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FOR REGISTRATION REGISTER OF DEED  
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NEW HANOVER COUNTY, NC  
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STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

**DECLARATION OF EASEMENTS, COVENANTS AND CONDITIONS  
FOR  
CARMAR PARK**

THIS DECLARATION OF EASEMENTS, COVENANTS AND CONDITIONS FOR CARMAR PARK, made on the date hereinafter set forth by MARKET AUTO PROPERTIES, LLC, a North Carolina limited liability company, (hereinafter "Market Auto"), GULF, WORSLEY & COWPER PROPERTIES, LLC, a North Carolina limited liability company, (hereinafter "GWC" ), collectively "Declarant", and MITCHELL FAMILY, LLC, a North Carolina limited liability company, (hereinafter "Mitchell")

WITNESSETH

WHEREAS, Market Auto and GWC own lots shown as Tract 1, 2 and the Stormwater Pond Common Area Tract as shown on a recombination map recorded in Map Book 56 at Page 160 of the New Hanover County Registry, (hereinafter the "Map"), and

WHEREAS, Mitchell has acquired Tract 3 as shown on the recombination map as recorded in Map Book 56 at Page 160, of the New Hanover County Registry, and joins in this Declaration for the purpose of subjecting Tract 3 to the common scheme of development set out herein, and

WHEREAS, the Declarant desires to develop all of the property under a common scheme of development such that they will share certain storm water facilities and access and utility easements, and

NOW, THEREFORE, Declarant and Mitchell hereby declares that all of the Properties described above shall be held, sold and conveyed subject to the following easements, restrictions, rights and responsibilities, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof

**ARTICLE I  
DEFINITIONS**

SECTION 1 "Association" shall mean and refer to CARMAR PARK ASSOCIATION, its successors and assigns

SECTION 2 "Building" shall mean and include, but shall not be limited to, both the main portion of a structure built for permanent use and all projections or extensions thereof, including, but not limited to, garages, outside Platforms and decks, canopies, porches and outbuildings

SECTION 3 "Common Area" and "Common Easements" "Common Area" and/or "Common Facilities", which terms may be used interchangeably, shall mean and refer to all common facilities designated as such, now or in the future, by Declarant for the common use and enjoyment of all of the Owners in accordance with this Declaration and shall specifically include the following

- a All Access Easements, Drainage Easements and Utility Easements as depicted on the Map,

**DRAWN BY**  
*James A. McDonald*  
Returned To  
*Daniel D. Mahn*

- b All stormwater and drainage facilities identified and described in the stormwater permit issued to Declarant for development of the Property, including the existing Stormwater Facility as depicted upon the Map,
- c All roads now or hereafter constructed upon the Property and reasonably intended to be used for ingress and egress to, from and through the Property as shown, and
- d Any and all utility installations located upon the Property reasonably designed and constructed for use by two or more Parcels, including but not limited to all stormwater piping and facilities transporting water to and from the stormwater pond

SECTION 4 "Declarant" shall mean and refer to Market Auto and GWC, either individually or collectively, for so long as said Market Auto or GWC owns any of the Properties

SECTION 5 "Improvements" shall mean and include, but shall not be limited to, buildings, outbuildings, roads and driveways (other than those dedicated to public use), parking areas, fences, screened walls, retaining walls, loading areas, signs, utilities, lawns, landscaping, irrigation and walkways located on Lots, together with any construction work or treatment done or applied to a Lot in connection therewith, including, any storm water drainage lines or facilities and any piping related thereto

SECTION 6 "Lot" or "Tract" shall mean and refer to any numbered or lettered plot of land shown upon the Map Within the context of this Declaration, the terms Lot or Tract shall be used as interchangeable terms

SECTION 7 "Members" shall mean and refer collectively to the Members of the Association

SECTION 8 "Occupant" shall mean any person or entity who occupies, or who has the right to occupy, all or part of any Lot which is a part of the Properties, whether such occupancy or right of occupancy is based on ownership, lease, license or easement

SECTION 9 "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot, or any portion thereof, which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation

SECTION 10 "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be bought within the jurisdiction of the Association and this Declaration

