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VIKKI BARNETT, Recorder  
CARBON COUNTY CORPORATION  
For: D LAND TITLE

Land Title  
# 2-996-2  
# 1511#

## DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS

**THIS DECLARATION OF EASEMENTS, COVENANTS, AND RESTRICTIONS** ("Declaration") is made this 12<sup>th</sup> day of May, 2009, by **CREEKVIEW STATION INC.**, a Delaware corporation ("Declarant").

### RECITALS:

A. Declarant is the owner of that certain tract or parcel of land located in Carbon County, Utah, which is more particularly described in **Exhibit A** attached hereto and by this reference expressly incorporated herein and made a part hereof (said tract of land, together with all buildings and other improvements now or hereafter developed thereon, and all easements, rights, and options appurtenant thereto, being hereinafter referred to as the "Shopping Center").

B. Declarant is also the owner of that certain tract or parcel of land lying adjacent and contiguous to the Shopping Center, which is more particularly described in **Exhibit B** attached hereto and by this reference expressly incorporated herein and made a part hereof (said tract of land, together with all buildings and other improvements now or hereafter developed thereon, and all easements and rights appurtenant thereto, being hereinafter referred to as the "Outparcel") (the Shopping Center and the Outparcel are sometimes individually referred to below as a "Parcel" and collectively as the "Parcels").

C. Declarant intends to convey the Outparcel to one or more third parties; provided that Declarant shall have no obligation to so convey the Outparcel to third parties.

D. Declarant, in view of the fact that the Shopping Center and the Outparcel may be separately owned, desires to establish certain covenants, easements, rights, options, and restrictions to facilitate the separate and mutually beneficial development and operation of the Shopping Center and the Outparcel.

**NOW, THEREFORE**, for and in consideration of the premises hereof, and other good and valuable consideration, Declarant hereby covenants and declares, for itself and its successors, assigns, and successors-in-title to the Shopping Center and the Outparcel, as follows:

1. The Shopping Center shall be and is hereby declared to be subject to the easements more particularly set forth in this Declaration for the benefit of the Outparcel. The

Outparcel shall be and is hereby declared to be subject to the easements and restrictions more particularly set forth in this Declaration for the benefit of the Shopping Center. The Outparcel shall be and is hereby declared to be subject to the restrictive covenants more particularly set forth in this Declaration. The Shopping Center and the Outparcel shall each hereafter be held, transferred, sold, conveyed, used, rented, enjoyed, occupied, mortgaged, or otherwise encumbered or disposed of subject to the covenants, easements, options, rights, and restrictions set forth in this Declaration.

2. For purposes of this Declaration, the term "Shopping Center Owner" shall mean the then-current fee owner of the Shopping Center or any portion thereof, and shall not mean any person or entity having an interest in the Shopping Center or any portion thereof solely by virtue of either (i) a contract or as security for an obligation; (ii) a lease; or (iii) a mortgage, deed of trust, sale-leaseback, or other interest created for the purpose of securing an indebtedness. For purposes of this Declaration, the term "Outparcel Owner" shall mean the then-current fee owner of the Outparcel or any portion thereof, and shall not mean any person or entity having an interest in the Outparcel or any portion thereof solely by virtue of either (i) a contract or as security for an obligation; (ii) a lease; or (iii) a mortgage, deed of trust, sale-leaseback, or other interest created for the purpose of securing an indebtedness.

