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.

12. **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.

13. **Remedies for Breach.** The terms and conditions of this Declaration shall be enforceable by Declarant (or its successor pursuant to the terms of Section 10), by actions for specific performance or injunction, in addition to any other remedies available at law.

14. **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.

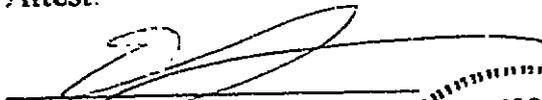
FAISON-ARROWOOD PROPERTIES LIMITED PARTNERSHIP, a North Carolina limited partnership (SEAL)

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: 
**James H. Culpepper, IV
Vice President**

Attest:


Secretary

[CORPORATE SEAL]



STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

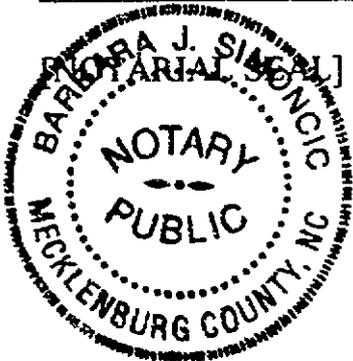
This 12 day of May, 1998 personally came before me James H. Culpepper, IV, who, being by me duly sworn, says that he is the Vice President of FAISON & ASSOCIATES, INC., General Partner of FAISON-CHARLOTTE PROPERTIES LIMITED PARTNERSHIP, General Partner of FAISON-ARROWOOD PROPERTIES LIMITED PARTNERSHIP, 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 Vice President acknowledged the said writing to be the act and deed of said corporation, on behalf of said partnerships.

Barbara J. Simovic

Notary Public

My commission expires:

My Commission Expires May 15, 2001



State of North Carolina, County of Mecklenburg

The foregoing certificate(s) of

Barbara J. Simovic

Notary(ies) Public is/are certified to be correct This day of MAY 18 1998 . 19

JUDITH A. GIBSON, REGISTER OF DEEDS By

Valerie J. White

Deputy Register of Deeds

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