

FOR REGISTRATION J. DAVID GRANBERRY
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2010 APR 06 03:00:54 PM
BK: 25533 PG. 953-965 FEE: \$47.00
INSTRUMENT # 2010038859



2010038859

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

FIRST AMENDMENT TO DECLARATION
OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
ARBORS AT MALLARD CREEK

THIS FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR ARBORS AT MALLARD CREEK (this "Amendment"), is made and entered into as of the 1st day of March, 2010 by and between ARBORS HOLDINGS, LLC, a North Carolina limited liability company ("Declarant"), and those property owners who execute this Amendment for purposes of consenting to the terms hereof (the "Executing Owners").

RECITALS:

ARBORS AT MALLARD CREEK, LLC, a North Carolina limited liability company (the "Original Declarant") has heretofore imposed certain covenants, conditions, and restrictions in that certain Declaration of Covenants, Conditions, Restrictions and Easements for Arbors at Mallard Creek dated July 30, 2004 and recorded in Book 17594, Page 893 of the Mecklenburg County Register of Deeds (the "Declaration") upon the property described in Exhibit A of the Declaration and all other property made subject to the Declaration by amendment, deed or otherwise (collectively, the "Property").

Original Declarant bargained, sold, assigned, transferred, conveyed, and set over to Declarant any and all of its rights, powers, easements, reservations, interests and privileges as Declarant under the Declaration by that certain Assignment and Assumption of Declarant's Rights dated May 14, 2009 and recorded May 15, 2009 in Book 24736 at Page 613 in the Mecklenburg County Register of Deeds.

Drawn by and mail to:
Gary T. McDermott, Esq.
Womble Carlyle Sandridge & Rice, PLLC
3500 One Wachovia Center
301 S. College Street
Charlotte, NC 28202

Declarant and the Executing Owners desire to amend the following provisions of the Declaration: Article I, Section 1.1(f); Article III, Section 3.1(a)(2); and Article VI, Section 6.6, all pursuant to Article VIII, Section 8.1 of the Declaration; and

The signatories hereto represent a minimum of two-thirds (2/3) of the votes of the Members of the Association, each Member's vote being equal to such Member's Prorata Share, as required by the Declaration.

NOW, THEREFORE, for and in consideration of the recitals set forth above and pursuant to the authority set forth in Article VIII, Section 8.1 of the Declaration, Declarant and the Executing Owners hereby agree to amend the Declaration by declaring that the Property shall be held, developed, improved, leased, sold, transferred, conveyed and occupied subject to the covenants, conditions, restrictions and reservations set forth in this Amendment, all of which the parties hereto agree are harmonious with the general intent and purpose of the Declaration, and shall run with title to the Property, and shall be binding on all parties having a right, title or interest therein, along with their heirs, successors and assigns, and which shall inure to the benefit of each owner thereof. Accordingly, the Declarant and the Executing Owners hereby agree as follows:

1. The recitals set forth above are incorporated herein by reference. Any capitalized term used herein and not otherwise defined shall have the meaning ascribed to it in the Declaration.
2. Article I, Section 1.1(f) of the Declaration is hereby deleted in its entirety and replaced with the following:

““Common Facilities” shall mean and refer to (i) the BMPs, (ii) the Entrance Areas, (iii) the Retaining Walls, (iv) the roads, if any, (until such time as, if ever, such roads are dedicated and accepted by the appropriate governmental authority), and (v) all other Common Facilities designated as such, now or in the future, by Declarant under the terms of this Declaration or any supplement hereto, for the common use and enjoyment of all of the Owners in accordance with this Declaration. The roads, if any, can be transferred to the Association, and upon such transfer shall remain Common Facilities.”

3. Article III, Section 3.1(a)(2) of the Declaration is hereby deleted in its entirety and replaced with the following:

“Class B. The Class B Member shall be Declarant and its successors or assigns (as Declarant, and not merely as successor Owner of any Lot) hereunder. The Class B membership shall terminate and cease upon the first to occur of the following: (i) twenty (20) years pass from the date of filing this Declaration in the Office of the Register of Deeds for Mecklenburg County, North Carolina, (ii) voluntary termination of the Class B membership by Declarant as evidenced by the recording of a certificate by

Declarant in the Office of the Register of Deeds of Mecklenburg County terminating such class, or (iii) the date that Arbors Holdings, LLC, a North Carolina limited liability company, no longer owns any Lot or any ownership interest in any entity which is Owner of any Lot.”

