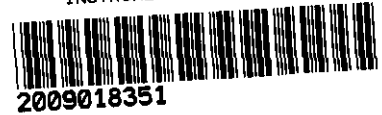


FOR REGISTRATION J. DAVID GRANBERRY  
REGISTER OF DEEDS  
MECKLENBURG COUNTY, NC  
2009 FEB 13 12:33:29 PM  
BK: 24452 PG: 15-22 FEE: \$32.00  
INSTRUMENT # 2009018351



**FIRST AMENDMENT TO DECLARATION OF EASEMENTS AND RESTRICTIONS  
FOR KINGS CROSSING**

This **FIRST AMENDMENT TO DECLARATION OF EASEMENTS AND RESTRICTIONS** (the “**First Amendment**”) is made this 12 day of February, 2009, by and between **WAITING ROOM 1, LLC**, a North Carolina limited liability company (“**Declarant**”) and **EASTBOURNE MALLARD LLC**, a Delaware limited liability company (“**Eastbourne**”).

**RECITALS**

A. Declarant is a party to that certain Declaration of Easements and Restrictions recorded in Book 21857 at Page 893 in the Mecklenburg County Public Registry (the “Declaration”) encumbering multiple parcels of real estate containing an aggregate of approximately 10.574 acres, located at the southeast corner of Mallard Creek Road and Galloway Road, in the City of Charlotte, Mecklenburg County, North Carolina (the “**Property**”). The Property is more particularly shown on that plat entitled “Minor Subdivision, Kings Crossing,” recorded in Map Book 47 at Page 705 in the aforesaid Public Registry (the “**Plat**”). Declarant is the owner of Lot 2 of the Property as the same is depicted on the Plat.

B. Eastbourne is the owner of Lot 1 of the Property as the same is depicted on the Plat. Pursuant to Recital B of the Declaration, Eastbourne has prepared a subdivision of Lot 1 of the Property, as more particularly shown on the plat entitled “Minor Subdivision, Kings Crossing- Map 2,” prepared by the Isaacs Group, P.C., dated January 27, 2009, and recorded in Map Book 51 at page 380 in the aforesaid Public Registry (the “**Revised Plat**”). Eastbourne intends to convey Lot 3 as shown on the Revised Plat to TOKA2, LLC, a North Carolina limited liability company, as to a 50% undivided interest, and Kings Crossing Partners, LLC, a North Carolina limited liability company, as to a 50% undivided interest (together, “**Purchaser**”) for development of a medical office building on Lot 3 of the Property.

C. Declarant and Eastbourne have entered into this First Amendment to acknowledge Eastbourne’s subdivision of Lot 1, to substitute a new site plan for the Site Plan attached to the Declaration which now includes the new Lot 3 as depicted on the Revised Plat and to amend certain other provisions of the Declaration required by the subdivision of Lot 1.

DRAWN BY TMAIL TO:  
TIM GAVIGAN 10700 SIKES PLACE, SUITE 305  
CHARLOTTE NC 28277

D. The provisions of Section 8 of Article X of the Declaration permit the amendment of the Declaration if at least seventy-five percent (75%) of the Owners, and Declarant, so long as it owns any portion of the Property, join in the execution of a written instrument that is properly recorded in the aforesaid Public Registry. Declarant and Eastbourne are together 100% of the Owners of the Property.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises and covenants herein contained, Declarant and Eastbourne hereby agree as follows:

1. The Recitals set forth above are incorporated herein by reference. The use of any capitalized term not otherwise defined herein shall have the meaning ascribed thereto in the Declaration.

2. The Site Plan attached to the Declaration is hereby deleted in its entirety and substituted in lieu thereof is the revised site plan attached hereto as **Exhibit A** and made a part hereof (the "**Revised Site Plan**"). From and after the date this First Amendment is recorded, any reference in the Declaration to the Site Plan shall be deemed to be a reference to the Revised Site Plan.

