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**MUTUAL AGREEMENT AND DECLARATION
OF COVENANTS AND EASEMENTS**

June 19, 2003

CHARLOTTE 370242v1f

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Unofficial Document

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MUTUAL AGREEMENT AND DECLARATION OF COVENANTS AND EASEMENTS

THIS MUTUAL AGREEMENT AND DECLARATION OF COVENANTS AND EASEMENTS (this "Agreement") is made as of this 19th day of June, 2003, among SOUTHEND PARTNERS, LLC, a North Carolina limited liability company ("Southend"), VILLAGE OF SOUTHEND, LLC, a North Carolina limited liability company ("Village"), and JOHN B. AND PAMELA E. BLOOM (collectively, "Bloom"). Southend, Village, and Bloom may each individually be referred to as a "Party," or together, collectively, as the "Parties".

BACKGROUND STATEMENT

A. Southend is the owner of that certain parcel of real property consisting of approximately 1.9165 acres of land, shown as Lot 1 on that certain plat (the "Map") of "Village of Southend, Map 1" (dated June 13, 2003 and recorded in Map Book 39, Page 657 of the Mecklenburg County Public Registry (the "Southend Parcel"));

B. Village is the owner of that certain parcel of real property immediately adjacent to the Southend Parcel consisting of approximately 0.6013 acres of land, shown as Lot 2 on the Map (the "Village Parcel");

C. Bloom is the owner of that certain parcel of real property immediately adjacent to the Southend Parcel and the Village Parcel consisting of approximately 0.1671 acres of land, shown as Lot 3 on the Map (the "Bloom Parcel");

D. The Parties contemplate that the Southend Parcel, Village Parcel, and Bloom Parcel shall be developed as a mixed-use development comprised of retail, office and multi-family residential components with related parking facilities. In order to promote the unified development of the Southend Parcel, Village Parcel, and Bloom Parcel, it is in the best interest of each of the Parties hereto to grant and reserve various easements burdening their respective Parcels and to agree to certain covenants as more particularly set forth herein.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which each Party acknowledges, the Parties hereto agree as follows:

Article I
DEFINITIONS

- 1.1 "Agreement" is defined in the preamble.
- 1.2 "Bloom" is defined in the preamble.
- 1.3 "Bloom Parcel" is defined in the background statement.
- 1.4 "Charlotte" shall refer to the City of Charlotte, North Carolina.

1.5 "Condominium Regime" shall be deemed to have commenced, with regard to any Parcel, at such time as a Declaration of Condominium has been filed in the Mecklenburg County Registry subjecting such Parcel to the terms of the North Carolina Condominium Act and one (1) or more condominium unit(s) has been transferred so as to be under separate ownership from the other condominium units.

1.6 "Easement" shall refer to any of the Southend Easement Village Easement, Private Utility Easement or Stormwater Drainage Easement individually; "Easements" shall refer to two (2) or more of same, collectively.

1.7 "Easement Area(s)" shall refer individually or collectively, as applicable, to the Southend Easement Area and the Village Easement Area.

1.8 "Grant(s)" shall mean to give, grant, bargain, sale and convey an easement in the real property described in such grant, to the extent specified, and shall be deemed to create an easement appurtenant to the Parcel of the specified grantee and shall burden the Parcel of the specified grantor forever unless a shorter time is set forth, to have and to hold each of the Easements herein unto the Owners and their Permittees, as applicable, for the uses and purposes set forth herein.

1.9 "Improvement" shall mean buildings (including additions to existing Improvements which change their external appearance), outbuildings, underground installations, slope alterations, roads, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, windbreaks, plantings, planted trees and shrubs, poles, signs, loading areas and all other structures or landscaping improvements of every type and kind.

1.10 "Mortgage" is defined in Section 8.1 hereof.

1.11 "Mortgagee" means the holder or holders, from time to time, of a Mortgage, as reflected in the Mecklenburg County, North Carolina Public Registry.

1.12 "Notice" is defined in Section 11.9 hereof.

1.13 "Owner(s)" The Person or Persons which shall be, from time to time, the record owner of fee simple title to any Parcel, or any portion thereof; provided, however, that such term shall not include any Mortgagee or trustee who may hold title to any such property pursuant to a Mortgage unless and until such Mortgagee shall acquire record title to any such property secured by such Mortgage, free of any right of redemption; and provided further that if a Condominium Regime is established for any Parcel, the condominium owners association established pursuant to such Condominium Regime shall be deemed the Owner of such parcel from the date such Condominium Regime is established.

1.14 "Parcel" shall refer to any of the Bloom Parcel, Southend Parcel or Village Parcel, individually; "Parcels" shall refer to two (2) or more of same, collectively.

1.15 "Partial Taking" is defined in Section 6.2 hereof.

1.16 "Party" and "Parties" are each defined in the preamble.

1.17 "Permittee" The Parties, their successors and assigns (including, but not limited to, any owners of individual condominium units in a Condominium Regime) and any tenant, subtenant or other authorized occupant of any portion of the Improvements located on any Parcel and their respective officers, directors, employees, agents, partners, contractors, customers, visitors, invitees, licensees and concessionaires.

1.18 "Person" shall refer to any natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

1.19 "Protective Covenants" shall mean the protective covenants set forth in Article IV of this Agreement, as it may from time to time be amended or supplemented.

1.20 "Southend" is defined in the preamble.

1.21 "Southend Easement" is defined in Article II hereof.

1.22 "Southend Easement Area" is that area on the Southend Parcel that is, or will be, developed as surface parking, sidewalk and driveway areas generally available for use of all Owners and their Permittees and generally shown approximately on Exhibit A attached hereto and incorporated herein by reference. Such Easement Area shall not include any parking areas, sidewalks or driveway areas in the building (including, but not limited to, the structural parking deck which will be a part of such building) anticipated to be constructed on the Southend Parcel.

1.23 "Southend Parcel" is defined in the background statement.

1.24 "Unforeseeable Events" means with respect to the performance by any Owner of any obligation under this Agreement, any of the following to the extent the same materially and adversely affects the ability of such Owner to perform the obligation in question within the time period provided for herein for the performance of such obligation: (a) strike, boycott, riot, act of God, governmental regulation of the sale of material or supplies and the transportation thereof, shortage of labor or materials, or war; (b) governmental moratorium, down zoning or other similar governmental action not initiated or consented to by such Owner; (c) material adverse changes in governmental laws, regulations or restrictions; (d) any other cause that is beyond the reasonable control of such Owner; and (e) the failure of the other Owners to perform their obligations under this Agreement in the time period required under this Agreement for any of the reasons described in clauses (a) through (d) above or otherwise. Failure or inability of any Owner to pay money when due (other than as a result of the failure of the other Owners to pay any costs to be paid or reimbursed by the other Owners pursuant to the terms of this Agreement) shall not be deemed to constitute an Unforeseeable Event hereunder.

1.25 "Village" is defined in the preamble.