## **ARTICLE II PROPERTY RIGHTS**

SECTION 1 OWNERS' EASEMENTS OF ENJOYMENT Every Owner shall have a right and easement of enjoyment in and to the Common Easements which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions

(a) the right of the Association to permit the use of and to charge reasonable fees for the use and maintenance of the Common Easements,

(b) the right of the Association to suspend the voting rights of an Owner or Occupant for any period during which any assessment against his Lot remains unpaid or for any infraction of its published rules and regulations,

(c) the right of the Association to grant easements and rights of way, to dedicate or transfer all or any part of the Common Easements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Association consistent with the terms of this Declaration and the Articles and bylaws of the Association Provided, however, that no dedication or transfer of any Common Area shall be effective unless an instrument signed by two-thirds (2/3) of the Members

(d) the right of the Association to impose regulations for the use and enjoyment of the Common Easements and any improvements thereon, which regulations may further restrict the use of the Common Easements, and

(e) the right of the Association, in accordance with its Articles and Bylaws, to borrow money

for the purpose of maintaining and /or improving the Common Easements and facilities thereon

SECTION 2 EASEMENTS Declarant hereby grants a perpetual non-exclusive easement to the Association over and across the Existing 50' wide ingress/egress access and utility easement depicted on the Map Declarant hereby grants said Easements to the Association, its members, occupants, successors and assigns as shown on the Map In consideration for the perpetual easement, over and across said Easements, the Association shall be responsible for maintenance costs (including the cost of any capital improvements) of said easements Such expense shall be part of the common expenses of the Association, payable by the lot owners as part of the Annual Assessments and/or Capital Improvement Special Assessment prorated among and levied against the Lots in accordance with the formula established in SECTION 5 of ARTICLE V of this Declaration

SECTION 3 DELEGATION OF USE Any Owner may delegate, in accordance with this Declaration, his rights of use and enjoyment of the Common Easements and its facilities to an occupant

SECTION 4 LEASES OF LOTS Any lease agreement between an Owner and a lessee for the lease of such Owner's lot or any part thereof (including a lease of all or a portion of a Building constructed on a Lot) shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and Bylaws of the Association and that any failure by the lessee to comply with the terms of the Declaration, Articles, Bylaws shall be a default under the terms of the lease All leases of Lots, Buildings or any portions thereof shall be in writing Provided, however, that as between the Association and a lot Owner, no lease agreement shall release the Lot Owner from ultimate responsibility for payment of all assessments due against that Owner's Lot Other than the foregoing, there are no restrictions on the right of any Owner to lease his lot

**ARTICLE III  
COMMON EASEMENT MAINTENANCE AND MANAGEMENT**

After obtaining approval from DENR for transfer of the stormwater pond system at its expense, then Market Auto and GWC covenants for themselves, their successors and assigns, that they shall convey to the Association the Stormwater Permit SW8000647 The Association shall accept the conveyance and immediately become responsible for all maintenance and operation of such properties In addition, Market Auto, GWC, and the Mitchell Family, LLC agree and covenant that the Lots subject to the Declaration shall also be subject to the Common Easements as hereinafter set out

- (a) a perpetual non-exclusive easement over the 50' Access, Drainage and Utility Easements and the Stormwater Detention Pond Lot as shown on the Map
- (b) a perpetual non-exclusive easement to utilize the storm water transmission and retention facilities, including the Stormwater Pond as shown on the Map
- (c) Common Areas designated as such on the Map recorded as to the Properties
- (d) Any easements as shown on the Properties

Any future transfers of the Lots shall be subject to the provisions of this Declaration and to all easements and encumbrances, rights-of-way and restrictive covenants of record at the time of the conveyance

The record title holder of the pond reserves the right to transfer the fee ownership of the pond as described on the Map to the Association at such time the pond has been approved for transfer under the existing governmental regulations then in force for subdivision of parcels of land and no later than 60 days after the sale of the last Lot by the Declarant

Once Market Auto and GWC provide the Association with written certification from DENR that the stormwater system is in compliance and contemporaneously with the transfer of the stormwater facilities to the Association, the Board of Directors for the Association shall sign acceptance of the Stormwater Pond Permit transfer and the Association agrees that it will indemnify and hold the Declarant harmless from any costs expense or loss associated with the Stormwater Pond after the tender of the Stormwater Pond Permit to the Association as set forth in this Article

