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House + Blanco Box

RK1763 P2950

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STATE OF NORTH CAROLINA)
COUNTY OF FORSYTH)

**CROSS-EASEMENT AND
MAINTENANCE AGREEMENT**

THIS CROSS-EASEMENT AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into on the 20th day of November, 1992, by and between MERWYN A. HAYES and wife, KATHERINE H. HAYES, and SAMUEL J. WILLIARD, III and wife, KAREN H. WILLIARD (collectively, "Grantor"), and P & A PARTNERS, a North Carolina general partnership ("Grantee").

W I T N E S S E T H:

I. DEFINITIONS

The following terms shall have the respective meanings indicated:

Benefitted Tract: That certain tract or parcel of land described in Exhibit "A" attached hereto, incorporated herein and made a part hereof for all purposes.

Burdened Tract: That certain tract or parcel of land described in Exhibit "B" attached hereto, incorporated herein and made a part hereof for all purposes.

Easement Strip: That certain tract or parcel of land described in Exhibit "C" attached hereto, incorporated herein and made a part hereof for all purposes.

II. RECITALS

A. Grantor is the owner of that certain tract of land described in Exhibit "B" attached hereto, incorporated herein and made a part hereof for all purposes ("Burdened Tract").

B. Grantee is the owner of a contiguous tract of land described in Exhibit "A" attached hereto, incorporated herein and made a part hereof for all purposes (the "Benefitted Tract").

C. Grantee has requested that Grantor grant a certain nonexclusive easement and right-of-way over, along and across a portion of Burdened Tract appurtenant and adjacent to the Benefitted Tract for the purpose of vehicular and pedestrian ingress and egress.

D. Grantor has agreed to grant to Grantee an easement in, on, across and upon a portion of the Burdened Tract for vehicular and pedestrian traffic.

NOW, THEREFORE, in consideration of Ten Dollars and other valuable considerations (\$10.00 and O.V.C.), in hand paid by

Grantee to Grantor, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties agree as follows:

III. GRANT OF EASEMENT

Grantor does hereby transfer, grant and convey unto Grantee, its successors and assigns, and any employees, agents, lessees, invitees and guests of Grantee, a non-exclusive easement and right-of-way for ingress and egress purposes on, over and across the Easement Strip for vehicular and pedestrian traffic. This conveyance is accepted subject to any and all restrictions, conditions, covenants, encumbrances, liens and other matters of record, and any unrecorded prior easements which may affect the Easement Strip.

The owner of the Burdened Tract shall have the right to use all or any portion of the Easement Strip for any purpose, including, but not limited to, the right to construct, place, lay, maintain, inspect, protect, operate, repair, alter, substitute, replace, and remove sidewalks, parking lots, communication lines, and utility lines on, over, along, across, and through the Easement Strip and for any other purposes which do not unreasonably interfere with the purpose for which the non-exclusive easement hereinabove set forth is granted.

Nothing herein shall constitute a dedication of any interest in the Easement Strip to the public or to give any members of the public any rights whatsoever. The owner of the Burdened Tract shall have the right to grant easement rights with respect to all or parts of the Easement Strip, to tenants occupying portions of the Burdened Tract and their respective customers and invitees, provided that such easement rights shall not be inconsistent with the provisions of this Agreement or any lease affecting the property over which such easement rights are granted.

Nothing herein contained shall be construed to permit any use of the Easement Strip that is offensive by reason of odor, fumes, dust, smoke, noise or that is hazardous by reason of excessive danger of fire or explosion, or that would otherwise unreasonably interfere with the quiet enjoyment of adjacent or surrounding property.

No use of the Easement Strip by Grantor, its successors or assigns, shall ever be permitted hereunder which necessitates, permits, or requires the construction, building, installation, or maintenance of any above-ground structure, installation, equipment, or apparatus of any kind within the boundaries of the Easement Strip.

IV. MAINTENANCE

The owner of the Benefitted Tract and owner of the Burdened Tract shall be mutually responsible, to the extent provided below, for the repair and maintenance in a first-class condition of the Easement Strip, including patching of pavement, resurfacing and re-striping lines, sweeping and removing trash and debris, and maintaining any drainage system and repairing and maintaining the lighting system (including repair of light standards and replacement of lamps) and keeping the right-of-way and easement available for the uses described in this Agreement. Any additional repairs or maintenance deemed necessary or advisable, but not included within the maintenance and repairs specified above, will not be undertaken under this Agreement except with the express written consent of each of the parties and an assumption for such in writing of the proportionate share of financial liability for the costs of such additional repairs and maintenance. The parties agree to bear the costs and expenses of repairs and maintenance authorized pursuant to and during the term of this Agreement for the easement as follows:

Grantor agrees to bear fifty-four percent (54%) of the costs and expenses. Grantee agrees to bear forty-six percent (46%) of the costs and expenses, of which Grantee shall pay its share within thirty (30) days of being billed therefor by Grantor or the then owner of the Burdened Tract.

