

LINOWES
AND **BLOCHER LLP**
ATTORNEYS AT LAW

February 2, 2005

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Hand Delivery

Ms. Sandra Youla
Development Review Division
M-NCPPC
8787 Georgia Avenue
Silver Spring, MD 20910

Re: Mile One - Development Plan Amendment 04-2 (the "DPA") – Declaration of Covenants

Dear Sandra:

Further to your request, enclosed is a fully executed original Declaration of Covenants with the referenced exhibits and with the revisions requested by the Hearing Examiner, for inclusion in the record of the referenced DPA. It is our understanding that, upon receipt and review, you will be transmitting the enclosed Declaration to the Hearing Examiner to complete the record of the DPA and allow transmittal of the DPA to the County Council for action. Upon review, if you have any questions, please call.

Thank you for your assistance on this matter.

Very truly yours,

LINOWES AND BLOCHER LLP



Scott C. Wallace

cc: Ms. Françoise Carrier
Mr. Jerry Fader
Mr. Chris Sokira
Mr. Tom Gordon
Mr. Jim Gordon
Barbara A. Sears, Esq.

EXHIBIT NO. 50a
APPLICATION NO. DPA 04-2

L&B 401825v1/05832.0001



DECLARATION OF COVENANTS

THIS DECLARATION OF COVENANTS, made this 31st day of January, 2005, by Auto Park Investment General Partnership No. II, LLP, a Maryland limited liability partnership, hereinafter "Declarant."

WHEREAS, Declarant is the owner of certain real property located in Montgomery County, Maryland, identified in the Tax Records as Parcel 970 and Parcel 973/Part of Outlot E, more particularly described in Exhibit "A" (the "Property"); and

WHEREAS, the Property is part of an approximately 10-acre parcel that was rezoned from RE-2 to C-3 (highway commercial) by Local Map Amendment Application ("LMA") G-189, approved by the Montgomery County Council by Resolution 9-806 adopted May 27, 1980; and

WHEREAS, the 10-acre parcel was subdivided by Plat No. 16036 recorded on or about June 20, 1986 into Lot 15 and Outlot E with Parcel 970 remaining an unplatted parcel. Parcel 973 is a part of Outlot E created by created deed conveyance; and

WHEREAS, Schematic Development Plan Amendment ("SDP") 86-1 was approved by the County Council by Resolution 10-2241 adopted on October 30, 1986 to amend the schematic development plan approved with LMA G-189; and

WHEREAS, SDP 86-1 showed development on Lot 15 with 25,433 SF of gross floor area and development of the Property with 22,067 SF of gross floor area; and

WHEREAS, SDP 86-1 includes Binding Elements for front and side yard setback and green space requirements for the Property; and

WHEREAS, a Declaration of Covenants, recorded on or about April 30, 1986 in the Land Records of Montgomery County, Maryland in Liber 7099 at Folio 747, attached hereto and



EXHIBIT NO. 506

APPLICATION NO. DPA 04-2

incorporated by reference herein as Exhibit "B" (the "1986 Declaration"), sets forth the setback and green space requirements for the Property and limits development of the Property and adjacent Lot 15 to 47,500 SF of gross floor area; and

WHEREAS, the development on the Property is now envisioned in a fashion different from that shown in SDP 86-1; and

WHEREAS, Declarant filed an Application to Amend SDP 86-1, designated DPA 04-2, to allow for the development of 57,749 SF of gross floor area and associated surface and structured parking on the Property in one or more phases (the "Amendment"); and

WHEREAS, the Amendment did not seek to modify any other development restrictions contained in SDP 86-1 or the Declaration, including the requirements for setbacks and green space; and

WHEREAS, the Amendment was approved by the Montgomery County Council, sitting as the District Council, by Resolution No. _____, adopted _____; and

WHEREAS, pursuant to Section 59-H-2.54(c) of the Montgomery County Code, with the approval of the Amendment, the 1986 Declaration is modified only to the extent the 1986 Declaration limited development on the Property to 22,067 SF of gross floor area.

NOW THEREFORE, in consideration of the approval of the Amendment, the Declarant, for itself, its respective successors and assigns hereby covenant and agrees as follows:

1. That the Property will be restricted to the following development standards as shown and described on the Schematic Development Plan Amendment approved by the District Council in DPA No. 04-2 and identified in the administrative record as Exhibit 46(a) (the "Schematic Development Plan Amendment"):



Development Control

Required

Binding

Minimum Building Setback

Front from Briggs Chaney Road

10'

50'

Side

0'

42'

Green Area - Minimum

10%

15%

Maximum Development

57,749 square feet of gross floor area

2. No parking shall be allowed in the green area.
3. The remaining terms and restrictions of the 1986 Declaration are not modified by this Declaration and are incorporated herein by reference.
4. These Covenants will be recorded among the Land Records of Montgomery County, Maryland, immediately following the approval of DPA 04-2 by the District Council. Further, these Covenants shall run with the land and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof and to Montgomery County, Maryland, so long as the Property is zoned C-3. These Covenants shall remain in effect until such time as the Property is rezoned or the Schematic Development Plan Amendment is amended by action of the District Council or other governmental body having jurisdiction, or until such time as the Covenants are declared invalid by any court of competent jurisdiction, at which time the covenants and restrictions shall terminate and have no further force and effect.
5. The binding elements contained in this Declaration of Covenants and on the Schematic Development Plan Amendment shall be enforceable by the Council pursuant to Section 59-H-2.53 of the Zoning Ordinance.



6. This Declaration of Covenants may be amended by the Owners of the Property, their successors and assigns, to conform to any modification made by the District Council in the binding elements contained on the Schematic Development Plan Amendment.

[SIGNATURE PAGE FOLLOWS]



IN TESTIMONY WHEREOF, the said Declarant has hereunto set its hands and seals the day and year above.

WITNESS:

AUTO PARK INVESTMENT
GENERAL PARTNERSHIP NO. II
a Maryland Limited Liability Partnership

By: CAR MI HG L.L.C., its general partner

By: Capital Automotive L.P., its
managing member

By: Capital Automotive REIT,
its general partner

[Signature]

By: [Signature]
Name: **JOHN M. WEAVER**
Title: **Senior Vice President and
General Counsel**

STATE OF Virginia

COUNTY OF Fairfax to wit:

I HEREBY CERTIFY that on this 31st day of January, 2005, before me, a Notary Public in and for the State and County aforesaid, personally appeared John M. Weaver, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing and annexed instrument as the SVPC General Counsel of Capital Automotive REIT and acknowledged that said individual executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public

My Commission Expires: 7/31/06