Market Auto and GWC shall be responsible for the repair of the stormwater system necessary for the transfer of the stormwater permit to the Association, and for the costs to prepare the stormwater system and facilities for certification by DENR and for transfer to the Association

**ARTICLE IV  
MEMBERSHIP AND VOTING RIGHTS**

**SECTION 1 MEMBERS** Every Owner of a Lot which is subject to a lien for assessments shall be a Voting Member of the Association. An Owner may assign in writing his membership voting rights to an Occupant upon such terms as the Association may prescribe. Otherwise, membership and voting rights shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment, provided, however, that no such assignment shall affect the obligation of the owner to pay the assessments described in ARTICLE V hereof.

<u>LOT</u>	<u>VOTES</u>
Tract 1	1
Tract 2	35
Tract 3	30
<b>Total Votes</b>	<b>75</b>

In the event a Lot recombination or resubdivision is approved as set out in SECTION 2 of ARTICLE VII of this Declaration, votes among or between the recombined or resubdivided Lot shall be reallocated by the Board of Directors, in its sole discretion, however, that any such vote reallocation shall not increase or decrease the proportionate voting share of any lots not then being resubdivided or recombined.

When more than one person holds an interest in any Lot, all such persons shall be Members. The vote or votes for such Lot shall be exercised as they among themselves determine, but in no event shall multiple Owners of a Lot be entitled to cast more than the vote allotted to such Lot.

**SECTION 2 DECLARANT'S RIGHT TO SELECT DIRECTORS** Notwithstanding anything to the contrary herein, until 2 or more of the Lots as shown on the Map referred to in this Declaration have been conveyed to Owners other than Declarant, or until January 1, 2014, whichever occurs first, Declarant shall have the right to designate and select a majority of the Board of Directors of the Association. Whenever Declarant shall be entitled to designate and select any person to serve on any Board of Directors of the Association, the manner in which such person shall be designated shall be provided in the Articles of Incorporation and/ or Bylaws of the Association. Declarant shall have the right to remove any person selected by it to act and serve on said Board of Directors and to replace such person with another person to act and serve in the place of any Director so removed. Any Director designated and selected by Declarant need not be the Owner or Occupant of a Lot in the Properties. Any representative of the Declarant serving on the Board of Directors of the Association shall not be required to disqualify himself from any vote upon any contract or matter between Declarant and the Association where Declarant may have a pecuniary or other interest. Similarly, Declarant, as a Member of the Association, shall not be required to disqualify itself upon any contract or matter between the Declarant and the Association where Declarant may have a pecuniary or other interest.

**SECTION 3 OWNERS' RIGHT TO SELECT DIRECTORS** Upon the conveyance by Declarant of 2 or more of the Lots shown on the Map to Owners other than Declarant, then a meeting to elect a new Board of Directors for the Association shall be held within 30 days and each Owner shall have the right to appoint one Director per Lot to the Board of Directors, which Directors will subsequently hold office pursuant to the Association's bylaws.

**ARTICLE V  
COVENANT FOR MAINTENANCE AND ASSESSMENTS**

**SECTION 1 CREATION OF THE LIEN AND PERSONAL OBLIGATION OF LOT OWNERS FOR ASSESSMENTS** The Declarant, for each Lot owned within the Properties, and each Owner of any Lot or portion thereof, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Annual Assessments or charges, (2) Special Assessments for capital improvements and/ or for such assessments to be established and collected as hereinafter provided, (3) any fine, charge or late fee which may be levied by the Association against an owner pursuant to the provisions of this Declaration, (4) to the appropriate governmental taxing authority (a) a pro rata share of ad valorem taxes levied against the Common Area, if any, and (b) a pro rata share of assessments for public improvements to or for the benefit of the Common Area if the Association shall default on the payment of either or both for a period of (6) months, and (5) such amounts as may be necessary to secure a liability insurance policy in a

minimum amount of \$1,000,000 00 for each incident insuring the Association and each Owner from any liability arising from the Common Easements including but not limited to the stormwater pond, all as hereinafter provided. Such annual and special assessments, and any fine, late fee or other charge, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment, fine, late fee or charge is made. Each such assessment, fine or late fee and charge together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the entity which was the Owner of the Lot at the time when the assessment, fine, late fee or charge fell due. The personal obligation of a Lot Owner for delinquent assessments shall not pass to its successors in title unless expressly assumed by them.