3. The following non-exclusive rights and easements shall exist and are hereby established for the benefit of, and as an appurtenance to the ownership of, the Outparcel, with respect to, and as a burden upon, the Shopping Center: (i) a non-exclusive right and easement for pedestrian and vehicular ingress and egress in, to, upon, and across the Shopping Center for the purpose of driving, walking, or going (but not parking) upon or across any driveway, access road, walkway, or sidewalk, now existing or hereafter constructed on the Shopping Center, and being utilized by Declarant or its successors-in-title, or by or for the benefit of tenants or occupants of the Shopping Center, as a driveway, access road, walkway, or sidewalk, as the case may be (collectively, the "Shopping Center Driveways"), but only for so long as such portion of the Shopping Center is so utilized; and (ii) a non-exclusive right and easement for vehicular parking in, to, and upon the Shopping Center for the purpose of vehicular parking in any parking spaces now existing or hereafter constructed on the Shopping Center and designated as a parking space, but only for so long as such portion of the Shopping Center is so designated; and (iii) a non-exclusive, perpetual right and easement across, through, and under the Shopping Center to tie into, connect with, and use, all only to the extent reasonably necessary, any utility facilities (including, without limitation, water, electric, gas, and telephone distribution lines, and sanitary and storm sewer pipelines), now or hereafter installed on the Shopping Center and intended to jointly serve the Shopping Center and the Outparcel; and (iv) a non-exclusive, perpetual right and easement to drain storm water runoff from the Outparcel, both on the surface and through any now-existing or hereafter constructed underground storm drainage systems located on the Shopping Center and intended to jointly serve the Shopping Center and the Outparcel, including the right to use any storm water retention facilities located on the Shopping Center and intended to jointly serve the Shopping Center and the Outparcel, so long as such drainage from the Outparcel shall not cause any material damage to the Shopping Center or any improvements located thereon. The rights and easements hereby established in this Section are solely for the benefit of, and shall be appurtenant to, the Outparcel, as provided above, and shall in no way limit or restrict the right and privilege of Declarant, or any successor-in-title of Declarant with

respect to the Shopping Center, at any time and from time to time, to relocate, repair, replace, alter, eliminate, or build upon any driveway, access road, sidewalk, walkway, parking space, or utility facility, now or hereafter existing upon the Shopping Center, or in any way obligate or require Declarant or any successor-in-title of Declarant as to the Shopping Center to construct thereon any driveway, access road, sidewalk, walkway, parking spaces, or utility facility; provided that the rights and easements hereby established for the Outparcel to tie into, connect with, and use utility facilities or to drain surface water in, to, upon, under, and across the Shopping Center shall be undisturbed (subject to being repaired, replaced, or relocated), and provided further that the Outparcel shall at all times have reasonable vehicular and pedestrian access to and from the Outparcel and Price River Drive over the Shopping Center and reasonable vehicular and pedestrian access over and across any curb cuts approved by Declarant and any drives located immediately adjacent to the Outparcel. In the event that the Outparcel connects with any such utility facilities on the Shopping Center, then (i) such connection of such utility facilities shall be subject to the approval of the Shopping Center Owner, which approval shall not be unreasonably withheld, and shall be performed in a good and workmanlike manner and comply in all respects with all applicable governmental regulations and requirements; (ii) such connection with such utility facilities shall not unreasonably interfere with the conduct or operation of any business on the Shopping Center or reduce the capacity of any such utility facilities to the material detriment of the Shopping Center; and (iii) after each exercise of any such connection with such utility facilities, the Outparcel Owner shall, at its sole cost and expense, restore those portions of the Shopping Center affected by such connection to no less than the condition and appearance prior to such connection.

4. The following non-exclusive rights and easements shall exist and are hereby established for the benefit of, and as an appurtenance to the ownership of, the Shopping Center, with respect to, and as a burden upon, the Outparcel: (i) a non-exclusive right and easement for pedestrian and vehicular ingress and egress in, to, upon, and across the Outparcel for the purpose of driving, walking, or going (but not parking) upon or across any driveway, access road, sidewalk, or walkway, now existing or hereafter constructed on the Outparcel, and being utilized by the owner or lessee of the Outparcel or its successors-in-title, or by or for the benefit of tenants or occupants of the Outparcel, as a driveway, access road, sidewalk, or walkway, as the case may be, but only for so long as such portion of the Outparcel is so utilized; and (ii) a non-exclusive right and easement for vehicular parking in, to, and upon the Outparcel for the purpose of vehicular parking in any parking spaces now existing or hereafter constructed on the Outparcel and designated as a parking space, but only for so long as such portion of the Outparcel is so designated; and (iii) a right and easement to maintain the driveways, access roads, parking areas, and landscaping and any replacements thereof on the Outparcel, and a right and easement for the construction, installation, operation, maintenance, repair, and replacement thereof, and in connection therewith, the Shopping Center Owner and its employees, agents, and contractors shall have a right and easement to enter upon the Outparcel for the purposes of exercising any such easement rights so granted; and (iv) a right and easement to maintain the existing Shopping Center pylon sign and any replacements thereof on the Outparcel, and a right and easement for the installation, operation, maintenance, repair, and replacement thereof, and in connection therewith, the Shopping Center Owner and its employees, agents, and contractors shall have a right and easement to enter upon the Outparcel for the purposes of exercising any such easement rights so granted, provided, however, the grantees thereof shall, subsequent to any