1.26 "Village of Southend Project" means that certain mixed-use development with office, retail and residential components and related parking facilities of which the Parcels shall form a part, which is being developed by Southend and Village in the city block bounded by South Boulevard to the west, Magnolia Avenue to the south, McDonald Avenue to the north, and Euclid Avenue to the east.

1.27 "Village Easement" is defined in Article II hereof.

1.28 "Village Easement Area" is that area on the Village Parcel that is, or will be, developed as parking, sidewalk and driveway areas generally available for use of all Owners and their Permittees and generally shown approximately on Exhibit B attached hereto and incorporated herein by reference.

1.29 "Village Parcel" is defined in the background statement.

Article II
GRANT OF EASEMENTS

2.1 Grant of Southend Easement.

(a) By its execution and delivery of this Agreement, Southend Grants to the Owners of the Village Parcel and Bloom Parcel for their use and use by their Permittees, subject to the provisions of this Agreement, a perpetual, non-exclusive easement (the "Southend Easement") over, across and through the Southend Easement Area for the purpose of:

(1) The non-exclusive use and enjoyment of the parking spaces currently constructed or hereinafter constructed within the Southend Easement Area to park automobiles, motorcycles, pickup trucks, panel trucks, utility vehicles and other types of light delivery vehicles; and

(2) The non-exclusive use and enjoyment of the drive lanes, ramps, entrances and exits currently constructed or hereinafter constructed within the Southend Easement Area for pedestrian and vehicular access, ingress and egress to, from and between the Southend Parcel, Village Parcel, Bloom Parcel, Magnolia Avenue, McDonald Avenue, and South Boulevard.

2.2 Grant of Village Easement.

(a) By its execution and delivery of this Agreement, Village Grants to the Owners of the Southend Parcel and Bloom Parcel for their use and use by their Permittees, subject to the provisions of this Agreement, a perpetual, non-exclusive easement (the "Village Easement") over, across and through the Village Easement Area for the purpose of:

(1) The non-exclusive use and enjoyment of the parking spaces currently constructed or hereinafter within the Village Easement Area to park automobiles, motorcycles, pickup trucks, panel trucks, utility vehicles and other types of light delivery vehicles; and

(2) The non-exclusive use and enjoyment of the drive lanes, ramps, entrances and exits currently constructed or hereinafter currently constructed or hereafter constructed within the Village Easement Area for pedestrian and vehicular access, ingress and egress to, from and between the Village Parcel, Southend Parcel, Bloom Parcel, Magnolia Avenue, MacDonalld Avenue, and South Boulevard.

2.3 Change in Number and/or Location of Parking Spaces. Any change in the location or number of the parking spaces located in the Southend Easement Area or the Village Easement Area, except as required by law, ordinance or regulation, shall be subject to the prior written consent of the other Owners, which consent shall not be unreasonably withheld conditioned or delayed.

2.4 Grant of Easements for Private Utilities. Each of the Owners hereby Grants to each of the other Owners, for the benefit of each of the other Owners' Parcels, a non-exclusive easement (the "Private Utility Easement") and right to use and to maintain, repair and replace any and all sanitary sewer lines and fire service water lines and associated meters, backflow preventers, grease traps and other similar equipment currently constructed or hereafter constructed on such granting Owner's Parcel in accordance with the Plans (as defined herein) to the extent reasonably necessary to serve the Improvements constructed or to be constructed on the appurtenant Parcels (collectively, the "Private Utility Equipment"). The Grant of easement described in this Section 2.4, as to each Owner, is a Grant of easement only for that portion of such Easement located on such Owner's Parcel. Each Owner reserves the right to pave and landscape the surface of the Easement areas described in this Section 2.4 and as shown on the Plans, and to use those areas for vehicle parking, driveways, sidewalks and for other purposes that do not unreasonably interfere with the use and enjoyment of the Easement.

2.5 Grant of Easement for Storm Water Drainage. Each of the Owners hereby Grants to each of the other Owners, for the benefit of each of the other Owners' Parcels only, a non-exclusive easement (the "Stormwater Drainage Easement") and right to use for natural surface and storm water drainage, and to maintain, repair and replace, any and all storm drainage pipes, drains, conduits or other components of the storm drainage system currently constructed or hereafter constructed on such granting Owner's Parcel in accordance with the Plans (as defined herein) to the extent reasonably necessary to serve the Improvements constructed or to be constructed on the appurtenant Parcels (collectively, the "Stormwater Drainage Equipment", and together with the Private Utility Equipment, the "Equipment"). This Grant of easement is for storm water drainage from the Parcels only and is not intended to cover, nor shall it be expanded to cover extraordinary drainage from property adjacent to or in the vicinity of the Parcels. Each Owner reserves the right to pave and landscape the surface of the Easement areas described in this Section 2.5 and as shown on the Plans, and to use those areas for vehicle parking, driveways, sidewalks and for other purposes that do not unreasonably interfere with the use and enjoyment of the easement.

2.6 Mitigation of Interference. Each Owner agrees to make good faith reasonable efforts to mitigate any interference with the development and use of the other Parcels and Easement Areas, including the Stormwater Drainage Easement and Private Utility Easement, in connection with its use and the construction, maintenance and repair of the easements granted to such Owner herein, and each Owner agrees it shall not cause any mechanic's or materialman's lien to be imposed on the Parcel of any other Owner in connection with any of the construction, maintenance and repair obligations hereunder.

2.7 Reservation of Rights. Each Owner hereby reserves the right to use their Parcel for any use not inconsistent with the easements granted by such Owner herein.

2.8 Relocation of Easements; Change in Use. Subject to Section 2.3 above, nothing contained in this Agreement shall prohibit or restrict any Owner from relocating any street, driveway, parking area, sanitary sewer or storm drainage pipe or conduit, as shown on those certain site plans described as Project Number 004-014, prepared by Design Resource Group and dated August 16, 2002, last revised June 2, 2003 (the "Plans"), within the boundary of such Owner's own Parcel so long as such relocation or removal is expressly approved by the Owners of appurtenant Parcels, such approval not to be unreasonably withheld, conditioned or delayed (approval shall not be withheld if such relocation or removal does not unreasonably reduce or impair the use of the easement area by such Owners of the appurtenant Parcels).

2.9 Subsequent Construction. As used in this Agreement, the phrase "hereafter constructed" or words of similar import shall refer only to those improvements, roads, drives, driveways, curb cuts, sidewalks, storm water or sanitary sewer pipes, conduits or other improvements as described in this Agreement, as shall be constructed within 21 years from the date of this Agreement.

Article III
MAINTENANCE AND REPAIR OF EASEMENT AREAS

3.1 Maintenance and Operation of Easement Areas. Except as otherwise specifically set forth herein, the responsibility for the performance of the maintenance, repair, replacement of the Easement Areas, the Stormwater Drainage Equipment and the Private Utility Equipment, and the operation and management thereof, shall be vested in the Owner of the Parcel upon which such Easement Area and/or Equipment is located. The applicable Owner shall pay all taxes, assessments, invoices and other expenses relating to such obligations promptly and in all events prior to the delinquency thereof. Such maintenance, repair and replacement activities shall be performed at a level consistent with other mixed-use buildings and parking facilities in Charlotte, North Carolina similar in scope and age to the Southend Project. Without limiting any other provisions of this Agreement, each Owner shall operate the parking area located in the Easement Areas on its Parcel subject to the use restrictions set forth on Exhibit C attached hereto and incorporated herein by this reference.