## SECTION 2 PURPOSE OF ASSESSMENTS

(a) The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the Members of the Association, their Occupants, lessees and employees and in particular for the improvements and maintenance of properties, services and facilities devoted to this purpose or for the use and enjoyment of the Common Easements, including but not limited to, the cost of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Easements, the maintenance of private streets (as required in SECTION 2 of ARTICLE II of this Declaration), storm water run-off facilities, detention ponds, fences, walls and other elements of the Common Easements, the procurement and maintenance of liability insurance for the Stormwater Pond and all Common Easements in accordance with the Bylaws, the payment of charges for street lights located in the Common Easements, the payment of charges for water and sewer services furnished to the Common Easements, the employment of attorneys and other professionals to represent the Association when necessary, and such other needs as may arise.

(b) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid into the Association by any Member, the same may be commingled with monies paid to the Association by the other Members. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When an Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Member for any share of the funds or assets of the Association, or which may have been paid to the Association by such Member, as all monies which any Member has paid to the Association which may be used in the operation and management of the Properties and/ or the Common Easements.

SECTION 3 ANNUAL ASSESSMENTS FOR LOT OWNERS The Association shall levy, in each calendar year, Annual Assessments for the purpose of maintaining and operating all portions of the Common Area including utility cost, fixtures and personal property related thereto. Such Annual Assessments shall be levied only against the Lots and Lot Owners thereof. Until December 31 of the second year following the conveyance of the first Lot to an Owner other than the Declarant, the Annual Assessment shall be \$1,000 00 per vote (as assigned in SECTION 1 of ARTICLE IV above Based on an initial budget of \$7,500 00 per year). In subsequent years, the amount of the Annual Assessment shall be as established by the Board of Directors, in its reasonable discretion, and may be increased or decreased from year to year by the Board, without consent of Lot Owners, so long as any increase does not exceed 10% from the prior year. Provided if the increase does exceed 10% from the prior year said increase shall be approved by a majority of the lot owners.

SECTION 4 CAPITAL IMPROVEMENT SPECIAL ASSESSMENTS In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area including fixtures and personal property related thereto, provided that any such assessment shall be approved by two-thirds vote of the Members who are voting in person or by proxy at a meeting duly called for this purpose. The Capital Improvement Special Assessments shall be levied against each Lot in the same manner as Annual Assessments, as set forth in SECTION 5 below.

Written notice of any meeting called for the purpose of taking any action authorized under this SECTION 4 shall be sent at least ten (10) days but not more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Voting Members or the proxies entitled to cast twenty percent (20%) of the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required

quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting  
No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting

SECTION 5 RATE OF ASSESSMENTS The Annual Assessments and Capital Improvement Special Assessments shall be levied against the Lots so that each Lot's portion of the assessment bears the same relationship to the total assessment as such Lot's appurtenant vote in the Association bears to the total number of votes then outstanding in the Association (For example, if a Lot has one (1) vote in the Association out of a total of three (3) possible votes, such Lot and its Owner would be liable for one-third (1/3) of any assessment

SECTION 6 DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS, DUE DATES The Annual Assessments provided for herein shall be collected on an annual basis, or other periodic basis established by the Board, and shall commence as to each Lot, on the date the Declarant conveys any lot to another party The first annual assessments shall be adjusted according to the number of months remaining in the calendar year At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the Annual Assessment applicable to every Owner subject thereto The due dates for all such annual assessments shall be December 1 of each year, or such other date as established by the Board of Directors The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot has been paid

SECTION 7 EFFECT OF NONPAYMENT OF ASSESSMENTS LATE FEES REMEDIES OF THE ASSOCIATION Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum In addition, the Association may impose a late fee of \$15 00 per month for each month any assessment remains unpaid for 30 days after its due date per delinquent assessment per Lot The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as created herein against the property in the same manner as prescribed by the laws of the State of North Carolina for the foreclosures of deeds of trust, and late fees, interest, costs and reasonable attorney's fees for representation of the Association in such action of foreclosures shall be added to the amount of such assessment No Owner may waive or otherwise escape liability for any assessment provided for herein by non-use of the Common Area or abandonment of his Lot, nor shall damage to or destruction to any improvements on the Common Area, or any Lot by fire or other casualty result in any abatement or diminution of the assessments provided herein