entry upon the Outparcel for the purposes of exercising any such easement rights so granted, restore, to the condition existing immediately prior to any such entry, such portion of the surface of the Outparcel damaged on account of any such entry; and (v) a non-exclusive, perpetual right and easement across, through, and under the Outparcel to tie into, connect with, use, maintain, repair, and replace, all only to the extent reasonably necessary, any utility facilities (including, without limitation, water, electric, gas, and telephone distribution lines, and sanitary and storm sewer pipelines), now or hereafter installed on the Outparcel and intended to jointly serve the Outparcel and the Shopping Center; and (vi) a non-exclusive, perpetual right and easement to drain storm water runoff from the Shopping Center onto and across the Outparcel, both on the surface and through any now-existing or hereafter constructed underground storm drainage systems located on the Outparcel and intended to jointly serve the Outparcel and the Shopping Center, including the right to use any storm water retention facilities located on the Outparcel and intended to jointly serve the Outparcel and the Shopping Center, so long as such drainage shall not cause any material damage to the Outparcel. The rights and easements hereby established in this Section are solely for the benefit of, and shall be appurtenant to, the Shopping Center, and shall in no way limit or restrict the right and privilege of the owner or lessee of the Outparcel, or any successor-in-title thereof, at any time and from time to time, to relocate, repair, replace, alter, eliminate, or build upon any driveway, access road, sidewalk, walkway, parking space, or utility facility, now or hereafter existing upon the Outparcel, or in any way obligate or require the owner or lessee of the Outparcel or any successor-in-title thereof to construct thereon any driveway, access road, sidewalk, walkway, parking spaces, or utility facility; provided that the rights and easements hereby established for the Shopping Center to tie into, install, repair, replace, maintain, and use utility facilities or to drain surface water in, to, upon, under, and across the Outparcel shall be undisturbed (subject to being repaired, replaced, or relocated). In the event that the Shopping Center connects with, installs, maintains, repairs, or replaces any such utility facilities on the Outparcel, then (i) such connection, installation, maintenance, repair, or replacement of such utility facilities shall be performed in a good and workmanlike manner and comply in all respects with all applicable governmental regulations and requirements; (ii) such connection with or installation, maintenance, repair, or replacement of such utility facilities shall not unreasonably interfere with the conduct or operation of any business on the Outparcel or reduce the capacity of any such utility facilities to the material detriment of the Outparcel; and (iii) after each exercise of any such connection with or installation, maintenance, repair, or replacement of such utility facilities, the Shopping Center Owner shall, at its sole cost and expense, restore those portions of the Outparcel affected by such connection, installation, maintenance, repair, or replacement to no less than the condition and appearance prior to such connection, installation, maintenance, repair, or replacement.

5. Subject to the prior written approval of the Outparcel Owner, which approval shall not be unreasonably withheld, conditioned, or delayed, the Shopping Center Owner and such other parties to whom such rights shall be granted shall have the right and license to enter upon the Outparcel for the installation, operation, maintenance, repair, and replacement of underground utilities lines and facilities as shall be required for the benefit of the Shopping Center, provided, however, the installation, operation, maintenance, repair, and replacement of any such lines and facilities shall not materially interfere with the use of the Outparcel or the business thereon and the grantees thereof shall, subsequent to any entry upon the Outparcel for

the purposes of accessing such areas, restore, to the condition existing immediately prior to any such entry, such portion of the surface of the Outparcel damaged on account of any such entry.