3.2 Costs of Maintenance. Notwithstanding the provisions of Section 3.1, all costs associated with the routine maintenance, repair and replacement of the Easement Areas shall be borne by the Owner of the Parcel upon which the applicable Easement Area is located; provided, however, that all costs for such maintenance, repair or replacement of an Easement Area necessitated by the maintenance repair or replacement of the Equipment shall be allocated in the same manner as the costs for such maintenance, repair or replacement of such Equipment. Notwithstanding the provisions of Section 3.1, the cost of maintenance, repair and replacement of any portions of the Equipment which are used by, or service, more than one Owner shall be allocated to such Owners in proportion to the square footage of their applicable Parcels. Furthermore, notwithstanding anything herein to the contrary, the responsibility for maintaining, repairing or replacing any grease trap and related equipment on any Parcel, and all costs associated with such maintenance, repair and replacement, shall be borne by the Owner who is using, or whose Permittees are using, such grease trap. In the event that an Owner or Permittee ceases its use of a grease trap and its related equipment, such Owner shall remain liable for the

ongoing repair, maintenance and replacement of such grease trap unless and until another Owner or another Owner's Permittee commences use of such grease trap.

3.3 Negligence and Misconduct. Notwithstanding the foregoing Sections 3.1 and 3.2, but subject to Section 5.4 hereof, any and all costs of maintenance, repair or replacement necessitated by the gross negligence or willful misconduct of a particular Owner or as a result of construction or development activity on the property of a particular Owner shall be borne by such Owner and shall be due and payable by such Owner to the Owner of the Parcel for which such maintenance, repair or replacement is required within thirty (30) days after receipt of an invoice with supporting documentation to justify such cost.

3.4 Failure to Maintain.

(a) In the event any Owner fails to perform the general maintenance obligation described in Section 3.1 hereof or a specific maintenance obligation for which such Owner is responsible under this Agreement in accordance with the applicable standard as stated herein, and such failure continues for thirty (30) days following such Owner's receipt of written Notice of such failure from any other Owner, then the complaining Owner shall have the right but not the obligation to perform the maintenance obligation in question, provided that the performance by the complaining Owner shall be subject to the same standards imposed upon the non-performing Owner hereunder. Such right shall be in addition to, and not in limitation of, all other remedies available at law or in equity for the failure of the responsible Owner to perform.

(b) If the complaining Owner elects to perform such maintenance obligations, the other Owner who is responsible for such obligations under this Agreement shall be responsible for all reasonable, out-of-pocket costs incurred by the complaining Owner in the performance of the maintenance. Such reimbursement shall occur within thirty (30) days following receipt of the complaining Owner's invoice therefor.

(c) Additionally, if the complaining Owner elects to perform such maintenance obligations, then such complaining Owner shall have the right to go upon and to bring reasonably appropriate equipment and machinery upon such portions of the Parcel of the responsible Owner as the complaining Owner shall reasonably require to plan and prepare for such work and to perform such work (during such times as such equipment or machinery is in use); provided, however, (i) the complaining Owner shall not unnecessarily disturb or interfere with any ongoing or completed construction or development work or business operations on such entered portion of the Parcel, (ii) the complaining Owner shall restore any disturbed portion of the entered Parcel (including landscaping) as nearly as practicable to the condition it was in prior to the performance of such work, (iii) the work shall be performed in a workmanlike fashion, and in accordance with all applicable governmental laws, rules and regulations, and (iv) all invoices for the work shall be paid promptly, and the complaining Owner shall not cause any mechanic's or materialman's lien to be imposed on the Parcel of any other Owner.

3.5 Standards for Performance. Without limiting any other applicable standards or requirements set forth elsewhere in this Agreement, the Owner performing any work permitted or required to be performed hereunder, in performing such work, shall (a) perform all such work in a good and workmanlike and first class manner, in accordance with good construction and

engineering practices; (b) perform all such work at its own cost and expense (including payment of all design fees), subject to any applicable reimbursement obligation of the other Owners under this Agreement; (c) comply with all applicable legal requirements; and (d) comply with all applicable provisions of this Agreement. The performing Owner shall use reasonable efforts to perform such work in such a manner as to minimize any noise, vibration, particulates and dust infiltration or other disturbance which would disturb any user of the other Owner's Parcel, taking into account the time of day and pattern of use of such Parcel, but such Owner shall not be liable to any Owner in any event for damages as a result of any such disturbance so long as such work is done in a reasonable fashion.

3.6 Disagreement. In the event of a disagreement by the Owners as to any matter arising under this Article III, including, without limitation, whether any maintenance is necessary, the matter shall be settled by arbitration as set forth in Article IX below.

Article IV
PROTECTIVE COVENANTS

4.1 General Agreement Subjecting the Parcels to the Protective Covenants. The Parties hereby agree that the Parcels and every part thereof is and shall be owned (legally and beneficially), leased, or otherwise occupied, conveyed, hypothecated, encumbered or otherwise transferred, developed, improved, built upon or otherwise used, subject to the protective covenants set forth in this Article IV (the "Protective Covenants"). The Protective Covenants are declared and agreed to be in furtherance of a general plan for the development, improvement, sale and use of the Village of Southend Project and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Village of Southend Project and every part thereof. All of the Protective Covenants shall run with each Parcel and every part thereof for all purposes and shall be binding upon and inure to the benefit of the Owners and their Permittees, as set forth in this Agreement.

4.2 Improvements.

(a) Completion of Improvements. Construction, refinishing, alteration or excavation of any Improvements on any Parcel shall be completed within twenty-four (24) months after the commencement thereof, except for so long as such completion is rendered impossible or would result in great hardship due to Unforeseeable Events.

(b) Height, Size and Use Requirements.

(1) Bloom Parcel and Village Parcel. Notwithstanding anything herein to the contrary, unless otherwise approved by the Owners of the appurtenant Parcels (a) no improvement on the Bloom Parcel or the Village Parcel shall exceed forty-five feet (45') in height above grade, excluding any basement, (b) the usable square footage of the building or buildings on the Bloom Parcel shall not exceed 20,000 usable square feet, and (c) the usable square footage of the building or buildings on the Village Parcel shall not exceed 14,500. Unless otherwise approved by the Owners of the appurtenant Parcels, which approval shall not be unreasonably withheld conditioned or delayed, the uses on the Bloom Parcel and the Village Parcel shall be limited to a

combined total of 20,000 usable square feet of live/work and 14,500 usable square feet of retail and no other uses shall be permitted thereon; provided, however, that neither such Parcel shall be restricted to solely live/work or solely retail, but each may have a mix of retail and live/work as long as the usable square footage limitations for retail and live/work referenced above on both Parcels combined does not exceed the above stated limitations.

