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\$11,550-  
\$

Record & Return To:  
Southern Title Holding Company, LLC  
400 Seabreeze Blvd.  
Daytona Beach, FL 32118

CM093146

Prepared by:

Michael F. Tomlinson, Esq.  
K&L Gates LLP  
214 N. Tryon Street  
Hearst Tower, 47<sup>th</sup> Floor  
Charlotte, North Carolina, 28202

**SPECIAL WARRANTY DEED  
(WITH PROTECTIVE COVENANTS)**

THIS SPECIAL WARRANTY DEED executed this 20<sup>th</sup> day of November, 2009, by MELBOURNE 95 NEW HAVEN, LLC, a North Carolina limited liability company whose address is 1111 Metropolitan Avenue, Suite 700, Charlotte, NC 28204 ("Grantor"), to RACETRAC PETROLEUM, INC., a Georgia corporation whose address is 3225 Cumberland Boulevard, Suite 100, Atlanta, GA 30339 ("Grantee").

WITNESSETH, That the said Grantor, for and in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the Grantee, all that certain land situate in Brevard County, Florida (the "Premises"), to-wit:

SEE LEGAL DESCRIPTION OF PREMISES ON EXHIBIT "A" ATTACHED HERETO.

SUBJECT TO all matters listed on Exhibit "B" attached hereto (the "Permitted Exceptions").

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.

AND the Grantor hereby covenants with said Grantee that it is lawfully seized of the Premises in fee simple; that it has good right and lawful authority to sell and convey said Premises; that it hereby fully warrants the title to said Premises and will defend the same against the lawful claims of all persons claiming by, through or under the said Grantor; and that said Premises is free of all encumbrances, except the Permitted Exceptions.

IN ADDITION TO the foregoing conveyance, Grantor hereby restricts, for the benefit of the Premises, the use of certain property owned by Grantor (the "Restricted Property"), which Restricted Property is more particularly described on Exhibit "C" attached hereto. The terms and conditions of such restriction are more particularly set forth on Exhibit "D" attached hereto.

IN WITNESS WHEREOF, the said Grantor has hereunto set Grantor's hand and seal the day and year first above written.

Witnesses:

MELBOURNE 95 NEW HAVEN, LLC, a  
North Carolina limited liability company

Brittany L. Bell  
Print Name: Brittany L. Bell

By: C. Donovan Smith, IV  
Name: C. Donovan Smith, IV  
Title: Manager

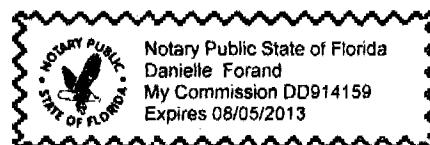
M.B. Jordey  
Print Name: M.B. Jordey

Florida  
STATE OF SOUTH CAROLINA )  
Brevard )  
COUNTY OF CHARLESTON )

On November 18<sup>th</sup>, 2009, before me, the undersigned, a notary public in and for said State, personally appeared C. Donovan Smith, IV, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that, by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

Danielle Forand Notary Public

My Commission Expires:  
08/05/2013



**EXHIBIT "A"**

TRACT B, **COASTAL COMMERCE CENTER**, ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 58, PAGE 54, PUBLIC RECORDS OF BREVARD COUNTY, FLORIDA, AS FURTHER DESCRIBED AS FOLLOWS:

BEING THE SAME PROPERTY DESCRIBED BY METES AND BOUNDS AS FOLLOW:

COMMENCE AT THE WEST 1/4 QUARTER OF SECTION 2, TOWNSHIP 28 SOUTH, RANGE 36 EAST; THENCE SOUTH 00°10'01" EAST, ALONG THE WEST LINE OF SOUTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 57.00 FEET TO A POINT OF THE SOUTH RIGHT OF WAY LINE OF U.S. 192 (STATE ROAD 500) BEING A 114 FOOT RIGHT OF WAY; THENCE NORTH 89°36'15" EAST, ALONG SAID SOUTH RIGHT OF WAY LINE, A DISTANCE OF 52.00 FEET TO THE NORTHWEST CORNER OF TRACT 'B', COASTAL COMMERCE CENTER AND POINT OF BEGINNING; THENCE CONTINUE NORTH 89°36'15" EAST, A DISTANCE OF 12.39 FEET; THENCE SOUTH 76°53'29" EAST, A DISTANCE OF 64.88 FEET; THENCE NORTH 89°36'15" EAST, A DISTANCE OF 213.31 FEET; THENCE SOUTH 01°29'48" EAST, A DISTANCE OF 294.80 FEET TO A SOUTHEAST CORNER OF SAID TRACT 'B' AND SOUTHWEST CORNER OF LAND DESCRIBED IN OFFICIAL RECORDS BOOK 5112, PAGE 583, BREVARD COUNTY RECORDS; THENCE FOR THE FOLLOWING THREE (3) COURSES ALONG SAID SOUTH LINE OF TRACT 'B'; THENCE SOUTH 88°29'33" WEST, A DISTANCE OF 141.45 FEET; THENCE NORTH 87°00'28" WEST, A DISTANCE OF 54.20 FEET; THENCE SOUTH 88°29'33" WEST, A DISTANCE OF 100.18 FEET TO THE SOUTHWEST CORNER OF TRACT 'B'; THENCE NORTH 00°10'01" WEST, ALONG THE EAST LINE OF TRACT 'B', A DISTANCE OF 311.38 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B****PERMITTED EXCEPTIONS**