6. Any construction or reconstruction of any buildings, structures, or improvements on the Outparcel shall be subject to the prior written consent of Shopping Center Owner, which consent shall not be unreasonably withheld; provided that Shopping Center Owner shall have the right, in its sole and absolute discretion, to withhold its consent to any construction or reconstruction that would violate any restrictions then in effect with respect to the Shopping Center. Before any construction or reconstruction begins on the Outparcel, Outparcel Owner shall submit to Shopping Center Owner, for Shopping Center Owner's prior approval, all plans for the construction of all improvements to be located upon the Outparcel, including, but not limited to, all buildings, signs, parking areas, roadways, and driveways to be constructed on the Outparcel. Such plans shall include, but shall not be limited to, signage plans, including building signage, a full grading plan, full front elevations, footprints of the building, and full utility and landscaping plans. All of such plans shall be subject to the prior written consent of Shopping Center Owner, which consent shall not be unreasonably withheld; provided that Shopping Center Owner shall have the right, in its sole and absolute discretion, to withhold its consent to any construction or reconstruction that would violate any restrictions then in effect with respect to the Shopping Center. Outparcel Owner's plans, approved as provided herein, shall be referred to hereinafter as the "Approved Plans." Following approval of the Approved Plans, Outparcel Owner shall not make any alterations, additions, or modifications to the Outparcel and the improvements located thereon except as is provided in the Approved Plans or unless otherwise consented to by Shopping Center Owner in writing. No more than one (1) building shall be permitted on the Outparcel at any time. Any building or improvement that may be constructed on the Outparcel shall not exceed the lesser of (i) one (1) story in height, or (ii) twenty (20) feet in height, measured from ground level to the top of all rooftops, parapets, signs, and other extensions.

7. (a) Outparcel Owner shall keep the Outparcel and all buildings and improvements, sidewalks, and walkways located thereon in a neat and orderly condition, clean and free from accumulated ice, snow, and trash, and otherwise in a first class condition; provided that Outparcel Owner shall have no obligation to maintain the driveways, access roads, parking areas, and landscaping on the Outparcel. Outparcel Owner shall keep clean and adequately lighted any sidewalks and walkways located on the Outparcel. Outparcel Owner shall promptly comply with all laws, ordinances, and governmental regulations concerning the cleanliness, safety, occupancy, and use of the Outparcel. All receptacles for the storage of garbage on the Outparcel shall be screened from public view by means of a brick barrier or other suitable screening apparatus approved by Shopping Center Owner. It is the intention of the parties hereto that all buildings, improvements, signs, and landscaping on the Outparcel be constructed, installed, erected, operated, and maintained so that the Shopping Center and the Outparcel shall be aesthetically harmonious and shall be operated as an integrated retail development. To that end, and without limiting any of the obligations set forth elsewhere in this Declaration, Outparcel Owner shall (i) maintain the Outparcel and all buildings and other improvements thereon to the same standard as Shopping Center Owner maintains the Shopping Center and the buildings and improvements thereon; and (ii) maintain an outdoor lighting theme that is harmonious with the outdoor lighting theme of the Shopping Center, and cause the outdoor areas on the Outparcel to

be lighted during the same hours as the outdoor areas on the Shopping Center are lighted. In the event any building, structure or other improvement located upon the Outparcel shall be damaged or destroyed by any casualty, Outparcel Owner shall, within sixty (60) days thereafter, commence to repair or reconstruct such building, structure, or other improvement to the condition existing immediately prior to such casualty, or commence to raze the remainder of such building, structure, or other improvement and complete the removal of the debris therefrom within one hundred eighty (180) days after such casualty and shall thereafter keep the Outparcel neat, orderly, and planted in grass until subsequently improved and constructed upon. In the event that Outparcel Owner does not maintain the Outparcel in accordance with the terms set forth in this Section, Shopping Center Owner shall give Outparcel Owner written notice of such failure. In the event that Outparcel Owner does not cure such failure within five (5) days after its receipt of such notice (or such lesser period of time as may be specified in such notice, if, in Shopping Center Owner's reasonable discretion, an emergency situation exists), Shopping Center Owner shall have the right to enter upon the Outparcel and to maintain such buildings, improvements, sidewalks, and walkways, in accordance with the foregoing. Outparcel Owner shall, immediately upon demand, reimburse Shopping Center Owner for any and all costs incurred in connection therewith, which amount shall bear annual interest until paid at the lesser of ("Default Rate"): (i) the highest rate allowed by law; or (ii) 18%, from and after the date when same is due.