4. The first paragraph of Article VI, Section 6.6 of the Declaration is hereby amended such that the following is added as the last sentence of said first paragraph:

“Notwithstanding the above to the contrary, for that certain parcel shown as “LOT 1” on that certain plat entitled “FINAL PLAT OF THE ARBORS AT MALLARD CREEK OWNER: CRESCENT RESOURCES, INC.” dated 01-07-04 and recorded in Map Book 41 at Page 755 of the Mecklenburg County Register of Deeds (“Lot 1”), and only for Lot 1, the following shall be a Permitted Use and shall not be a Prohibited Use: an express lube and oil change center (the “Additional Lot 1 Permitted Use”), so long as such use is in conformance with all Environmental Laws and so long as any release of any Hazardous Substances from such operations is promptly remediated. Without limiting the scope of the Additional Lot 1 Permitted Use, the Additional Lot 1 Permitted Use shall include but is not limited to minor automotive services and repair.

The Declaration, as amended hereby, shall continue in full force and effect in accordance with its terms, except as expressly or by necessary implication modified and supplemented by this Amendment, and is hereby ratified and confirmed by Declarant and the Executing Owners.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed under seal by authority duly given as of the day and year first above written.

DECLARANT AND CLASS B MEMBER:

ARBORS HOLDINGS, LLC,
a North Carolina limited liability company

By: [Signature]
Name: Lat W. Purser, III
Its: Manager

STATE OF NC
COUNTY OF MECKLENBURG

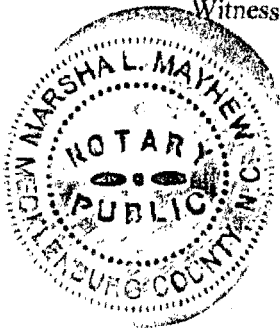
I, MARSHA L. MAYHEW, a Notary Public of MECKLENBURG County and State of NORTH CAROLINA, do hereby certify that LAT W. PURSER, III (the "Signatory"), Manager of ARBORS HOLDINGS, LLC, a North Carolina limited liability company, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of ARBORS HOLDINGS, LLC.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 - a driver's license or
 - in the form of _____); or
 - (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 19TH day of FEBRUARY, 2010.



[Signature]
Notary Public

Print Name: MARSHA L. MAYHEW

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 28 JANUARY 2013

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

OWNER:

GAVI THE ARBORS III, LLC, (SEAL)
a Delaware limited liability company, and

PURSER ARBORS, LLC,
a North Carolina limited liability company, collectively

By: LAT PURSER & ASSOCIATES, INC.,
a North Carolina corporation, Manager

By: [Signature]
Name: Lat W. Purser, III
Title: Authorized Officer

STATE OF NC
COUNTY OF MECKLENBURG

I, MARSHA L. MAYHEW, a Notary Public of MECKLENBURG County and State of NORTH CAROLINA, do hereby certify that LAT W. PURSER, III (the "Signatory"), Authorized Officer of LAT PURSER & ASSOCIATES, INC., a North Carolina corporation, Manager of GAVI THE ARBORS III, LLC, a Delaware limited liability company, and also Manager of PURSER ARBORS, LLC, a North Carolina limited liability company, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of LAT PURSER & ASSOCIATES, INC. as Manager of GAVI THE ARBORS III, LLC and as Manager of PURSER ARBORS, LLC.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 - a driver's license or
 - in the form of _____); or
 - (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 19TH day of FEBRUARY, 2010.



[Signature]
Notary Public
Print Name: MARSHA L. MAYHEW

[Note: Notary Public must sign exactly as on notary seal]
My Commission Expires: 28 FEBRUARY 2013
[NOTARY SEAL] (MUST BE FULLY LEGIBLE)
JANUARY
mlm

OWNER:

GAVI THE ARBORS II, LLC, (SEAL)
a Delaware limited liability company, and

PURSER ARBORS, LLC,
a North Carolina limited liability company, collectively

By: LAT PURSER & ASSOCIATES, INC.,
a North Carolina corporation, Manager

By: [Signature]
Name: Lat W. Purser, III
Title: Authorized Officer

STATE OF NC
COUNTY OF MECKLENBURG

I, MARSHA L. MAYHEW, a Notary Public of MECKLENBURG County and State of NORTH CAROLINA, do hereby certify that LAT W. PURSER, III (the "Signatory"), Authorized Officer of LAT PURSER & ASSOCIATES, INC., a North Carolina corporation, Manager of GAVI THE ARBORS II, LLC, a Delaware limited liability company, and also Manager of PURSER ARBORS, LLC, a North Carolina limited liability company, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of LAT PURSER & ASSOCIATES, INC. as Manager of GAVI THE ARBORS II, LLC and as Manager of PURSER ARBORS, LLC.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 - a driver's license or
 - in the form of _____); or
 - (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 19TH day of FEBRUARY, 2010.