V. COVENANTS AND AGREEMENTS

Each fee simple owner of any parcel of land affected by this Agreement ("Indemnitor") covenants to indemnify, defend and hold harmless each other owner of any such parcel ("Indemnitee") from and against all claims, costs, expenses and liabilities (including reasonable attorney's fees) incurred in connection with all claims, including any action or proceedings brought hereon, arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to, any person or entity, or to the property of any person or entity, which shall occur on the Easement Strip except for claims caused by the negligence or willful act or omission of the Indemnitee, its tenants, licensees, concessionaires, agents, servants or employees or the agents, servants or employees of any tenant, licensee or concessionaire wherever the same may occur.

VI. DEFAULT; REMEDIES

The following events shall be deemed to be an Event of Default under this Agreement:

- (a) The owner of the Benefitted Tract shall fail or refuse to pay its share of the cost of maintaining and repairing the Easement Strip.

- (b) The owner of the Burdened Tract shall fail and refuse to pay its share of the cost of maintaining and repairing the Easement Strip.

Each party's pro rata cost of maintaining and repairing the Easement Strip, together with such interest thereon and cost of collection thereof as herein provided, shall be a charge on either the Burdened Tract or the Benefitted Tract and shall be a continuing lien upon either the Burdened Tract or the Benefitted Tract, as appropriate. Each such charge, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the defaulting party at the time the charge falls due. Upon the occurrence of an Event of Default, the nondefaulting party, at its option and within 45 days (the "Cure Period") of prior written notice to the defaulting party and any mortgagees of record of the defaulting party, may proceed to cure the default by the payment of money or other action on behalf of the defaulting party. The foregoing right to cure shall not apply, however, if within the Cure Period the defaulting party or its mortgagee cures the default or, if the default cannot reasonably be cured within that time period, diligently begins pursuing cure to completion. Additionally, the parties further agree that the 45-day notice period shall not be required if, using its good faith business judgment, the nondefaulting party deems an emergency exit which requires immediate cure. In the event of such emergency, the nondefaulting party shall give notice to the defaulting party and to its mortgagee.

Within ten days of demand thereof to the defaulting party and its mortgagee, the defaulting party shall reimburse the nondefaulting party for any sums reasonably expended by the nondefaulting party due to the occurrence of an Event of Default, together with interest at the rate of 10% per annum. If said payments are not timely paid, and such charge shall become delinquent and shall, together with such interest thereon and the cost of collection thereof, become a continuing lien on either the Burdened Tract or the Benefitted Tract, as appropriate. The personal obligation of the defaulting party to pay such assessment, however, shall remain its personal obligation through the statutory period and shall not pass to its successors-in-title unless expressly assumed by them. If the charge is not paid within thirty days after the delinquency date, the nondefaulting party may bring appropriate civil action against the defaulting party personally obligated to pay the same or to foreclose the lien against either the Burdened Tract or the Benefitted Tract, as appropriate, and there shall be added to the amount of such charge the cost of such action and a reasonable attorney's fee and other costs incurred by the nondefaulting party incident to bring such civil action. In the event a judgment is obtained against the defaulting party for such assessments, such judgment shall include interest on the

assessment as above provided and a reasonable attorney's fee, to be fixed by the Court, together with the cost of the action.

VII. BINDING NATURE OF AGREEMENT; NOTICE; SEVERABILITY

The easement in and upon the Easement Strip granted hereby shall be an appurtenance to the Benefitted Tract, shall run with the title to the Benefitted Tract and shall be for the benefit of Grantee and each and every of its assigns and its successors in the ownership of all or any portion of the Benefitted Tract.