(2) Southend Parcel. Notwithstanding anything herein to the contrary, unless otherwise approved by the Owners of the appurtenant Parcels, which approval shall not be unreasonably withheld conditioned or delayed, the area of the building or buildings on the Southend Parcel shall be limited as follows: (a) residential use shall be limited 118 residential condominium units; (b) office uses shall be limited to a total area of 16,000 usable square feet; (c) retail uses shall be limited to a total area of 8,500 usable square feet.

(c) Storage and Loading Areas. No materials, supplies, merchandise or equipment, (including company-owned or operated trucks), shall be stored in any area on a Parcel except inside of a closed building, for more than six (6) hours; provided, however, that such items may be stored outside of a closed building (i) in connection with maintenance and repair of the Easement Areas or Equipment, in accordance with all applicable laws, ordinances and governmental regulations, or (ii) as reasonably required during construction activities performed in accordance with Section 4.2(a) hereof. Permanent outside storage is not permitted on any Parcel and temporary outside storage areas shall be screened so that they are not unsightly from the neighboring properties or streets. Loading doors, docks, facilities and other service areas shall be adequately screened with architectural walls or landscaping to minimize the effect of their appearance from any streets or neighboring property as required by applicable zoning ordinances.

(d) Storage of Garbage, Trash or Rubbish. No Owner or Permittee shall accumulate on his Parcel any junk vehicles, or any litter or garbage except in receptacles generally used for such purposes. All rubbish, garbage, and trash receptacles shall be screened in a manner so as not to be visible from any street right-of-way of other Parcels.

(e) Property Maintenance Repair of Improvements. All real property in the Parcels, whether occupied or unoccupied, and any buildings or other Improvements placed thereon shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of unattractive growth or the accumulation of rubbish or debris. No Improvements on a Parcel shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished consistent with other mixed-use buildings and parking facilities in Charlotte, North Carolina similar in scope and age to the Village of Southend Project.

(f) Temporary Improvements. No temporary buildings or other Improvements of a temporary nature, including without limitation trailers, tents and shacks, shall be permitted on the Parcels. Temporary Improvements used solely in connection with the construction of permanent Improvements may be permitted provided they are located as

inconspicuously as reasonably practicable and are removed immediately after completion of such construction.

(g) Storage Tanks. All above ground storage tanks, including, but not limited to those used for storage of water or propane gas must be completely screened from view with appropriate landscaping so as not to be visible from public street right of ways, that certain private drive labeled as "Southend Drive" on Exhibit A or from other buildings within the Parcels.

4.3 Land Classification; Permitted Uses and Restrictions.

(a) Land Classification. All land within the Parcels shall be restricted to such uses as are permitted under the MUDD-O as set forth in the Zoning Ordinance of Charlotte, North Carolina in the form in effect as of the date hereof.

(b) Restrictions and Prohibited Uses. The following uses shall be prohibited on the Parcels:

(1) Business or use which (i) creates strong, unusual or offensive odors, fumes, dust or vapors, (ii) is a public or private nuisance, (iii) emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, or (iv) creates unusual fire, explosive or other hazards, (v) has flashing lights or signs, strobe lights, search lights or loudspeakers, or (vi) has phonographs, radios or video screens within any exterior portion, provided, however, restaurants and bars shall never be deemed to violate this subsection (1) so long as they are in compliance with applicable governmental codes and regulations;

(2) Movie theatre;

(3) Auditorium or other similar place of public entertainment or general assembly;

(4) Bowling alley;

(5) Funeral parlor;

(6) Industrial, warehouse (other than the storage of inventory, fixtures and equipment as part of a permitted business) or manufacturing use;

(7) Carnival, discotheque or dance hall, massage parlor (excluding day spas, which are permitted);

(8) A pawn shop, a military surplus store, or for the sale of drug paraphernalia;

(9) Massage parlor, "strip" or similar club or establishment providing adult entertainment, including adult dance clubs; provided, however, that day spas shall be permitted;

(10) Gambling facility or operation (except for the sale of lottery tickets if such sale is legal in the State of North Carolina), including an off-track or sports betting parlor, the operation of table games (except video games permitted in arcades, bars or restaurants), slot machines, video poker/black-jack/keno machines or similar devices, or as a bingo hall;

(11) Service of motor vehicles, boats, or mobile homes, or for the installation of auto parts;

(12) Rental, service or repair of lawn care equipment, carpet sweepers, power tools, televisions, VCRs, or electronic or computer equipment, except incident to the retail sale of such items;

(13) "Hi-fi", electronics, stereo, television or similar stores provided, however, that such stores may be permitted with soundproofing reasonably satisfactory to the Association in its sole reasonable discretion;

(14) Veterinary facility, animal raising facility or pet shop; provided, however, pet grooming services shall be permitted;

(15) Laundromat or dry cleaners (except as a "drop off" site for off-site cleaning); or

(16) Photography stores that develop film on-site (unless the proposed Owner has received assurances satisfactory to the Association in its reasonable discretion as to the proper storage and disposal of processing chemicals and other photographic waste materials).

(17) Business the operation of which would result in the generation, storage or disposal of any flammable explosives, radioactive materials, infectious substances or raw materials which include hazardous constituents or any other substances or materials which are included under or regulated by Environmental Laws (as hereinafter defined) (collectively, "Hazardous Substances"), including, but not limited to, (i) any asbestos or insulation or other material composed of or containing asbestos, or (ii) any hazardous, toxic or dangerous substance, material or waste defined as such in (or for the purposes of) the Comprehensive Environmental Response Compensation and Liability Act, as amended, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., the Safe Drinking Water Act, 15 U.S.C. § 2601 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., any so-called state or local "Superfund" or "Superlien" laws, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous substance ("Environmental Laws").

4.4 Animals. No animals, livestock, or poultry of any kind shall be kept or maintained on any Parcel, except that small common household pets may be kept or maintained

in any residence located on a Parcel, provided they are not kept or maintained for commercial purposes. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on the Parcels. Any pet kept on a Parcel shall be registered and inoculated as required by law.

Article V
INSURANCE

5.1 Duty to Carry Liability Insurance. Each Owner shall maintain (or cause to be maintained) commercial general liability insurance against claims for personal injury or death and property damage occasioned by any occurrence on such Owner's Easement Area and all buildings and Improvements situated thereon. Such insurance shall have a single limit coverage of not less than \$3,000,000.00 for personal injury and property damage.

5.2 Notice of Casualty. If at any time any of the Improvements within the Easement Areas or any part thereof are destroyed or damaged (in whole or in part) by fire or other casualty, the Owner of such Easement Area shall promptly give Notice thereof to the other Owner.