(b) Shopping Center Owner shall keep all driveways, access roads, parking areas, and landscaping on the Outparcel in a neat and orderly condition, clean and free from accumulated ice, snow, and trash, and otherwise in a first class condition; provided that Outparcel Owner shall have no obligation to maintain the buildings, sidewalks, and walkways on the Outparcel. It is the intention of the parties hereto that all buildings, improvements, signs, and landscaping on the Outparcel be constructed, installed, erected, operated, and maintained so that the Shopping Center and the Outparcel shall be aesthetically harmonious and shall be operated as an integrated retail development. To that end, and without limiting any of the obligations set forth elsewhere in this Declaration, Shopping Center Owner shall (i) maintain the driveways, access roads, parking areas, and landscaping on the Outparcel to the same standard as Shopping Center Owner maintains the driveways, access roads, parking areas, and landscaping on the Shopping Center; and (ii) utilize the same contractors for the maintenance, trimming, and replacement of all lawns, trees, shrubs, hedges, grass, and other landscaping located on the Outparcel, and for the cleaning and sweeping of, and removal of snow and ice from, all driveways, access roads, and parking areas located on the Outparcel, as are utilized by Shopping Center Owner for the Shopping Center.

8. On or before January 31, 2010, and on or before January 31 of each calendar year thereafter, Outparcel Owner shall pay Shopping Center Owner the sum of Five Thousand and 00/100 Dollars (\$5,000.00) per year ("Outparcel Owner's Contribution") as Outparcel Owner's contribution toward the costs and expenses incurred by Shopping Center Owner in connection with (i) the maintenance, repair, replacement, policing, inspection, guarding, and protection of all roads, driveways, curbing, walkways, and sidewalks located on the Shopping Center, including, without limitation, the Shopping Center Driveways, and (ii) the maintenance, repair, and replacement of all driveways, access roads, parking areas, and landscaping on the Outparcel. Outparcel Owner's Contribution shall be adjusted on the five-year anniversary of the date of this Declaration, and

thereafter at five (5) year intervals on each five-year anniversary of the date of this Declaration (each such increase to take effect starting with the next required payment of Outparcel Owner's Contribution), to an amount which shall be determined by multiplying Five Thousand and 00/100 Dollars (\$5,000.00) by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the month that this Declaration is dated; the "Current Index Number" shall be the level of the Index for the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the parties hereto shall substitute for the Index comparable statistics as computed by an agency of the United States government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index. In the event that Outparcel Owner fails to pay Outparcel Owner's Contribution within ten (10) days after the same shall be due, thereafter, until paid, the delinquent amount shall bear interest at the Default Rate.

9. In the event that Shopping Center Owner has expended funds on behalf of Outparcel Owner for any reason as is provided herein, and Outparcel Owner has not paid the amount owing within thirty (30) days after an invoice is received by Outparcel Owner setting forth the amount then due, and/or in the event Outparcel Owner shall fail to pay any amount owed to Shopping Center Owner pursuant to Section 8 above, Shopping Center Owner shall have the right to place a lien on the Outparcel to secure payment of such amount, all interest accruing thereon, and any costs and expenses incurred by Shopping Center Owner (including attorneys' fees) in attempting to collect such amount, which lien shall be deemed perfected upon the expenditure of any such funds by Shopping Center Owner. Such lien may be foreclosed by Shopping Center Owner in the manner provided for foreclosure of trust deeds or mortgages under Utah law. The rights granted under this Section shall not be the exclusive remedy of Shopping Center Owner, but shall be in addition to all rights and remedies at law and in equity. Any lien created by and resulting from this Section shall be subordinate and inferior to the lien of any institutional first mortgage which may exist from time to time upon the Outparcel.