All notices, requests, demands and other communications required or permitted under this Agreement and the transactions contemplated hereby shall be in writing and shall be deemed to have been duly given, made and received when personally delivered or upon the third day after deposit in the United States registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below:

If to Grantor: Merwyn A. Hayes
1248 Partridge Lane
Winston-Salem, NC 27106
Facsimile No.: 765-7781

with a copy to: William R. DeGraw, Jr.
Wilson, DeGraw & Johnson
P. O. Box 11771
Winston-Salem, NC 27116
Facsimile No.: 759-7600

If to Grantee: P & A Partners
c/o J. Scott Anders
4680-D Brownsboro Road
Winston-Salem, NC 27106
Facsimile No.:

with a copy to: George E. Hollodick
House & Blanco, P.A.
P. O. Drawer 25008
Winston-Salem, NC 27114-5008
215 Executive Park Blvd.
Winston-Salem, NC 27103
Facsimile No.: (919) 765-4830

Any party may alter the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provision of this paragraph for the giving of notice.

If any provision of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder thereof and the application of such

provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

This Agreement contains the entire understanding among the parties hereto and with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance and/or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by any agreement in writing.

The paragraph headings in this Agreement are for convenience only; they form no part of this Agreement and shall not affect its interpretation.

Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

GRANTOR:

Merwyn A. Hayes (SEAL)
MERWYN A. HAYES

Katherine H. Hayes (SEAL)
KATHERINE H. HAYES

Samuel J. Williard, III (SEAL)
SAMUEL J. WILLIARD, III

Karen H. Williard (SEAL)
KAREN H. WILLIARD

GRANTEE:

P & A PARTNERS, a North Carolina
general partnership (SEAL)

J. Scott Anders
J. Scott Anders, General Partner

Joe L. Puckett, III
Joe L. Puckett, III, General Partner

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11/18/92

STATE OF NORTH CAROLINA)
COUNTY OF FORSYTH)

I, George E Halledick, a Notary Public of the County and State aforesaid, certify that MERWYN A. HAYES AND WIFE, KATHERINE H. HAYES, and SAMUEL J. WILLIARD AND WIFE, KAREN H. WILLIARD, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and Notarial Seal or Stamp, this the 20 day of November, 1992.

[Signature]
Notary Public



My Commission Expires:

9/26/94

NOTARIAL SEAL/STAMP:

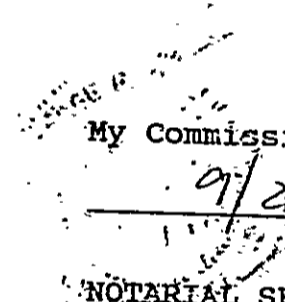
STATE OF NORTH CAROLINA)

COUNTY OF Forsyth)

I, George E Halledick, a Notary Public of said State and County, certify that J. SCOTT ANDERS, General Partner of P & A PARTNERS, a North Carolina general partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of said Partnership.

WITNESS my hand and Notarial Seal or Stamp, this the 20 day of November, 1992.

[Signature]
Notary Public



My Commission Expires:

9/26/94

NOTARIAL SEAL/STAMP:

STATE OF NORTH CAROLINA)
COUNTY OF Forsyth)

I, George E. Hollodick, a Notary Public of said State and County, certify that JOE L. PUCKETT, III, General Partner of P & A PARTNERS, a North Carolina general partnership, personally appeared before me this day and acknowledged the due execution of the foregoing instrument for and on behalf of said Partnership.

WITNESS my hand and Notarial Seal or Stamp, this the 20 day of November, 1992.


Notary Public

My Commission Expires:

9/26/94

NOTARIAL SEAL/STAMP:

STATE OF NORTH CAROLINA—Forsyth County

The foregoing (or annexed) certificate S of George E. Hollodick N.P.
(here give name and official title of the officer signing the certificate passed upon)

(are) certified to be correct. This the 20 day of Nov 1992

L. E. Speas, Register of Deeds

92 NOV 20 P4 058v Jessie Holder Deputy Assistant

Probate and Filing Fee \$ 26.00

paid
REGISTER OF DEEDS
FORSYTH CO
Jeri Stagner

EXHIBIT "A"