SECTION 8 EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements, which default shall continue for a period of six (6) months, each Owner of a Lot shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority among the Owners in accordance with the formula established in SECTION 5 of this ARTICLE If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien on such Lot and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against such Lot in accordance with foreclosure actions set forth in N C G S & 45 et seq

The Declarant and the Lot Owners shall direct the tax office to have the value of the Stormwater Pond Common area and the Common Easements proportionately added to the three tracts shown as Tract 1, 2 and 3 on the Map, said proportion to be allocated for each tract as follows the numerator will be the acreage for the individual tract (i e Tract 1 is 1 0 acre) and the denominator will be the total area of all the tracts (7 5 acres)

SECTION 9 SUBORDINATION OF THE LIEN TO MORTGAGES The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust

## **ARTICLE VI USE AND IMPROVEMENTS; RECOMBINATION OR SUBDIVISION OF LOTS**

SECTION 1 LAND USE AND BUILDING TYPE All Lots shall be used for business or

commercial purposes as permitted by law except to the extent that any portion thereof is utilized for stormwater pond use or for access and utility easements

SECTION 2 RECOMBINATION AND SUBDIVISION OF LOTS No Lots shall be combined nor shall any Lots be further subdivided from that shown on the recorded Plat(s) of the Properties unless the prior written consent of Declarant is obtained Any permitted recombination or subdivision shall meet all applicable requirements of New Hanover County In the event of any other permitted recombination or resubdivision, the Board of Directors of the Association shall reallocate the vote so that it shall allocate the vote based on 1 0 vote rounded to the nearest 0 5 acre owned (e g if 1 5 acres and 1 5 acres are recombined into one 3 0 acre tract - the vote of the surviving tract would be 3 0)

**ARTICLE VII  
UTILITY, DRAINAGE AND ACCESS EASEMENTS;  
STORMWATER REGULATIONS, ALLOCATION OF IMPERVIOUS SURFACE,  
EMERGENCY EASEMENT**

SECTION 1 UTILITY AND DRAINAGE EASEMENTS Easements for installation and maintenance of utilities, drainage facilities and buffers are shown as indicated on recorded Map or attached Exhibits Within all such drainage and utility easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements Provided, however, that Lot Owners may install landscape planting, parking areas and driveways within easement areas, if such planting, parking areas and driveways do not interfere with the installation or maintenance of the utilities, or interfere with or change the direction of flow of water in drainage channels, and provided that it shall be the responsibility of the Lot Owner to remove and to repair or replace such plantings or paved areas if necessary to allow access to the easement area for maintenance and repairs

An easement is hereby established for the benefit of the City of Wilmington and New Hanover County (and any other person or firm providing services to the Properties under agreement with or at the direction of the Association) over all Common Areas as may be reasonably necessary for the setting, removal and reading of electric and water meters, and the maintenance and replacement of electric, water, sewer and drainage facilities and for the electric, water, sewer and drainage facilities and for the fighting of fires and collection of trash The Association shall have the power and authority to grant and establish upon, over and across the Common Areas such additional easements as are necessary or desirable for the providing of service or utilities to the Common Areas, Lots or Affiliate Lots

Furthermore, in addition to the foregoing reserved specific easements, the Declarant, so long as it appoints a majority of the Board of Directors of the Association, and thereafter the Association, may cut and create drains and drainways along, over or across any Lot, both above ground and underground, for the purpose of facilitating the removal of surface water whenever such action may appear to be necessary in order to maintain reasonable standards of health, safety and appearance of the Properties

These reservations of easements expressly include the right to cut any trees, bushes, shrubs or growth, to grade, cut or ditch the soil and to take any other action necessary to complete installation, and/or to repair and maintain the utilities and facilities located therein

SECTION 2 ENFORCEMENT OF STORM WATER RUNOFF REGULATIONS The following covenants are intended to ensure ongoing compliance with State Storm Water Management Permit Number SW8000647 as issued by the Division of Water Quality under NCAC 2H 1000