10. The Outparcel shall be used for the operation of a one-story building initially operating for the retail sale of tires and tire-related services, i.e., balancing, rotating, and tire repairs. Any change in the use of the Outparcel shall be subject to the prior written consent of Shopping Center Owner, which consent shall not be unreasonably withheld; provided that Shopping Center Owner shall have the right, in its sole and absolute discretion, to withhold its consent to any change in use that would violate any restrictions or exclusive use rights then in effect with respect to the Shopping Center, or that would duplicate any type of business that is then operating on the Shopping Center. The Outparcel shall never be used for any of the purposes set forth on Exhibit C attached hereto and incorporated herein by reference.

11. Outparcel Owner shall promptly, before any penalties or interest accrues thereon, pay all taxes and assessments which become a lien upon the Outparcel and are due and payable. Outparcel Owner shall also carry full replacement cost insurance with respect to the improvements to be located upon the Outparcel. Outparcel Owner shall also carry commercial

general liability insurance with a combined single limit of Five Million Dollars (\$5,000,000.00) for bodily injury, personal injury and property damage, arising out of any one occurrence. The limits for Outparcel Owner's commercial general liability insurance shall be increased on the five-year anniversary of the date of this Declaration, and thereafter at five (5) year intervals on each five-year anniversary of the date of this Declaration, to an amount which shall be determined by multiplying Five Million Dollars (\$5,000,000.00) by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. Upon request by Shopping Center Owner, Outparcel Owner shall furnish to Shopping Center Owner a certificate of insurance evidencing that the insurance required to be carried by Outparcel Owner is in full force and effect.

12. Shopping Center Owner reserves the right at any time and from time to time (a) to make or permit changes or revisions in the Shopping Center, including additions to, subtractions from, rearrangements of, alterations of, modifications of, or supplements to the building areas, walkways, parking areas, driveways, curb cuts, or other areas, (b) to construct other buildings or improvements in the Shopping Center and to make alterations thereof or additions thereto and to build additional stories on any such building or buildings and to build adjoining same, and (c) to make or permit changes or revisions in the Shopping Center, including additions thereto, and to convey portions of the Shopping Center to others for the purpose of constructing thereon other buildings or improvements, including additions thereto and alterations thereof.

13. Outparcel Owner shall take all reasonable steps necessary to protect the Shopping Center from damage by reason of its activities permitted hereunder upon the Shopping Center, including, but not limited to, its use of easements now existing or hereafter to be created, and in the event of any such damage to the Shopping Center, Outparcel Owner shall, at its sole cost and expense, promptly restore or cause to be restored that portion of the Shopping Center so damaged to as nearly as practicable the condition existing prior to such damage. Outparcel Owner shall indemnify Shopping Center Owner, its officers, directors, managers, members, stockholders, beneficiaries, partners, representatives, agents and employees, and save them harmless from and against any and all claims, actions, damages, liabilities, costs, and expenses, including attorney fees, in connection with all losses, including loss of life, personal injury, and/or damage to property, arising from or out of any occurrence in, upon, or at the Outparcel. Shopping Center Owner shall take all reasonable steps necessary to protect the Outparcel from damage by reason of its activities permitted hereunder upon the Outparcel, including, but not limited to, its use of easements now existing or hereafter to be created, and in the event of any such damage to the Outparcel, Shopping Center Owner shall, at its sole cost and expense, promptly restore or cause to be restored that portion of the Outparcel so damaged to as nearly as practicable the condition existing prior to such damage. Shopping Center Owner shall indemnify Outparcel Owner, its officers, directors, managers, members, stockholders, beneficiaries, partners, representatives, agents, and employees, and save them harmless from and against any and all claims, actions, damages, liabilities, costs, and expenses, including attorney fees, in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon, or at the Shopping Center, except to the extent that any such claims, actions, damages, liabilities, costs, and expenses are attributable to the negligent or willful acts or omissions of Outparcel Owner, its agents, employees, or contractors.