5.3 Restoration Obligation. Following any such fire or other casualty, as described in Section 5.2 above, the Owner of the applicable Easement Area shall proceed promptly to repair, rebuild or restore, without regard to the sufficiency of available insurance proceeds, the Improvements within the Easement Area to substantially the same condition thereof as existed prior to the event causing such damage or destruction with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Owner of the Easement Area and reasonably approved by the other Owners and as shall not impair the character of the Easement Area or the rights of the other Owners hereunder.

5.4 Waiver of Subrogation. Each of the Owners hereby waives any and every claim for recovery from the other Owners for any and all loss or damage, whether such loss or damage is due to the negligence of any Owner or Permittees, which loss or damage is insured by valid and collectible insurance policies and then only to the extent of the proceeds collected or collectible under such insurance policies; provided, however, that the foregoing waiver shall not be operative in any case where the effect thereof is to invalidate any insurance coverage of the waiving Owner or to increase the cost of such insurance coverage; provided, further, that each Owner shall give written Notice of the terms of this mutual waiver to each insurance company which has issued, or in the future may issue, policies of physical damage coverage to it and shall have such insurance policies properly endorsed to prevent the invalidation of the insurance coverage by reason of such waiver and provided further that such insurance company waives all rights of subrogation which it might have against each applicable Owner.

Article VI
CONDEMNATION

6.1 Total Taking. If any competent authority condemns, or is deemed property in lieu of condemnation, (a "Taking") all or a substantial part of a Parcel such that it shall no longer be reasonably economical or practical to continue to operate the Easement Area thereon as provided in this Agreement (a "Total Taking"), the Owner of the affected Parcel shall promptly give

Notice thereof to the other Owners. Following a Total Taking, the Owner of the affected Parcel shall not be required to repair, rebuild or restore the its Easement Area and the Owners shall look solely to any amounts recovered from the condemning authority (the "Award") as compensation for damage on account of the Total Taking.

6.2 Partial Taking. If a Taking occurs which is not a Total Taking (a "Partial Taking"), the Owner of the affected Parcel shall promptly give Notice thereof to the other Owners. The Owner of the affected Parcel shall thereupon proceed promptly to repair, rebuild or restore, to the extent possible under the circumstances of the Taking without regard to the sufficiency of the Award and subject to the provisions of this Section 6.2, the applicable Easement Area to substantially the same condition thereof as existed prior to the Partial Taking with such changes, alterations and modifications (including the substitution and addition of other property) as may be desired by the Owner of the affected Parcel and reasonably approved by the other Owners and as shall not impair the rights of the other Owners hereunder.

6.3 Right to Restore Award. No provision of this Agreement shall prevent or prohibit an Owner from electing to restore or replace its Easement Area and/or Equipment, regardless of whether it is obligated to do so pursuant to the terms of this Agreement. Regardless of whether such Owner proceeds with the restoration or replacement of the its Easement Area and/or Equipment (whether it is obligated to do so or whether it elects voluntarily to do so), all Awards payable to any Owner with respect to the damage to the applicable Easement Area and/or Equipment shall be paid to the Owner of such Easement Area and/or Equipment. In the event a Parcel or any part thereof is taken by a Taking, each Owner waives, in favor of the Owner whose Parcel or any part thereof is taken by such Taking, any value of the condemnation award attributable to any easements reserved by or granted to an Owner in such taken Parcel; and no part of such award shall be payable to the holder of the dominant tenement by virtue of such easements. However, a waiver under this Section shall not preclude the holder of any interest in another Parcel from claiming and collecting from the condemning authority and recovering out of the condemnation award the severance and consequential damages to its own Parcel resulting from the Taking of the condemned portion of the other Parcel.

Article VII
FUTURE PROVISIONS

The Owners acknowledge that as the Parcels are developed, it may be necessary for the Owners (or their successors and assigns) to agree on cost sharing arrangements, additional cross easements and use restrictions with respect to the Parcels not set forth in this Agreement in order to facilitate such development and subsequent operation. The Owners agree, on behalf of themselves and their successors and assigns, to negotiate any such easements, restrictions and cost sharing arrangements in good faith once the nature of such developments become known.

Article VIII
EFFECT OF INSTRUMENT

8.1 Mortgage Subordination. Any mortgage, security deed or deed of trust affecting any portion of the property affected hereby (a "Mortgage") shall at all times be subject and

subordinate to the terms of this Agreement and any Person foreclosing any such Mortgage, or acquiring title by deed in lieu of foreclosure or trustee's sale, shall acquire title subject to all of the terms and provisions of this Agreement.

8.2 Binding Effect. Any transferee of any property affected hereby shall automatically be deemed, by acceptance of the title to such property, to have assumed all obligations of this Agreement relating thereto to the extent of its interest in its respective property and to have agreed with the then owners of all other properties affected hereby to execute any and all instruments and to do any and all things reasonably required to carry out the intention of this Agreement, and the transferor shall upon the completion of such transfer be relieved of all further liability under this Agreement except liability with respect to matters that may have arisen during its period of ownership of the property so conveyed that remain unsatisfied. Nothing set forth herein shall impose, or be deemed to impose, any obligations (including, without limitation, any construction obligations) as to any Owner or property burdened hereby, unless such obligations are expressly set forth herein.

8.3 Non-Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any property affected hereby, or any portion thereof, to the general public or for any public use or purpose whatsoever, it being the intention of the Parties hereto that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the Parties hereto and their Permittees, any rights or remedies under or by reason of this Agreement. Notwithstanding anything to the contrary contained herein, no Permittee of any Owner, shall have any legal rights under this Agreement and, specifically, shall have no independent right to enforce the rights of any Owner under this Agreement.

8.4 Running with the Land. The Easements created herein are intended to run with title to the respective real property so burdened or benefited by the Easements created herein and such Easements shall inure to the benefit and burden of the successors Owners of the various parcels of real property affected thereby.

8.5 Rights of Permittees. To the extent any Easement created by this Agreement is stated to benefit the Permittees from time to time of any Owner, such Owner shall be entitled to designate from time to time which, if any, of its Permittees, shall be entitled to utilize and enjoy such easements; it being the intent of the Owners to this Agreement that no independent rights shall be created by this Agreement as to any such Permittees except for those which may be terminated or withdrawn at any time by the Owner through whom such rights were derived.