3. The real property to be conveyed to Purchaser which is depicted on the Revised Plat as Lot 3 is depicted on the Revised Site Plan as Parcel F. In this connection, Section 4 of Article VIII of the Declaration shall be amended to add the following:

<b>Parcel</b>	<b>Maximum Number Of Stories</b>	<b>Maximum Building Height</b>
F	1	25'

4. Section 6 of Article IV of the Declaration is hereby deleted in its entirety and substituted in lieu thereof is the following:

"Section 6. Calculation of Assessments. The Common Area Costs incurred by the Association shall be assessed against each Parcel based upon the respective acreages of each Parcel, with each Parcel's proportionate share equal to a fraction, the numerator of which is the acreage of that Parcel, and the denominator of which is the aggregate acreage of all Parcels within the Property that are subject to assessment."

5. Except as specifically set forth herein, the Declaration remains unchanged and in full force and effect and the parties, by their execution of this First Amendment, hereby ratify, affirm and approve the Declaration, as amended hereby. All of the provisions of the Declaration affected by this First Amendment shall be deemed amended, whether or not actually specified herein, if such amendment is clearly necessary to effectuate the intent of the parties hereto.

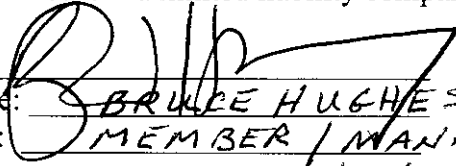
6. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but one and the same instrument.

7. The Property is encumbered by a Deed of Trust, Assignment of Rents and Security Agreement, dated June 30, 2006 and recorded in Book 20678 at Page 758 in the aforesaid Public Registry, executed and delivered by Declarant to TRSTE, Inc. ("Trustee"), as trustee for Wachovia Bank, National Association ("Lender"). A Consent and Subordination, as executed by Lender and Trustee, consenting to the execution and recording of this First Amendment, is attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the undersigned have duly executed these presents by authority duly given as of the date and year first above written.

**Declarant:**

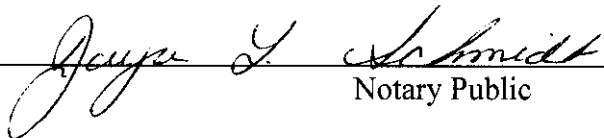
WAITING ROOM 1, LLC,  
a North Carolina limited liability company

By:   
Name: BRUCE HUGHES  
Title: MEMBER / MANAGER  
2/10/09

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, JOYCE L. SCHMIDT, a Notary Public of MECKLENBURG County and State of NORTH CAROLINA do hereby certify that BRUCE HUGHES (the "Signatory"), MEMBER / MANAGER of Waiting Room 1, LLC, a North Carolina limited liability company, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

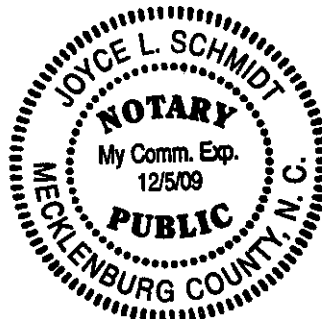
Witness my hand and official stamp or seal this 12<sup>th</sup> day of February, 2009.

  
Notary Public

Print Name: JOYCE L. SCHMIDT  
(Note: Notary Public must sign exactly as on notary seal)

My Commission Expires: \_\_\_\_\_

[NOTARY SEAL]  
(MUST BE FULLY LEGIBLE)



**Eastbourne:**

EASTBOURNE MALLARD LLC,  
a Delaware limited liability company

By: Eastbourne Investments Ltd

By: [Signature]  
Name: FRANCIS EGAN  
Title: PRESIDENT

STATE OF New York  
COUNTY OF Erie

I, Christopher M Henel, a Notary Public of St. Erie County and State of New York, do hereby certify that Francis Egan (the "Signatory"), Manager of Eastbourne Investments Ltd., the Manager of Eastbourne Mallard, LLC, a Delaware limited liability company, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official stamp or seal this 11 day of February, 2009.