14. Each party covenants to the other that any work to be undertaken by the one on the Parcel of the other shall be undertaken and completed in a good, workmanlike, first-class, and lien-free manner. Each party covenants to the other to cause any liens filed against the Parcel of the other on account of any such work so undertaken and/or materials supplied in connection therewith to be released and discharged of record within twenty-one (21) days after notice thereof to the party that has undertaken any such work. Each party indemnifies, agrees to defend and holds harmless the other party from and against any and all claims, actions, damages, liabilities, costs, and expenses, including attorney fees, in connection with any such liens so filed against the Parcel of the other party.

15. The owner of the Shopping Center shall have a perpetual right of first refusal to purchase all or any portion of the Outparcel. If the owner of the Outparcel receives a bona fide offer to purchase all or any portion of the Outparcel, which offer the owner of the Outparcel desires to accept, the owner of the Outparcel shall notify the owner of Shopping Center in writing of said offer. Within thirty (30) days after the date of such notice, the owner of the Shopping Center shall elect, by written notice to the owner of the Outparcel, either (i) to exercise its right of first refusal upon the terms and conditions stated in said offer, or (ii) to decline to exercise its right of first refusal. In the event that the owner of the Shopping Center elects to exercise its right of first refusal, the respective owners of the Outparcel and the Shopping Center shall work together, in good faith, to negotiate a purchase agreement that incorporates the terms and conditions stated in said offer. In the event that the owner of the Shopping Center declines to exercise its right of first refusal, the owner of the Outparcel may proceed to sell the Outparcel pursuant to the terms and conditions stated in said offer; provided that (a) in the event that any of the terms and conditions stated in said offer are subsequently modified, the owner of the Outparcel shall notify the owner of the Shopping Center in writing of such modifications, whereupon the owner of the Shopping Center shall again have the option to exercise its right of first refusal with respect to the modified terms and conditions based on the procedure described above; and (b) the right of first refusal described in this Section shall remain in full force and effect with respect to any subsequent offers to purchase all or any portion of the Outparcel.

16. This Declaration shall be governed by, and construed in accordance with, the laws of the State of Utah.

17. All easements and rights created under this Declaration and imposed upon the Shopping Center and the Outparcel, respectively, shall perpetually run with and against the Parcels as so described in this Declaration, and said easements shall be a charge and a burden for the benefit of the owners of the Parcels and of the holder(s) of any mortgage with respect to the Parcels. This Declaration is specifically intended to run with the Parcels and to benefit and burden the Parcels as set forth herein.

18. In the event that any party shall default in the performance of its respective obligations pursuant to this Declaration, the non-defaulting party shall retain all rights and remedies available at law and in equity, including, but not limited to, specific performance, and the right to recover damages incurred as a result of the defaulting party's breach, plus reasonable attorney fees and costs, and any and all other damages which may result on account of the defaulting party's breach.

19. Any enforcement proceedings may be by legal or equitable proceedings against any person or persons violating or attempting to violate any easements, declarations, restrictions, covenants, conditions, or agreements contained in this Declaration, either to restrain or enjoin such violation and/or recover damages and/or enforce specific performance of the covenants and agreements contained in this Declaration; provided, however, that no such easements or rights granted in this Declaration may be enforced by legal action or otherwise except by the then owners and/or then mortgagees of the Parcels.

20. (a) In the event of any transfer or transfers of Shopping Center Owner's interest in the Shopping Center, including a so-called sale-leaseback, the transferor shall be automatically relieved of any and all obligations on the part of Shopping Center Owner accruing from and after the date of such transfer, provided that (a) notice of such sale, transfer, or lease shall be delivered to Outparcel Owner; and (b) the transferee shall assume all of Shopping Center Owner's obligations under this Declaration accruing from and after the date of such transfer. Upon the termination of any such lease in a sale-leaseback transaction prior to termination of this Declaration, the former lessee thereunder shall become and remain liable as Shopping Center Owner hereunder until a further transfer.