Article IX
ARBITRATION

Any controversy or claim with respect to (i) any Owner's maintenance, repair or replacement obligations hereunder (whether the performance or payment obligations), (ii) any payment or reimbursement obligations hereunder, and (iii) disagreements as to any proposed changes, alterations or modifications to the Easement Areas after casualty or condemnation (to the extent the other Owners have been granted approval rights under the provisions hereof), shall be settled by arbitration in Mecklenburg County, North Carolina, according to the Commercial Arbitration Rules of the American Arbitration Association as amended and in effect on the date

Notice is given of the intention to arbitrate; provided, however, that the arbitrators shall have no authority to award punitive or consequential damages. Each arbitrator must have at least ten (10) years of experience in the real estate industry including experience with mixed-use real estate developments. The determination of the arbitrators shall be final, binding and conclusive on the Owners, and judgment may be rendered thereon by any court having jurisdiction, upon application of any Owner. The arbitrators shall also award reasonable attorney's fees and costs to the prevailing party to the dispute. This Article IX shall not be deemed to require the submission to arbitration of the following: (i) any controversy or claim arising out of or relating to this Agreement or the breach thereof, other than those controversies and claims expressly stated in this Article IX, and (ii) any application to a court for a provisional remedy pending settlement of such matter pursuant to the arbitration provisions set forth in this Article IX. For purposes of this Article IX, "provisional remedy" shall include (a) attachments and temporary protective orders issued pursuant to Article 35 of the North Carolina Rules of Civil Procedure (N.C. Gen. Stat. §1-440 et. seq. (2000)), (b) preliminary injunctions and temporary restraining orders issued for the purpose of preventing material business interruption or damage to person or property, pursuant to Article 37 of the North Carolina Rules of Civil Procedure, (N.C. Gen. Stat. §1-485 et. seq. (2000)), and (c) receivers appointed pursuant to Article 38 of the North Carolina Rules of Civil Procedure, (N.C. Gen. Stat. §1-501 et. seq. (2000)).

Article X
INDEMNIFICATION

10.1 General Indemnification. Subject to the provisions of Section 5.4 hereof, each Owner shall indemnify, hold the other Owners harmless from and defend the other Owners against any and all claims, loss, costs, damage, expense or liability, including, without limitation, reasonable attorneys' fees, for any injury or damages to any person or property whatsoever, to the extent that such injury or damage has been caused solely by any act, neglect, fault or omission of the indemnifying Owner, its agents, servants or employees. This indemnity shall not require any payment by either Owner as a condition precedent to recovery. With respect to any injury or damage caused by the joint negligence of two or more Owners, each shall indemnify the other against all claims, loss, costs, damage, expense or liability in excess of the indemnified Owner's comparative fault.

10.2 Litigation Expenses. Subject to the other provisions of this Article X, if any Owner is made a party to any litigation commenced by or against another Owner relating to this Agreement, and provided that in any such litigation an Owner or Owners is finally adjudicated to be at fault and the other Owners are adjudicated to be without fault, then the Owner at fault, as the case may be, shall pay all costs and expenses, including reasonable attorneys' fees and court costs, incurred by, or imposed upon the joined Owners without fault because of any such litigation, and the amount of all such costs and any expenses, including reasonable attorneys' fees and court costs, shall be a demand obligation.

Article XI
MISCELLANEOUS PROVISIONS

11.1 Governing Law. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of North Carolina.

11.2 Entire Agreement; Modification. This Agreement supersedes all prior discussions and Agreements among the Parties with respect to the matters contained herein and contains the sole and entire understanding among the Parties concerning the subject matter hereof. This Agreement shall not be modified or amended in any respect except by a written instrument executed by or on behalf of each of the Parties to this Agreement.

11.3 Captions. All captions, headings and all Article, Section, subsection and clause numbers and letters and other reference numbers or letters are solely for the purpose of facilitating reference to this Agreement and shall not supplement, limit or otherwise vary in any respect the text of this Agreement.

11.4 Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, shall be to any extent held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11.5 No Joint Venture. Nothing in this Agreement shall be construed to make any of the Parties hereto partners or joint venturers or render any of said Parties liable for the debts or obligations of any other Owner.

11.6 Exhibits. This Agreement shall be deemed to include all exhibits attached hereto, which exhibits are incorporated herein by reference, and shall be binding upon and inure to the benefit of the Parties hereto and their successors-in-title.

11.7 Estoppel. Any Owner hereto may, at any time and from time to time, in connection with the sale or transfer of its respective property or in connection with the financing or refinancing of its respective property by a bona fide Mortgage or sale-and-leaseback made in good faith and for value, deliver a written Notice to the other Owner or its successors-in-title requesting such Owner to execute a certificate certifying that such Owner making such request is not in default in the performance of its obligations under this Agreement, or, if in default, describing therein the nature and amount of any default. The Owner receiving such request shall execute and return such certificate within ten (10) business days following its receipt thereof. Failure by the Owner receiving such request to so execute and return such certificate within the specified period shall be deemed an admission on such Owner's part that the Owner requesting the certificate is current and not in default in the performance of such Owner's obligation under this Agreement. Such certificate may be relied upon by all transferees, mortgagees, and security deed holders.

11.8 No Merger. Should any Owner at any time become the owner in fee of two (2) or more of the Parcels the easements created hereunder shall be deemed to survive and shall not merge.

11.9 Notices. Each Notice given pursuant to this Agreement (a "Notice") shall be in writing and shall be, at the option of the Owner giving the Notice, deemed to have been properly given or served if (a) personally delivered, (b) transmitted by reputable overnight courier service such as Federal Express, or (c) sent by certified mail, return receipt requested, and addressed as hereinafter provided. Any Notice shall be deemed to have been given on (i) the date of receipt if delivered personally, (ii) the next business day, if transmitted by overnight courier, or (iii) five (5) days after being sent by certified mail. The time period for any response to a Notice or action in connection therewith shall not commence to run, however, until actual receipt or rejection or inability to deliver such Notice. By giving to the other Parties at least ten (10) days' Notice thereof, any Owner shall have the right from time to time during the term of this Agreement to change the address(es) thereof and to specify as the address(es) thereof any other address(es) within the United States of America. Notices shall be addressed to the Owner of the applicable parcel at the address listed in the Mecklenburg County tax records.

11.10 Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which together shall constitute one (1) and the same instrument.

11.11 No Termination. A default under this Agreement on the part of any Owner shall not entitle any other Owner to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect any other rights or remedies that any Owner may have by reason of such default.

11.12 Waiver and Remedies Cumulative. No waiver by any Owner of any default under this Agreement shall be effective or binding on such Owner unless and to the extent expressly made in writing by such Owner, and no such waiver shall be implied from any failure by a Owner to take action in respect to such default. No express written waiver of any default shall constitute a waiver of any subsequent default in the performance of the same or any other provisions of this Agreement. Except as expressly limited by this Agreement, all rights and remedies available to the Owners under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

11.13 Standards for Consent and Approval. In any instance where a Owner is granted consent or approval rights hereunder and a standard and/or time frame for such consent or approval is not explicitly set forth herein, such consent or approval shall not be unreasonably withheld, conditioned or delayed and shall be deemed given if not expressly withheld by written Notice given within ten (10) business days of receipt by the Owner with such consent or approval rights of all materials required for review in connection with such consent or approval.

[Signatures on Following Pages]

IN WITNESS WHEREOF, the Parties have duly signed, sealed, acknowledged and delivered this Agreement, to be effective upon the date of this Agreement.