[Signature]
Notary Public

Print Name: MARSHA L. MAYHEW

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 28 JANUARY 2013

☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)

OWNER:

ARBORS OFFICE B, LLC, (SEAL)
a North Carolina limited liability company

By: [Signature]
Name: Lat W. Purser, III
Title: Manager

STATE OF NC
COUNTY OF MECKLENBURG

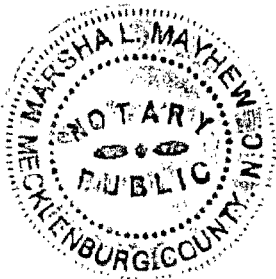
I, MARSHA L MAYHEW, a Notary Public of MECKLENBURG County and State of NORTH CAROLINA, do hereby certify that LAT W. PURSER, III (the "Signatory"), Manager of ARBORS OFFICE B, LLC, a North Carolina limited liability company, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of ARBORS OFFICE B, LLC.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 a driver's license or
 in the form of _____); or
- (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 19th day of FEBRUARY, 2010.



[Signature]
Notary Public

Print Name: MARSHA L MAYHEW

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 28 JANUARY 2013

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

OWNER:

**ARBORS PROFESSIONAL CENTER
CONDOMINIUM II, INC.,** (SEAL)
a North Carolina non-profit corporation

By: *Charles A. Hoch*
Name: Charles A. Hoch
Title: ADMINISTRATOR/PRESIDENT

STATE OF North Carolina
COUNTY OF Mecklenburg

I, DEBORAH C. BLANKEMEYER Notary Public of Mecklenburg County and State of North Carolina, do hereby certify that Charles A. Hoch (the "Signatory"), personally, came before me this day and acknowledged that he/she is ADMINISTRATOR/PRESIDENT of ARBORS PROFESSIONAL CENTER CONDOMINIUM II, INC., a North Carolina non-profit corporation, and that he/she, in such capacity and being authorized to do so, executed the foregoing on behalf of ARBORS PROFESSIONAL CENTER CONDOMINIUM II, INC.

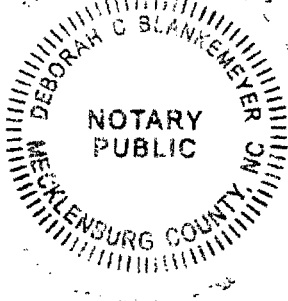
I certify that the Signatory personally appeared before me this day, and
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 a driver's license or
 in the form of _____); or
- (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 1ST day of MARCH, 2010.

Deborah C. Blankemeyer
Notary Public
Print Name: DEBORAH C. BLANKEMEYER
[Note: Notary Public must sign exactly as on notary seal]
My Commission Expires: July 14, 2014
[NOTARY SEAL] (MUST BE FULLY LEGIBLE)



OWNER:

BRANCH BANKING & TRUST COMPANY, (SEAL)
a North Carolina state banking corporation

By: Brenda Shamloo
Name: BRENDA A. SHAMLOO
Title: VICE PRESIDENT

STATE OF North Carolina
COUNTY OF Davie

I, Bonnie D. Russell, a Notary Public of Davie County and State of North Carolina, do hereby certify that Brenda Shamloo (the "Signatory"), personally came before me this day and acknowledged that he/she is Vice Pres. of BRANCH BANKING & TRUST COMPANY, a North Carolina state banking corporation, and that he/she, in such capacity and being authorized to do so, executed the foregoing on behalf of BRANCH BANKING & TRUST COMPANY.

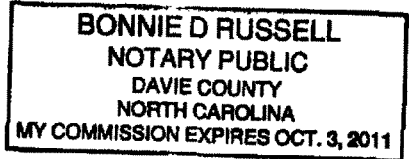
I certify that the Signatory personally appeared before me this day, and
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 a driver's license or
 in the form of _____); or
- (a credible witness has sworn to the identity of the Signatory).