(a) The State of North Carolina is made a beneficiary of these covenants to the extent necessary to maintain compliance with the storm water management permit

(b) These covenants are to run with the land and be binding on all persons and parties claiming under them

(c) The covenants pertaining to storm water may not be altered or rescinded without the express written consent of the State of North Carolina, Division of Water Quality

(d) Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Division of Water Quality

(e) The existing Stormwater Control Permit has been designed to handle the runoff from

221,369 square feet of impervious area. The build upon area for future development is limited to 90,000 square feet. The permit shall allow for drainage to the pond of up to 18,000 square feet from off site stormwater attributable to Mitchell, Taylor and Jordan properties on the South side of Tract 2. The impervious surface allocations will be made in accordance with the acreage contained in each tract as the numerator and the total acres within the lots defined as subject to this declaration as the denominator multiplied by the available impervious surface. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.

(f) All runoff from the built-upon areas on the lot must drain into the permitted system. This may be accomplished through providing roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales to collect lot runoff and directing them into the storm water system or into the street. Lots that will naturally drain into the system are not required to provide these additional measures.

**SECTION 3 ALLOCATION OF ALLOWED IMPERVIOUS SURFACE UNDER THE STORMWATER PERMIT** All of Tracts 2 and 3 and a portion of Tract 1 are subject to the stormwater control permit as set forth herein. The permit allows a maximum total of 203,369 square feet of impervious surfaces on the property. The impervious surface shall be allocated as follows:

Tract 2 -	109,311	53.75%
Tract 3 -	83,890	41.25%
Tract 1	10,168	5.00%

**SECTION 4 EMERGENCY EASEMENT** In the event of any emergency originating within a Lot, which emergency threatens other Lots, the owners or occupants thereof and/or the Common Area, the Association is hereby granted an easement on and over all Lots for the purpose of remedying or abating the cause of such emergency. All costs incurred by the Association in remedying or abating the cause of such emergency shall be reimbursed by the owner of the Lot upon which the emergency originated, and such costs shall be a charge on the land and the personal obligation of the owner of the Lot enforceable as an assessment pursuant to the provisions of ARTICLE V of the Declaration.

**SECTION 5 RELOCATION OF STORMWATER DRAINAGE OUTFLOW PIPE** The Owner or its successors and assigns of Tract 3 shall have the right to relocate the drainage outflow pipe for the Stormwater Pond which currently crosses Tract 3 to another location within the boundaries of Tract 3 or to install another drainage outflow pipe for the Stormwater Pond which would drain southwardly from the Stormwater Pond crossing the Common Area Tract to empty into an eighty foot (80') drainage easement adjacent to the southern boundary of the Pond, provided that the owner of Tract 3 must comply with all stormwater and city regulations then in place. In the event of relocation of the stormwater drainage outflow pipe, the abandoned stormwater drainage pipe easement would be relinquished upon the acceptance of the replacement stormwater drainage pipe easement by the Association. Any relocation or installation of such stormwater pipe, including any necessary modifications to the stormwater permit, shall be made at the sole cost and expense of the Owner of Tract 3.

**ARTICLE VIII  
MISCELLANEOUS**

**SECTION 1 ENFORCEMENT** The Association, and any Owner or Occupant, shall have the right to enforce, by any proceeding at law or equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, the Articles of Incorporation or Bylaws of the Association. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority.

**SECTION 2 SEVERABILITY** Invalidation of any one of the covenants or restrictions by judgment or court order shall not affect any other provision which shall remain in full force and effect.

**SECTION 3 AMENDMENT** The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by (a) owners holding at least sixty-seven percent (67%) of the then outstanding votes in the Association, and (b) Declarant, for so long as Declarant has the right to select a

majority of the members of the Board of Directors of the Association, provided that no amendment shall alter any obligation to pay ad valorem taxes or assessments for public improvements, as herein provided, or affect any lien for the payment thereof established herein. Any amendment must be properly recorded in the New Hanover County public records, and must refer to the recording data for this Declaration.