SOUTHEND:

SOUTHEND PARTNERS, LLC, a North Carolina limited liability company

By: [Signature]
David F. Furman, Manager

By: [Signature]
Mike G. Hood, Manager

VILLAGE:

VILLAGE OF SOUTHEND, LLC, a North Carolina limited liability company

By: [Signature]
Name: MIKE G. HOOD
Title: MANAGER

BLOOM:

[Signature]
John B. Bloom

[Signature]
Pamela E. Bloom

[Acknowledgments on following pages.]

STATE OF North Carolina
§
COUNTY OF Mecklenburg

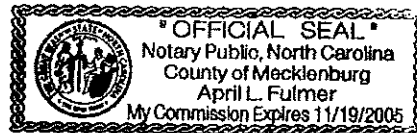
I, April L. Fulmer, a Notary Public for said County and State, do certify that David F. Furman, as a Manager of SOUTHEND PARTNERS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he/she is Manger of said limited liability company and that authority duly given, and as the act of such limited liability company, the foregoing instrument was signed in its name by such Manager.

Witness my hand and official seal, this 16 day of June, 2003.

April L. Fulmer
Notary Public

[NOTARIAL SEAL]

My Commission Expires:



STATE OF North Carolina
§
COUNTY OF Mecklenburg

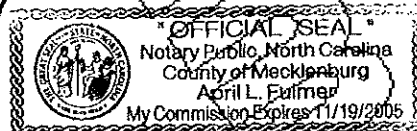
I, April L. Fulmer, a Notary Public for said County and State, do certify that Mike G. Hood, as a Manager of SOUTHEND PARTNERS, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he/she is Manger of said limited liability company and that authority duly given, and as the act of such limited liability company, the foregoing instrument was signed in its name by such Manager.

Witness my hand and official seal, this 16 day of June, 2003.

April L. Fulmer
Notary Public

[NOTARIAL SEAL]

My Commission Expires:



STATE OF North Carolina
COUNTY OF Mecklenburg

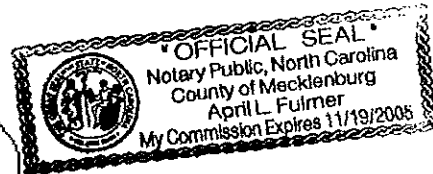
I, April L Fulmer, a Notary Public for said County and State, do certify that Mike G Hood, the Manager of VILLAGE OF SOUTHEND, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that he/she is Manger of said limited liability company and that authority duly given, and as the act of such limited liability company, the foregoing instrument was signed in its name by such Manager.

Witness my hand and official seal, this 16 day of June, 2003.

April L Fulmer
Notary Public

[NOTARIAL SEAL]

My Commission Expires:



DUPLICATE DOCUMENT

STATE OF NORTH CAROLINA

COUNTY OF Rowan

I, Lavada P. Forbis, a Notary Public of the aforesaid County and State, do hereby certify that JOHN B. BLOOM personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this 13th day of June, 2003.

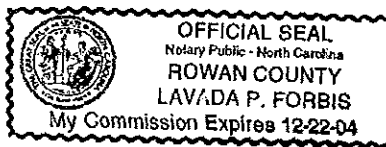
Lavada P. Forbis

Notary Public

My Commission Expires:

12-22-04

[NOTARIAL SEAL]



STATE OF NORTH CAROLINA

COUNTY OF Rowan

I, Lavada P. Forbis, a Notary Public of the aforesaid County and State, do hereby certify that PAMELA E. BLOOM personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and notarial seal this 13th day of June, 2003.

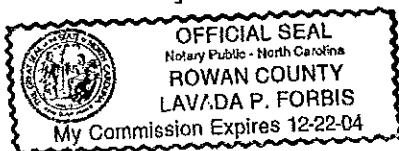
Lavada P. Forbis

Notary Public

My Commission Expires:

12-22-04

[NOTARIAL SEAL]



UNRECORDED INSTRUMENT

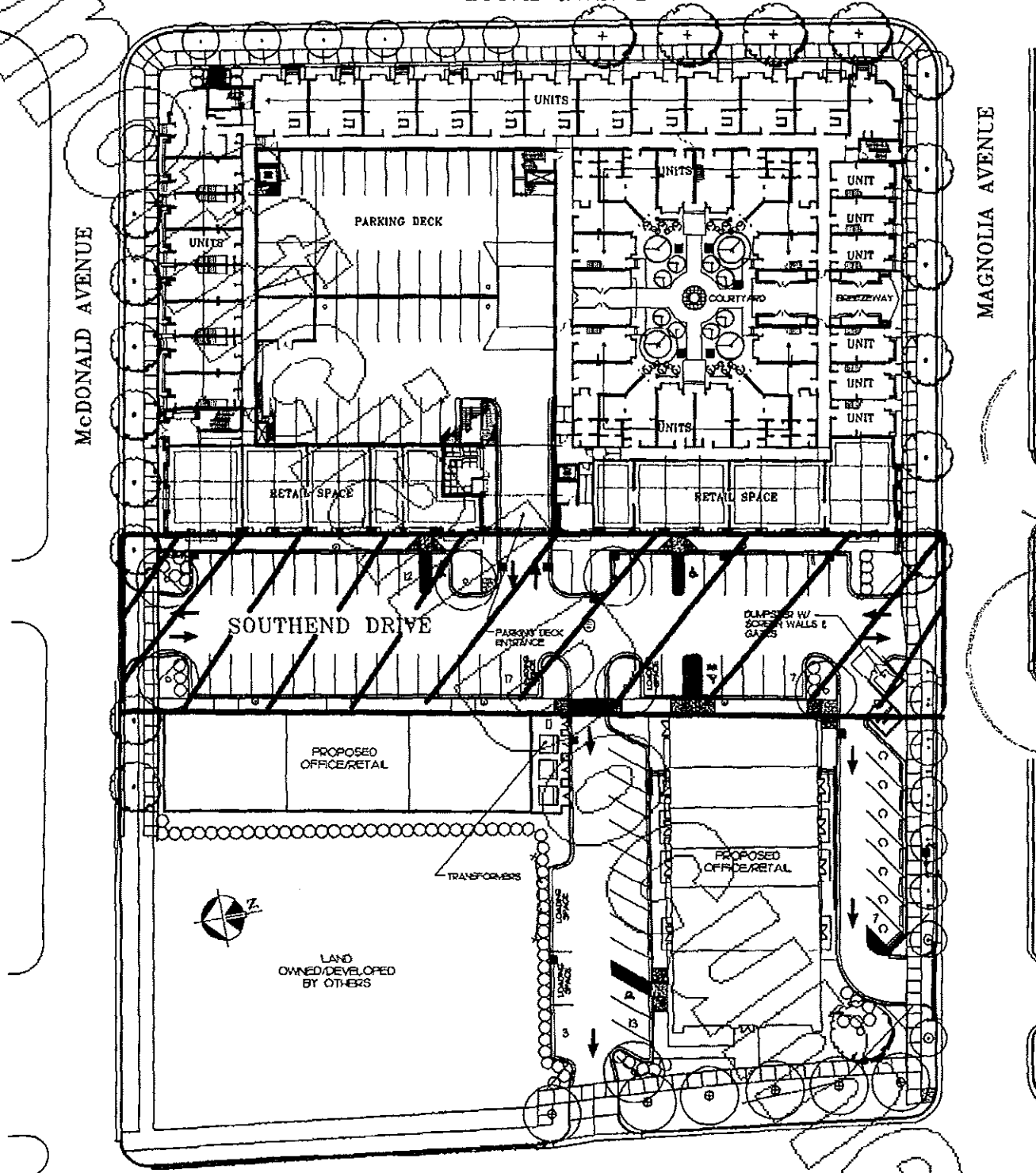
List of Exhibits

- Exhibit A - Depiction of Location of Southend Easement Area
- Exhibit B - Depiction of Location of Village Easement Area
- Exhibit C - Restrictions on Easement Areas