[Signature]  
Notary Public

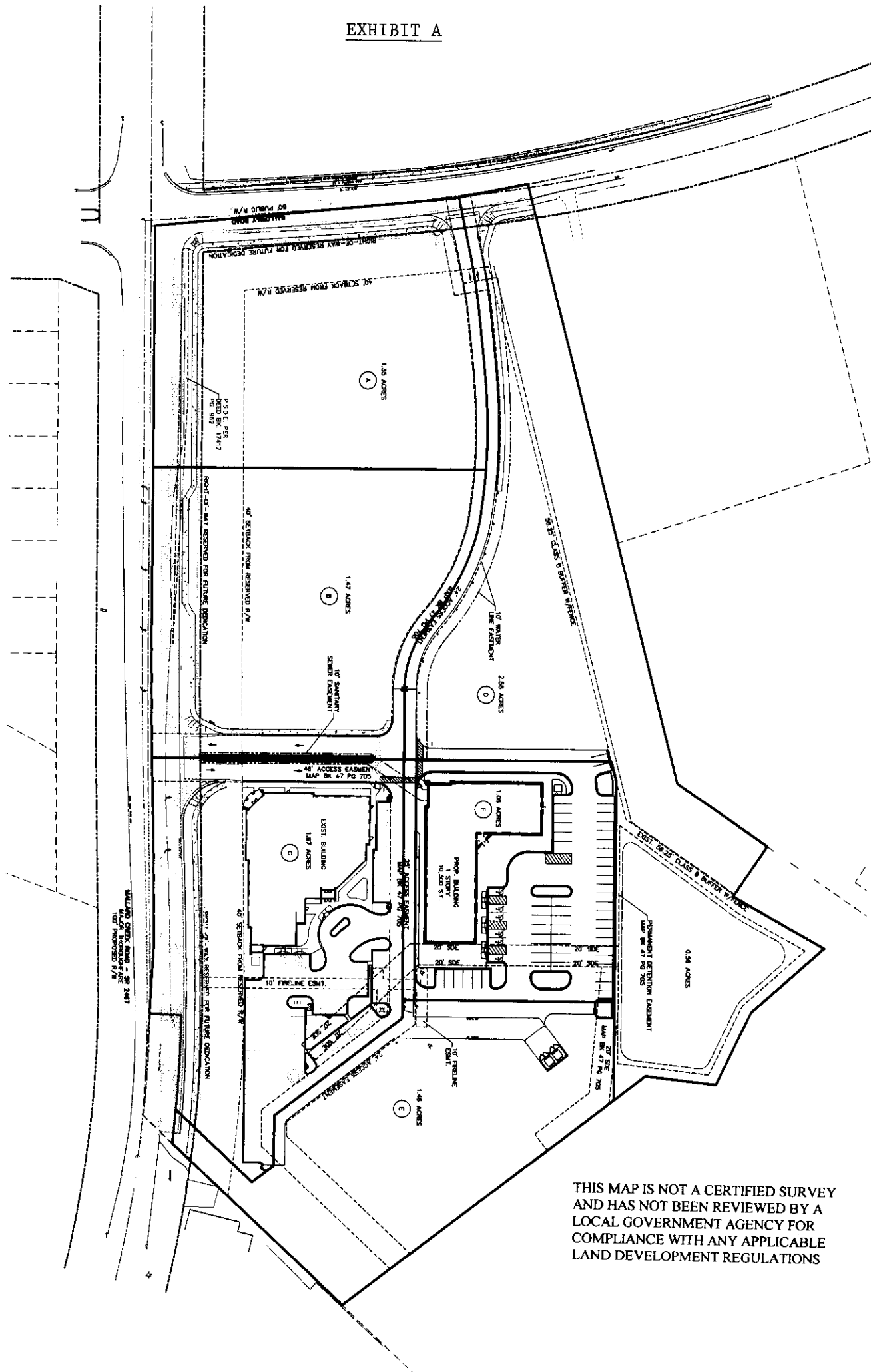
Print Name: Christopher M Henel  
(Note: Notary Public must sign exactly as on notary seal)

My Commission Expires: 08/07/2010

[NOTARY SEAL]  
(MUST BE FULLY LEGIBLE)

CHRISTOPHER M. HENEL  
Notary Public, State of New York  
Qualified in Erie County  
My Commission Expires 08/07/2010