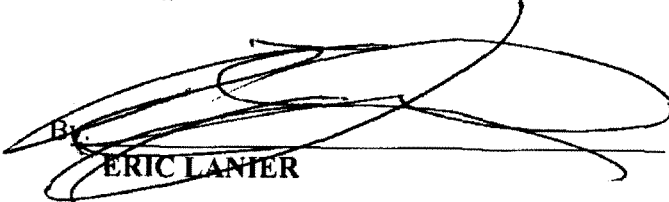
The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 22 day of Feb., 2010.

Bonnie D. Russell
Notary Public
Print Name: Bonnie D. Russell
[Note: Notary Public must sign exactly as on notary seal]
My Commission Expires: Oct. 3, 2011
☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)



OWNER:

By:  (SEAL)
ERIC LANIER

STATE OF N.C.
COUNTY OF Mecklenburg
I, Rosemond A. Davis, a Notary Public of Mecklenburg County, State of N.C., do hereby certify that ERIC LANIER (the "Signatory") personally appeared before me this day and acknowledged the execution of the foregoing instrument.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 - a driver's license or
 - in the form of _____); or
 - (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 25th day of February, 2010.



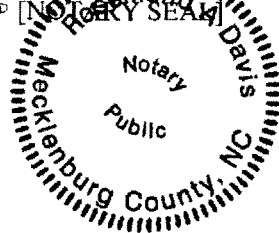
Notary Public

Print Name: Rosemond A. Davis

[Note: Notary Public must sign exactly as on notary seal]

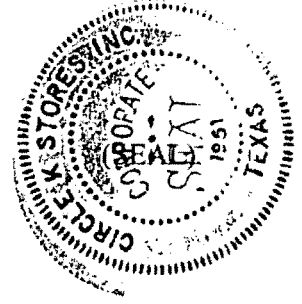
My Commission Expires: 5/13/2011

[NO SIGNATURE SEALS] (MUST BE FULLY LEGIBLE)



OWNER:

CIRCLE K STORES INC.,
a Texas corporation



By: M. McCure
Name: Matt McCure
Title: Vice Pres.

STATE OF South Carolina
COUNTY OF York

I, Stephanie R. Reeder, a Notary Public of York County, State of South Carolina, certify that Matt McCure (the "Signatory"), personally came before me this day and acknowledged that he/she is Vice President of CIRCLE K STORES INC., a Texas corporation, and that he/she, in such capacity and being authorized to do so, executed the foregoing on behalf of CIRCLE K STORES INC..

I certify that the Signatory personally appeared before me this day, and

(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:

(check one of the following)

- a driver's license or
- in the form of _____); or
- (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 25th day of February, 2010.

Stephanie R. Reeder
Notary Public

Print Name: Stephanie R. Reeder

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 10/11/2011

[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

STEPHANIE R. REEDER
NOTARY PUBLIC
YORK COUNTY
SOUTH CAROLINA
My Commission Expires October 11, 2011

OWNER:

THE ARBORS AT MALLARD CREEK TIC (SEAL)

a _____

By: Mindy Mills Hinson
Name: Mindy Mills Hinson
Title: Property Manager

STATE OF North Carolina
COUNTY OF Mecklenburg

I, Melissa D. Elder, a Notary Public of Mecklenburg County and State of North Carolina, do hereby certify that Mindy Mills Hinson (the "Signatory"), Property Manager of The Arbors at Mallard Creek TIC, a _____, personally appeared before me this day and by authority duly given, acknowledged the due execution of the foregoing instrument on behalf of DBSI.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)
 - a driver's license or
 - in the form of _____); or
 - (a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he/she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal this 26th day of February, 2010.

Melissa D. Elder

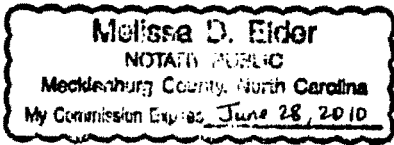
Notary Public

Print Name: Melissa D. Elder

[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: June 28, 2010

☞ [NOTARY SEAL] (MUST BE FULLY LEGIBLE)





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

PLEASE RETAIN YELLOW TRAILER PAGE

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

Filed For Registration: 04/06/2010 03:00:54 PM
Book: RE 25533 Page: 953-965
Document No.: 2010038859
RESTR 13 PGS \$47.00
Recorder: SERENA WOODS



2010038859