Notwithstanding anything in this SECTION 3 to the contrary, no consent by Members shall be required to amend this Declaration in connection with any of the following matters:

(a) the reallocation of votes among Lots occasioned by Lot recombinations and/or resubdivisions, as set out in SECTION 1 of ARTICLE IV of this Declaration.

SECTION 4 ANNEXATION OF RESIDENTIAL LOTS ON EASTERN SIDE OF STORMWATER POND There are three small residential lots on the eastern side of the Stormwater Pond for which the existing Stormwater Pond allocated drainage capacity of 18,000 square feet. In the event that any of the three residential lots shall connect and drain to the common stormwater pond which is designated in this Declaration, then said residential lot shall automatically be annexed and subjected to this Declaration and shall be subject to assessments as provided herein and shall be allocated a vote of one half of one (0.5) vote per residential lot.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed by its duly authorized manager this the 25<sup>th</sup> day of October, 2011

DECLARANT:

Gulf, Worsley & Cowper Properties, LLC,  
a North Carolina limited liability company

Market Auto Properties, LLC  
a North Carolina limited liability company

By: [Signature]  
Jon T. Vincent, Manager

By: [Signature]  
Jon T. Vincent, Manager

Mitchell Family, LLC  
a North Carolina limited liability company

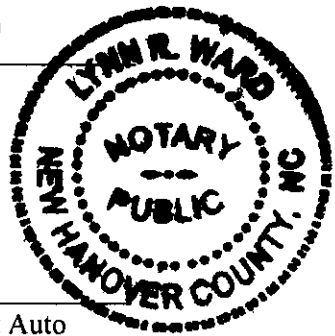
By: [Signature]  
Richard L. Mitchell

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid certify that Jon T. Vincent personally came before me this day and acknowledged that he/she is the Manager of Gulf, Worsley, & Cowper Properties, LLC, a North Carolina limited liability company, the limited liability company named hereinabove, and executed the foregoing instrument for the purposes therein expressed for and on behalf of the North Carolina limited liability company

WITNESS my hand and official stamp or seal, this the 25<sup>th</sup> day of October, 2011

[Signature]  
Notary Public



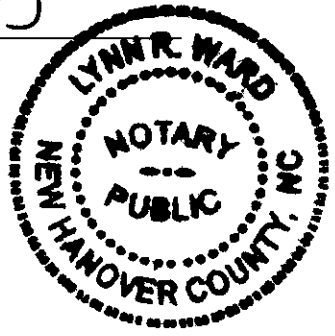
My commission expires: 5/18/2013

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid certify that Jon T. Vincent personally came before me this day and acknowledged that he/she is the Manager of Market Auto Properties, LLC, a North Carolina limited liability company, the limited liability company named hereinabove, and executed the foregoing instrument for the purposes therein expressed for and on behalf of the North Carolina limited liability company

WITNESS my hand and official stamp or seal, this the 25<sup>th</sup> day of October, 2011

[Signature]  
Notary Public



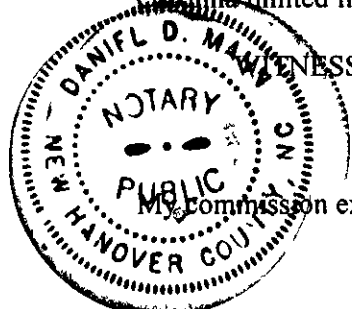
My commission expires 5/18/2013

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid certify that Richard L. Mitchell personally came before me this day and acknowledged that he/she is the Manager of Mitchell Family, LLC, a North Carolina limited liability company, the limited liability company named hereinabove, and executed the foregoing instrument for the purposes therein expressed for and on behalf of the North Carolina limited liability company

WITNESS my hand and official stamp or seal, this the 1<sup>st</sup> day of ~~October~~ November, 2011

[Signature]  
Notary Public



My Commission expires: 10/16/15

CONSENT AND JOINDER OF MORTGAGEE AND TRUSTEE

NEWBRIDGE BANK, as the holder of the existing mortgage loan on some or all of the property described in Exhibit "A" and Paul McCombie as Trustee under the deed of trust securing said loans and recorded in Book 4758 at Page 105 of the New Hanover County Registry, join in the execution of this Declaration of Easements, Covenants and Conditions for the purpose of subordinating said deed of trust securing said loan to the terms and provisions of this Declaration as may from time to time be amended or supplemented.