EXHIBIT A



THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS


CONSENT OF LENDER

**Wachovia Bank, National Association**, a national banking association ("Lender"), owner and holder of notes secured by that certain Deed of Trust, Assignment of Rents and Security Agreement recorded in Book 20678 at Page 758 in the Mecklenburg County Register of Deeds and **TRSTE, Inc.**, a North Carolina corporation, Trustee under said Deed of Trust ("Trustee"), hereby agree that they have consented to the terms and provisions of this First Amendment to Declaration of Easements and Restrictions (hereinafter called the "First Amendment"); that any subsequent foreclosure of the Deed of Trust secured by the property described therein shall not extinguish this First Amendment but shall merely vest in Lender the rights and duties set forth herein, provided, however, that should Lender acquire title to the property secured by this Deed of Trust, any liability Lender shall have for the duties set forth in the First Amendment shall be non-recourse except to the extent of its interest in such property; that all present and future owners of any of the property described in the First Amendment shall be entitled to the full rights and easements to the extent the same are granted herein; and that upon payment of the loan secured by the Deed of Trust, the rights of Lender and Trustee (or such successor trustees as permitted by the Deed of Trust) set forth in this First Amendment shall terminate.

IN WITNESS WHEREOF, the undersigned have duly executed these presents as of the 10<sup>th</sup> day of February, 2009.

**LENDER:**

WACHOVIA BANK, NATIONAL ASSOCIATION

By:   
Vice President

**TRUSTEE:**

TRSTE, Inc.

By:   
Vice President

STATE OF North Carolina

COUNTY OF Mecklenburg

This 10<sup>th</sup> day of February, 2009, personally came before me, Kara M. Clark, who being by me duly sworn, says that s/he is Vice President of Wachovia Bank, National Association, a national banking association, and that by authority duly given and as the act of said banking association, the foregoing instrument was signed in its name by its vice President.

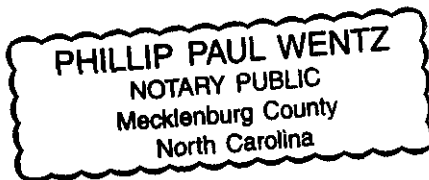
WITNESS my hand and notarial seal, this 10<sup>th</sup> day of February, 2009.

Phillip Paul Wentz  
Notary Public

My Commission Expires:

11-16-2009

(Notary Seal)



STATE OF North Carolina

COUNTY OF Mecklenburg

This 10<sup>th</sup> day of February, 2009, personally came before me, Kara M. Clark, who being by me duly sworn, says that s/he is Vice president of TRSTE, Inc., a North Carolina corporation, and that by authority duly given and as the act of said corporation, the foregoing instrument was signed in its name by its Vice President.

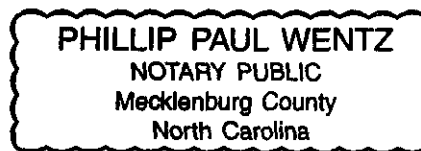
WITNESS my hand and notarial seal, this 10<sup>th</sup> day of February, 2009.

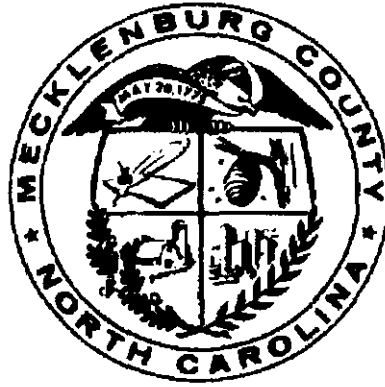
Phillip Paul Wentz  
Notary Public

My Commission Expires:

11-16-2009

(Notary Seal)





J. DAVID GRANBERRY  
REGISTER OF DEEDS, MECKLENBURG  
COUNTY & COURTS OFFICE BUILDING  
720 EAST FOURTH STREET  
CHARLOTTE, NC 28202

**PLEASE RETAIN YELLOW TRAILER PAGE**

It is part of the recorded document, and must be submitted with original for re-recording  
and/or cancellation.

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**Book:** RE 24452 **Page:** 15-22  
**Document No.:** 2009018351  
**RESTR 8 PGS \$32.00**  
**Recorder:** LYVANH PHETSARATH



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