BEGINNING at a nail in the pavement, said nail being at the Southeastern corner of the property owned, now or formerly, by Uni-Brown Group recorded at Deed Book 1311, Page 779, said nail also being on a new line with Samuel J. Williard, III and Merwyn A. Hayes (see Deed Book 1732, Page 1823); thence from said point and place of BEGINNING and then on a new line with said Williard and Hayes South $03^{\circ} 42' 47''$ West 87.09 feet to an iron pin; thence South $86^{\circ} 12' 00''$ East 100.17 feet to an iron pin; the new Southeast corner of Williard and Hayes, and being in the Western line of the property owned, now or formerly, by Eastern Federal Corp. (Deed Book 1598, Page 652); thence with the Western line of Eastern Federal Corp. and continuing with the Western line of Wake Forest University (Tax Block 3442, Lot 123B) South $03^{\circ} 48' 25''$ West 54.34 feet to an iron pin; thence with the Northern line of Willie Lee Matthews, now or formerly (Deed Book 1001, Page 77), North $89^{\circ} 42' 23''$ West 225.48 feet to an iron pin located in the Eastern right-of-way margin of University Parkway; thence with the Eastern right of way margin of University Parkway North $03^{\circ} 46' 22''$ East 153.69 feet to an iron pin, the Southwest corner of Uni-Brown Group; thence with the Southern line of Uni-Brown Group South $86^{\circ} 54' 06''$ East 124.85 feet to the point and place of BEGINNING, and being designated as Lot 122F, Tax Block 3442, of the Forsyth County Tax Records as presently constituted, and being more particularly shown on the survey for Scott Anders prepared by Brady Surveying Company, P.A., dated July 17, 1992, Job No. 92B42, reference to which is hereby made for a more particular description.

EXHIBIT **B**Tract 1 (Buildings B & C):

BEGINNING at an iron stake, said iron stake being in the western boundary line of the Eastern Federal Corporation property described in Deed Book 1598, page 652, Forsyth County Registry, and said iron stake being South 03° 48' 25" West from an iron stake in the southern right of way line of Brownsboro Road at the northwest corner of said Eastern Federal Corporation property; and thence from said BEGINNING point, South 03° 48' 25" West 73.72 feet to an iron stake, a common corner of Tracts B and C on the hereinafter mentioned survey; thence South 03° 48' 25" West 95.15 feet to an iron stake, said iron stake being a common corner with Tracts C & D as shown on the hereinafter mentioned survey; thence with the common boundary line with Tract D, North 86° 12' West 100.17 feet to an iron stake; thence North 03° 48' East 98.07 feet to a point, said point being a common corner between Tracts D and C as shown on the hereinafter mentioned survey; thence North 03° 48' East 69.38 feet to a point, said point being a common corner between Tracts A and B as shown on the hereinafter mentioned survey. Thence with the southern boundary line of said Tract A, South 87° 01' 45" East 100.20 feet to the point and place of BEGINNING, and containing 0.386 acres and being Tracts B & C as shown on the survey dated December 28, 1989, by Daniel W. Donathan, Registered Land Surveyor.

TRACT 2 (Building A):

BEGINNING at an iron stake in the southern right-of-way line of Brownsboro Road, said iron stake being the northeast corner of the property conveyed to Eastern Federal Corporation in Deed Book 1598, page 652, Forsyth County Registry; and thence from said BEGINNING point, South 03° 48' 25" West 79.23 feet to an iron stake, said iron stake being a common corner of Tracts A and B as shown on the hereinafter mentioned survey; thence with the northern boundary line of the said Tract B, North 87° 01' 45" West 100.20 feet to a point, said point being a common corner of Tracts A and B, being in the eastern boundary line of the property described in Deed Book 1311, page 779, Forsyth County Registry; thence with said eastern boundary line, North 03° 48' East 79.40 feet to an iron stake in the southern right-of-way line Brownsboro Road; thence with said southern right-of-way line, South 86° 56' East 100.21 feet to the point and place of BEGINNING, and containing 0.182 acres and being Tract A as shown on a survey dated December 28, 1989, by Daniel W. Donathan, Registered Land Surveyor.

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EXHIBIT C

BEGINNING at an iron pin located in the southern right-of-way line of Brownsboro Road, said iron pin also being the northeast corner of the property owned, now or formerly, by Uni-Brown Group (Deed Book 1311, Page 779); thence with the eastern line of said Uni-Brown Group the following two (2) courses and distances: (1) South 03°48'47" West 148.91 feet to a point and (2) South 03°53'57" West 10.96 feet to a point, the southeast corner of Uni-Brown and a new corner with P & A Partners; thence on a new line with P & A Partners the following two (2) courses and distances: (1) South 03°42'47" West 87.09 feet to a point and (2) South 86°12'00" East 25.00 feet to a point; thence North 03°46'54" East 247.29 feet to a point located in the southern right-of-way line of Brownsboro Road; thence with the southern line of Brownsboro Road North 86°56'00" West 25.00 feet to the point and place of BEGINNING.