

**FIRST AMENDMENT TO  
DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
MOUNTAIN ISLAND MARKETPLACE SHOPPING CENTER**

**THIS FIRST AMENDMENT TO DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS FOR MOUNTAIN ISLAND MARKETPLACE SHOPPING CENTER** (this "First Amendment") is made as of the 22<sup>nd</sup> day of May, 1995, by **CRESCENT RESOURCES, INC.**, a South Carolina corporation (the "Developer") and **HAWTHORNE CAROLINA LLC**, a North Carolina limited liability company ("Hawthorne");

W I T N E S S E T H:

WHEREAS, Developer has subjected certain real property located in Paw Creek Township, Mecklenburg County, North Carolina, to that certain Declaration of Easements, Covenants, Conditions and Restrictions for Mountain Island Marketplace Shopping Center recorded in Book 8104 at Page 274 in the Office of the Register of Mecklenburg County, North Carolina (the "Declaration");

WHEREAS, SouthTrust of North Carolina, Incorporated, the assignee of all right, title and interest of SouthTrust Bank of Central Carolina ("SouthTrust") in and to that certain Contract of Purchase and Sale of Real Estate dated March 8, 1995, between Developer, as Seller, and SouthTrust, as Buyer (the "Contract"), is willing to purchase that certain tract of land commonly referred to as Outparcel D within the Mountain Island Marketplace development [which Outparcel D is more particularly described on that certain subdivision plat (the "Subdivision Plat") recorded in Map Book 26 at Page 637 in the Mecklenburg County, North Carolina, Public Registry] pursuant to the terms of the Contract;

WHEREAS, pursuant to the terms of the Contract, Developer is required to impose certain use restrictions on a certain portion of the property encumbered by the Declaration;

WHEREAS, Hawthorne owns that certain tract of land commonly referred to as Outparcel B within the Mountain Island Marketplace development (which Outparcel B is more particularly described on the Subdivision Plat);

WHEREAS, pursuant to the terms of Section 9.15 of the Declaration, Hawthorne is required to join in the execution of this First Amendment due to its status as an Owner of an Outparcel;

WHEREAS, Developer and Hawthorne therefore desire to amend the Declaration to provide for the use restrictions required pursuant to the terms of the Contract; and

Drawn by and mail to

Kennedy Covington Lobdell & Hickman, L.L.P. (GLCjr.)  
NationsBank Corporate Center, Suite 4200  
100 North Tryon Street  
Charlotte, North Carolina 28202-4006

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JUDITH A GIBSON REG OF DEEDS MECK NC  
FILED FOR REGISTRATION 06/12/95 14:51  
BK: 08175 PG: 0255/0259 #:0310 16.00

WHEREAS, all defined terms used in this First Amendment, as indicated by the initial capitalization thereof, shall, unless otherwise specifically defined herein, be deemed to have the same meaning as assigned to such terms in the Declaration.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Developer and Hawthorne hereby agree as follows:

1. The Declaration is hereby amended by adding the following paragraph as Section 6.16 of the Declaration:

6.16 Additional Use Restrictions for the Benefit of Outparcel D.  
Notwithstanding any contrary term or provision in Section 6.1 above or in any other provision in this Declaration, the following terms and provisions shall be applicable for the time period specified below in this Section 6.16 and in such case shall be enforceable only by Developer and the Owner of that certain Outparcel identified as "Outparcel 'D'" on the Site Plan ("Outparcel D"):

(a) Subject to the rights of any tenant leasing space pursuant to the terms of any lease executed prior to March 8, 1995, the following restrictions shall apply to (i) the First Phase Property and (ii) those certain Outparcels identified as "Outparcel 'A'" and "Outparcel 'C'" on the Site Plan ("Outparcel A" and "Outparcel 'C,'" respectively):

(i) Such property shall not be sold to, leased to or used by a commercial bank, savings bank, savings and loan association, credit union or any other business engaged in retail banking.

(ii) No bank kiosks, automatic teller machine facilities or satellite banking branches shall be permitted within stores or shops that may be constructed or otherwise established on such property.

