

Drawn by *[handwritten]* to:
Admission Board on *[handwritten]* (PACBAT)
101 N. Tryon St. Suite 1900
[handwritten] NC 28242

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
1999 MAR 22 10:10 AM
BOOK: 10334 PAGE: 847-856 FEE: \$24.00
INSTRUMENT # 1999049944

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

**DECLARATION OF EASEMENTS
AND RESTRICTIONS**

THIS DECLARATION OF EASEMENTS AND RESTRICTIONS (this "Declaration") is made as of this 11th day of March, 1999 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 adjacent tracts of land located on the north side of Arrowood Road, west of its intersection with Forest Point Boulevard, in the City of Charlotte, Mecklenburg County, North Carolina, as shown on that plat recorded in Map Book 30 at Page 645 in the Mecklenburg County Public Registry (the "Plat"): (1) a tract containing approximately 1.65 acres and shown as "Lot B-6" on the Plat (the "Exxon Parcel"), and (2) a tract containing approximately 2.78 acres and shown as "Tract A" on the Plat (the "Other Parcel"). The Exxon Parcel and the Other Parcel are referred to collectively in this Declaration as the "Subject Property," and each subdivided portion of the Subject Property, including the Exxon Parcel and the Other Parcel, 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 the Exxon Parcel to Exxon Corporation or its designee to be developed as a motor fuel facility with a convenience products store, and to convey or ground lease the Other Parcel to a third party 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 access easement, for the benefit of both Parcels, over the thirty foot (30') wide strip of land located along the common boundary of the Exxon Parcel and the Other Parcel, which is identified as "30' Private Easement" on the Plat (the "Access Easement Area"), and to provide for the maintenance of the roadway improvements within the Access Easement Area.

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:

[Handwritten signature]

1. **Master Drainage Easement.** The Subject Property is subject to the matters set forth in that document entitled "Declaration of Drainage Easements" (the "Master Declaration"), dated as of March ____, 1999 and recorded in the Mecklenburg County Public Registry simultaneously with the recording of this Declaration, imposing certain assessments obligations on the Subject Property. The owner of fee simple title (the "Owner") to each Parcel shall comply with the restrictions set forth in the Master Declaration applicable to its Parcel.

2. **Use Restrictions.** 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;

(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; and

(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.

3. **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 Arrowood Road. 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 Arrowood Road; provided, however, that the foregoing provisions shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes. 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.

Declarant 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 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, Declarant shall comply with all applicable laws, regulations and ordinances, including appropriate erosion control ordinances of Mecklenburg County, and shall indemnify, defend and hold each other Owner 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 Declarant, its agents, employees or contractors, in connection with its construction work. Declarant shall promptly discharge or bond (within thirty (30) days after receipt of notice of filing) any and all liens filed against any Parcel or any portion thereof as a result of or relating to any construction undertaken by or on behalf of it under this paragraph 3.

Nothing in this paragraph 3 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.

4. **Maintenance of Access Easement Area**. Each Owner 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 paragraph 4 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.

5. **Sharing of Maintenance Costs**. If any Owner undertakes maintenance work on the Roadway Improvements located on the Access Easement Area as provided in paragraph 4 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.

6. **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 paragraph 6, 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.

7. **Sign Easement.** If the Other Parcel is subdivided, the Owner of the portion of the Other Parcel that does not front on the Access Easement Area shall have the right and easement to erect and maintain, at its sole expense, a directional sign within the eastern half of the Access Easement Area, located on the remainder of the Other Parcel. The directional sign shall not exceed three feet (3') in height, and the design and placement of the directional sign shall be subject to the reasonable prior approval of the Owner of the remainder of the Other Parcel.

8. **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 Forest Park development. Accordingly, no improvements (including buildings, canopies and free-standing signs) shall be constructed on any part of the Subject Property, until plans and specifications for those improvements (which plans, in the case of buildings, canopies, 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 not apply to the interior of any building or to interior changes, but shall apply with equal force to exterior renovations to or replacements of buildings, canopies or signs located on any part of the Subject Property. Declarant agrees that it will not unreasonably withhold approval to any proposed building plans that are architecturally and aesthetically compatible with the other improvements within the Forest Park development, and that any plans submitted to it will be deemed approved unless Declarant notifies the

submitting Owner in writing, within ten (10) business days after receipt, of the specific reasons for its disapproval.

9. **Maintenance Standard.** The Owner of the Subject Property shall maintain or cause to be maintained the Subject Property and any improvements located thereon in good order and condition, which obligation shall include, but shall not be limited to, the following specific items of maintenance and upkeep:

(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 the Subject Property; and

(f) Repairing any damage or breakage to utilities located beneath the pavement on the Subject Property.

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 a Parcel 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. In that event, the party performing the work 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 the Subject Property 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.

10. **General Standards.** Each 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, each Owner shall have 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 or any other portion of the Subject Property.

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

(d) Not to install in or about its Parcel any exterior amplification, exterior loudspeakers or similar devices that are audible outside the boundaries of the Subject Property.

(e) To screen from public view, to the extent practical, all television antennas, satellite dishes and any other mechanical equipment.

(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.

11. **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.

12. **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.

13. **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 Arrowood Road, and in the area identified as "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.

14. **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.

15. **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.

16. **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.

17. **Amendment to Declaration.** This Declaration may be amended only by a written agreement executed by Declarant (or its successor pursuant to the terms of paragraph 16), 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.

18. **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.

19. **Remedies for Breach.** The terms and conditions of this Declaration shall be enforceable by Declarant (or its successor pursuant to the terms of paragraph 16), by actions for specific performance or injunction, in addition to any other remedies available at law.

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

[signatures on following page]

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



CORPORATE SEAL

Alvin K. Hunter
ASST Secretary

By: David B. Chandler
Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

AKA D.B. Chandler

This 11th day of March, 1999 personally came before me DAVID B. Chandler, 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.

Randall M. [Signature]
Notary Public

Commission expires:



[NOTARY SEAL]

2003

Aug 23, 2003



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

Filed For Registration: 03/22/1999 10:10 AM
Book: RE 10334 **Page:** 847-856
Document No.: 1999049944
RESTR 10 PGS \$24.00
Recorder: LYNETTE FEELY

State of North Carolina, County of Mecklenburg

The foregoing certificate of CANDACE M. GATCH Notary is certified to be correct. This 22 ND of March 1999

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

Lynette Feely



1999049944