MORTGAGEE:  
NEWBRIDGE BANK

By: Marcus Smith  
Marcus Smith, Vice President

TRUSTEE:

Paul McCombie  
Paul McCombie, Trustee

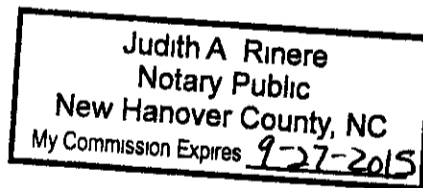
STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid certify that Marcus Smith personally came before me this day and acknowledged that he/she is the Vice President of NEWBRIDGE BANK, the lending institution named hereinabove, and executed the foregoing instrument for the purposes therein expressed for and on behalf of NEWBRIDGE BANK.

WITNESS my hand and official stamp or seal, this the 27 day of October, 2011.

Judith A Rinere  
Notary Public

My commission expires: 9-27-2015



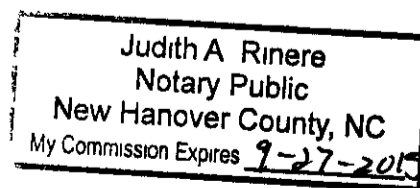
STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, a Notary Public of the County and State aforesaid certify that Paul McCombie personally came before me this day and acknowledged that he/she is Trustee named hereinabove, and executed the foregoing instrument for the purposes therein expressed.

WITNESS my hand and official stamp or seal, this the 27 day of October, 2011.

Judith A Rinere  
Notary Public

My commission expires: 9-27-2015



CONSENT AND JOINDER OF MORTGAGEE AND TRUSTEE

FIRST BANK, as the holder of the existing mortgage loan on some or all of the property described in Exhibit "A" and Teresa C Nixon as Trustee under the deed of trust securing said loans and recorded in Book 4059 at Page 891 of the New Hanover County Registry, join in the execution of this Declaration for the purpose of subordinating said deed of trust securing said loan to the easements, terms and provisions of this Declaration as may from time to time be amended or supplemented

MORTGAGEE  
FIRST BANK

By [Signature]  
Executive Vice President

TRUSTEE

[Signature]  
Teresa C Nixon, Trustee

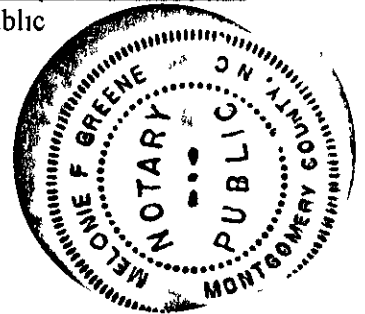
STATE OF NORTH CAROLINA  
COUNTY OF ~~NEW HANOVER~~ *Montgomery*

I, a Notary Public of the County and State aforesaid certify that Teresa C Nixon personally came before me this day and acknowledged that he/she is the <sup>Executive</sup> Vice President of FIRST BANK, the lending institution named hereinabove, and executed the foregoing instrument for the purposes therein expressed for and on behalf of FIRST BANK

WITNESS my hand and official stamp or seal, this the 31<sup>st</sup> day of October, 2011

[Signature]  
Notary Public

My commission expires 9/24/2014



STATE OF NORTH CAROLINA  
COUNTY OF ~~NEW HANOVER~~ *Montgomery*

I, a Notary Public of the County and State aforesaid certify that Teresa C Nixon personally came before me this day and acknowledged that he/she is Trustee named hereinabove, and executed the foregoing instrument for the purposes therein expressed

WITNESS my hand and official stamp or seal, this the 31<sup>st</sup> day of October, 2011

[Signature]  
Notary Public

My commission expires. 9/24/2014







JENNIFER H MACNEISH  
REGISTER OF DEEDS, NEW HANOVER  
216 NORTH SECOND STREET

WILMINGTON, NC 28401

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Filed For Registration. 11/02/2011 04:19 07 PM  
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14 PGS \$26.00  
Recorder: JOHNSON, CAROLYN

State of North Carolina, County of New Hanover

PLEASE RETAIN YELLOW TRAILER PAGE WITH ORIGINAL DOCUMENT.

**\*2011030142\***

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