(b) Upon the earliest to occur of any of the following dates (the "Outparcel D Restriction Termination Date"): (i) the date that a SouthTrust Bank of Central Carolina ("SouthTrust") branch bank (or a branch bank operated by SouthTrust's successors-in-interest by merger or other corporate transaction) ceases to be operated on Outparcel D; (ii) the date that Outparcel D is conveyed to a person or entity that does not intend to operate a SouthTrust branch bank (or a branch bank operated by SouthTrust's successors-in-interest by merger or other corporate transaction) on Outparcel D; (iii) August 1, 1998, if Outparcel D has not opened for business as a retail banking facility on or before August 1, 1998; or (iv) December 31, 2007, the following terms and provisions shall be applicable:

(i) From and after the Outparcel D Restriction Termination Date, the provisions and restrictions in this Section 6.16 shall be deemed null and void and of no further force and effect, and this Declaration shall thereafter be construed as if all of the text in this Section 6.16 were stricken in its entirety from this Declaration. Although no additional documentation shall be required to be executed or recorded to give effect to the terms of this Section 6.16(b)(i), if requested

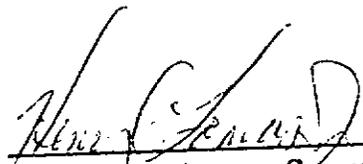
by Developer, following the occurrence of the Outparcel D Restriction Termination Date, the then-current owner of Outparcel D shall promptly execute and deliver to Developer an instrument in recordable form (to be prepared by Developer) acknowledging that the provisions and restrictions in this Section 6.16 are null and void and of no further force and effect, and Developer shall be entitled to record such acknowledgement instrument in the public real estate records in Mecklenburg County, North Carolina.

(ii) Notwithstanding any term or provision in this Declaration to the contrary, the terms and provisions in this Section 6.16 may be terminated at any time by an appropriate instrument executed both by Developer and the then-current Owner of Outparcel D, and such termination shall be effective from and after the date and time of the recordation of such instrument in the public real estate records in Mecklenburg County, North Carolina.

2. Except as modified herein, the Declaration shall remain in full force and effect.

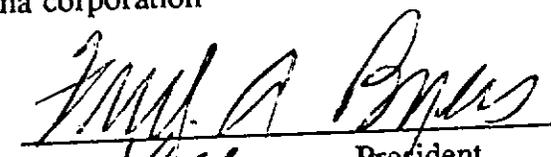
IN WITNESS WHEREOF, Developer and Hawthorne have caused this First Amendment to be executed effective as of the day and year first above written.

ATTEST:

  
\_\_\_\_\_  
Secretary



CRESCENT RESOURCES, INC., a South Carolina corporation

By:   
\_\_\_\_\_  
President

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

HAWTHORNE CAROLINA LLC, a North Carolina limited liability company

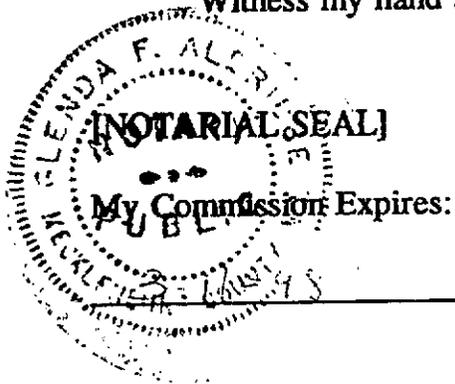
By: James P. Houser, Jr. [SEAL]  
James P. Houser, Jr.  
Its: Member/Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Glenda F. Aldridge, a Notary Public of Mecklenburg County, North Carolina, do hereby certify that Henry C. Lucas, Jr. personally came before me this day and acknowledged that [s]he is the Asst. Secretary of Crescent Resources, Inc. (the "Corporation"), and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed by Fred A. Beers as Vice President of the Corporation, sealed with its corporate seal and attested by himself/herself as its Asst. Secretary.

Witness my hand and notarial seal, this 21st day of May, 1995.



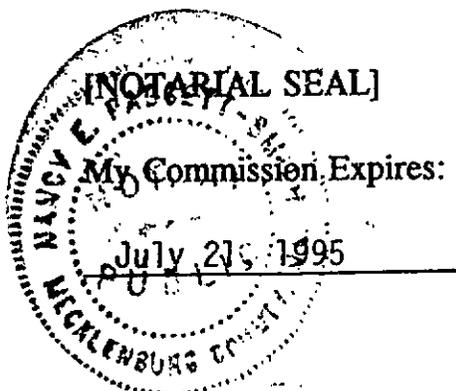
Glenda F. Aldridge  
NOTARY PUBLIC

STATE OF NORTH CAROLINA

COUNTY OF Mecklenburg

I, Nancy E. Padgett-Smith, a Notary Public of Mecklenburg County, North Carolina, do hereby certify that James P. Houser, Jr., Member/Manager of Hawthorne Carolina LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of Hawthorne Carolina LLC.

Witness my hand and notarial seal, this 22nd day of May, 1995.



Nancy E. Padgett-Smith  
NOTARY PUBLIC

State of North Carolina, County of Mecklenburg

The foregoing certificate(s) of Glenda F. Aldridge and  
Nancy E. Padgett-Smith

Notary(ies) Public is/are certified to be correct.

This 12th day of June, 19 95.

JUDITH A. GIBSON, REGISTER OF DEEDS

By: Mary H. Posey Deputy Register of Deeds

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