Unofficial Document

EXHIBIT A

Approximate Location of Southend Easement Area
EUCLID AVENUE

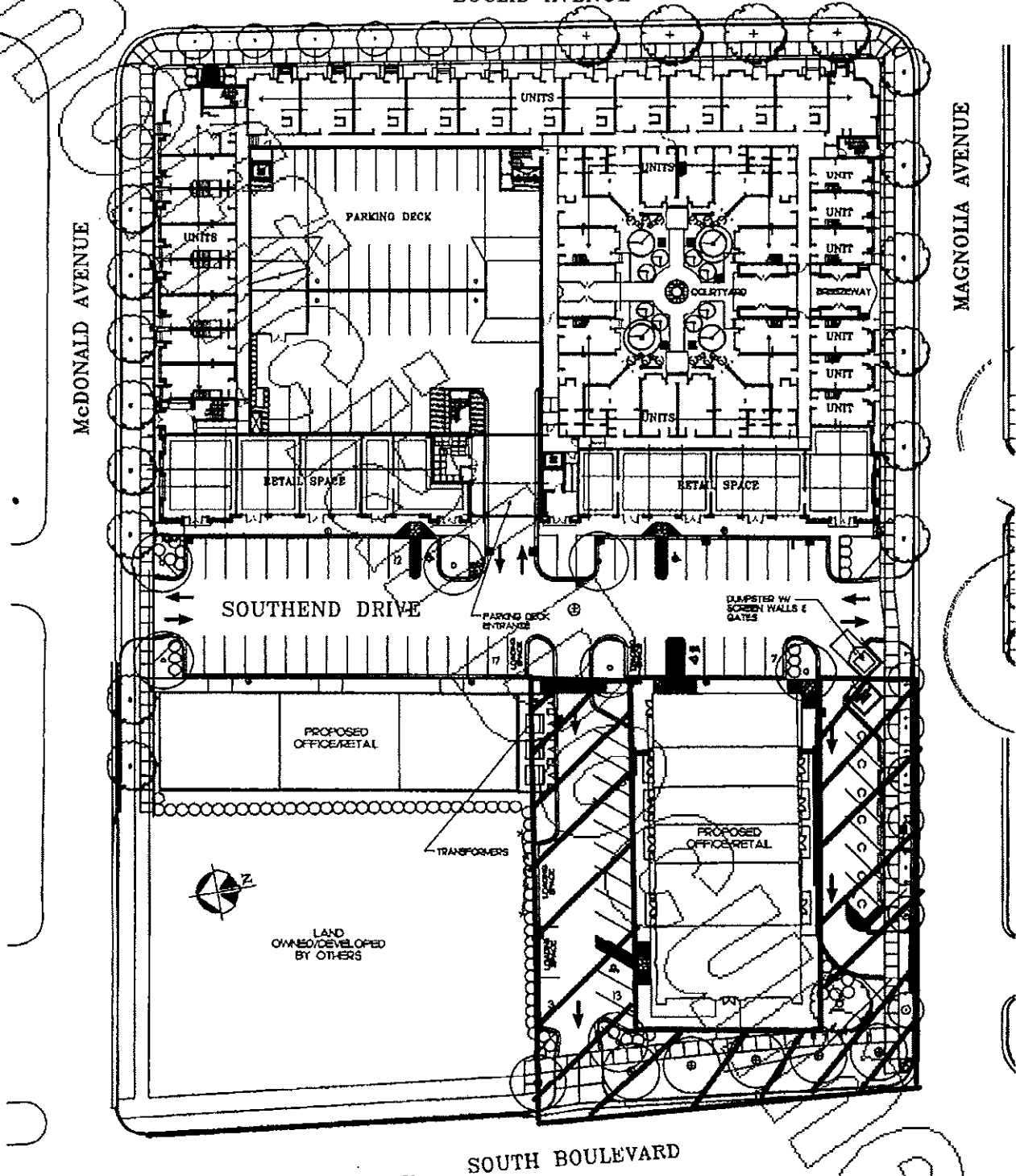


THIS MAP IS NOT A CERTIFIED SURVEY
AND HAS NOT BEEN REVIEWED BY A
LOCAL GOVERNMENT AGENCY FOR
COMPLIANCE WITH ANY APPLICABLE
LAND DEVELOPMENT REGULATIONS.

SOUTH BOULEVARD

EXHIBIT B

Approximate Location of Village Easement Area
EUCLID AVENUE



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.

SOUTH BOULEVARD

EXHIBIT C
RESTRICTIONS

(Easement Areas)

1. The Easement Areas shall be used only as access drives and a parking facility serving the Parcels.
2. The Owners (a) shall maintain the Easement Areas on their respective Parcels in a clean condition, and (b) shall sweep weekly and keep all drains clear of trash.
3. All trash and rubbish containers located in the Easement Areas shall be emptied regularly, as required, and shall be washed at intervals sufficient to maintain the same in a clean and sanitary condition and shall be otherwise maintained and kept in an attractive and good working condition.
4. The Owners shall take reasonable steps to prevent the occurrence of vandalism, theft and other crimes or illegal activities on their applicable Easement Area.
5. The Owners shall not permit any parking of delivery vehicles (specifically excluding moving vans and trucks used for such purpose) in the Easement Areas on their respective Parcel except for such deliveries not expected to require more than thirty (30) minutes of parking during the hours of 8:30 a.m. to 5:00 p.m. Monday through Friday and shall post signs so limiting such parking, if signage is necessary to enforce such regulations.
6. The Owners shall maintain and repair all entrance, exit, traffic control and directional signs, markers and lights on their Parcel and shall keep same in good, clean and legible condition. All hard-surfaced marking and all striping shall be inspected at regular intervals and promptly repaired or repainted as the same shall become unsightly or indistinct from wear and tear, or other cause.



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

Filed For Registration: 06/20/2003 03:42 PM
Book: RE-15548 Page: 204-231
Document No.: 2003437397
AGMT .28 PGS \$92.00
Recorder: GRACE TUCKER

State of North Carolina, County of Mecklenburg

The foregoing certificate of APRIL L. FULMER , LAVADA P. FORBIS Notaries are certified to be correct. This
20TH of June 2003

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



2003137397

Unofficial Document