1. Taxes and assessments for the year 2009 and subsequent years.
- 2) Pre-Annexation Agreement by and between CITY OF WEST MELBOURNE, AMERICAN BANK OF THE SOUTH, a Florida banking corporation, WILLIAM B. FERRELL, TRUSTEE, and ALBERT H. KLAIR, JR., recorded in Official Records Book 3386, Page 1068, and Assigned in Official Records Book 3530, Page 4414, Public Records of Brevard County, Florida.
- 3) Declaration of Covenants, Restrictions and Easements for Coastal Commerce Center by MELBOURNE 95 NEW HAVEN, LLC, a North Carolina limited liability company, recorded September 13, 2007, in Official Records Book 5811, Page 4200, Public Records of Brevard County, Florida.
- 4) Terms, conditions, covenants set out in Easement and Restrictive Use Agreement for Shopping Center recorded in Official Records Book 5814, Page 1120, First Amendment to Easement and use Agreement for Shopping Center recorded in Official Records Book 5856, Page 8071, Second Amendment to Easement and Restrictive Use Agreement for Shopping Center recorded in Official Records Book 5893, Page 1299, and Third Amendment to Easement and Restrictive Use Agreement for Shopping Center recorded in Official Records Book ~~6069~~, Page ~~1164~~, Public Records of Brevard County, Florida.
- 5) Easements to Florida Power & Light Company recorded in Official Records Book 1977, Page 1028, and Official Records Book 1977, Page 1029, Partial Release of Easement recorded in Official Records Book 6000, Page 2711, Public Records of Brevard County, Florida. (As to Easement Parcel only)
- 6) Ordinance No. 2007-12 recorded in Official Records Book 5834, Page 7752, Public Records of Brevard County, Florida.
- 7) Ordinance No. 2007-11 recorded in Official Records Book 5830, Page 3682, Public Records of Brevard County, Florida.
- 8) West Melbourne Potable Water line Extension Agreement between Melbourne 95 New Haven, LLC and the City of West Melbourne recorded in Official Records Book 5837, Page 7500, Public Records of Brevard County, Florida.
- 9) West Melbourne Sewer Line Extension Agreement between Melbourne 95 New Haven, LLC and the City of West Melbourne recorded in Official Records Book 5871, Page 6923 Public Records of Brevard County, Florida.

- 10) Pre-Annexation and Development Agreement Between City of West Melbourne and Sooner Investment Group, Inc. recorded in Official Records Book 5838, Page 7509, Public Records of Brevard County, Florida.
- 11) Developer's Agreement among Melbourne 95 New Haven, LLC, et al., and the Board of County Commissioners of Brevard County, Florida, recorded in Official Records Book 5885, Page 8093, First Amendment to Developer's Agreement recorded in Official Records Book 5936, Page 215, Public Records of Brevard County, Florida.
- 12) Easement in favor of Florida Power & Light Company recorded in Official Records Book 5908, Page 2008, Public Records of Brevard County, Florida.
- 13) Declaration of Storm Water Drainage Easement recorded in Official Records Book 6043, Page 436, Partial Release by Release and Termination of Declaration of Storm Water Drainage Easement recorded in Official Records Book 6069, Page 1150, Public Records of Brevard County, Florida.
- 14) Resolution No. 2009-16 recorded in Official Records Book 5960, Page 2539, Public Records of Brevard County, Florida.
- 15) Grant of Easements to City of West Melbourne recorded in Official Records Book 6026, Page 1978, Official Records Book 6026, Page 1981, Official Records Book 6026, Page 1985, Official Records Book 6026, Page 1989, Public Records of Brevard County, Florida.
- 16) Matters shown on the plat of COASTAL COMMERCE CENTER, a subdivision recorded in Plat Book 58, Page 54, Public Records of Brevard County, Florida.
- 17) Such matters, conditions and exceptions as would be shown on that certain survey prepared by Bloomster Professional Land Surveyors, Inc. dated May 19, 2009 last revised 11-20, 2009.
- 18) Outparcels Easement and Restrictive Use Agreement for Shopping Center recorded in Official Records Book 6069, Page 1213 Public Records of Brevard County, Florida.
- 19) Shared Drive Easement Agreement between Grantor and Grantee dated November 18, 2009 and recorded in the Public Records of Brevard County, Florida simultaneously herewith.
- 20) Those matters described in this Deed.

**EXHIBIT C**

**RESTRICTED PROPERTY**

All those certain tracts or parcels of land designated as Tracts E, G and H as shown on that certain Plat titled Coastal Commerce Center, Being a Replat of a Portion of Lots 8 and 9, Section 2, et. al., City of West Melbourne, Brevard County, Florida prepared by B.S.E. Consultants, Inc. dated November \_\_\_\_\_, 2009 and recorded in Plat Book 58, Page 54, Public Records of Brevard County, Florida.

**EXHIBIT D****RESTRICTION**

The operation of a retail outlet for motor fuel (of any size) and/or a convenience store with a building containing less than 10,000.00 square feet shall not be permitted anywhere on the Restricted Property (except on the Premises); provided, however such restriction shall be of no further force and effect if (i) within thirty-six (36) months of the date hereof a RaceTrac motor fuel station has not opened for business for at least one (1) day on the Premises, or (ii) after opening for one (1) day, the owner of the Premises does not operate a motor fuel station and/or convenience store on the Premises and such failure continues for a period of twelve (12) consecutive calendar months (except in the event of force majeure, property damage events or remodeling events (such events not to exceed twelve (12) months in the aggregate)). In no event shall the foregoing restriction prohibit the operation of a drug store (unless such drug store sells motor fuels for onsite fueling) including, but not limited to, Walgreens and CVS.