(b) In the event of any transfer or transfers of Outparcel Owner's interest in the Outparcel, including a so-called sale-leaseback, the transferor shall be automatically relieved of any and all obligations on the part of Outparcel Owner accruing from and after the date of such transfer, provided that (a) notice of such sale, transfer, or lease shall be delivered to Shopping Center Owner; and (b) the transferee shall assume all of Outparcel Owner's obligations under this Declaration accruing from and after the date of such transfer. Upon the termination of any such lease in a sale-leaseback transaction prior to termination of this Declaration, the former lessee thereunder shall become and remain liable as Outparcel Owner hereunder until a further transfer.

21. This Declaration and the easements created herein may be modified, amended, or terminated only by all of the owners and mortgagees of the Parcels, and no other person (including, without limitation, tenants, lessees, invitees, guests, or occupants of said Parcels) shall have any rights whatsoever to join in, prevent, or otherwise affect or limit any such modification, amendment, or termination.

22. In the event that any one or more of the provisions contained in this Declaration is held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Declaration, and this Declaration shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

23. In the event that any party hereto institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorney fees incurred in the preparation and prosecution of such action or proceeding.

24. This Declaration and the easements, rights, and obligations contained herein shall be binding upon and inure to the benefit of any owner of the Parcels, any mortgagee of the Parcels, and their respective successors and assigns.

25. Any and all notices to Declarant or Shopping Center Owner permitted or required to be given hereunder shall be in writing and shall be sent either: (i) postage prepaid by U.S. certified mail, return receipt requested; or (ii) by nationally recognized overnight delivery service which guaranties next day delivery, at the following addresses:

Creekview Station Inc.  
11501 Northlake Drive  
Cincinnati, Ohio 45249  
Attention: R. Mark Addy

With a copy to: Phillips Edison & Company  
11501 Northlake Drive  
Cincinnati, Ohio 45249  
Attention: Lease Administration Department

Any such notice shall be deemed given and effective three business days after depositing same in a U.S. mail receptacle, if sent by U.S. certified mail, or one business day after depositing same with a nationally recognized overnight delivery service.

26. Bank of America N.A., successor by merger to LaSalle Bank National Association, as beneficiary under a Deed of Trust, Security Agreement and Assignment of Leases and Rents and Fixture Filing, dated May 29, 2008, with respect to the Shopping Center and the Outparcel, hereby joins in this Declaration to evidence its consent to and approval of this Declaration and to subordinate its respective mortgage interests in the Parcels, if any, to the terms of this Declaration with all of the rights granted to it hereunder.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

**[SIGNATURE PAGES TO FOLLOW]**



WITNESS

**BANK OF AMERICA N.A.,**  
successor by merger to LaSalle Bank National  
Association, a national banking association

Anne Duquette Kruer

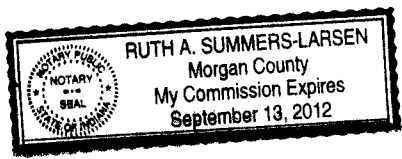
Kathryn R. Richardson

By: Steven L. Karn  
Name: STEVEN L. KARN  
Title: SENIOR VICE PRESIDENT

COUNTY OF MARION )  
STATE OF INDIANA )SS:

BE IT REMEMBERED that on this 12<sup>th</sup> day of May, 2009, before me, a Notary Public in and for the said county and state, personally appeared Steven L. Karn, the Senior Vice President of Bank of America N.A., successor by merger to LaSalle Bank National Association, a national banking association, who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free and voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal on the date and year above-mentioned.



Ruth A. Summers-Larsen  
Notary Public

**Exhibits List:**

- A – Legal Description of Shopping Center
- B – Legal Description of Outparcel
- C – Prohibited Uses

**EXHIBIT A**

**LEGAL DESCRIPTION OF SHOPPING CENTER**

BEGINNING AT A POINT ON THE SOUTH LINE OF A HIGHWAY RIGHT OF WAY AND THE WEST LINE OF A STREET; SAID POINT BEING NORTH 827.95 FEET AND WEST 1677.63 FEET FROM THE NORTHEAST CORNER OF SUNSET VIEW SUBDIVISION, SAID NORTHEAST CORNER OF SUNSET VIEW SUBDIVISION SAID TO BE SOUTH 945.23 FEET AND WEST 339.30 FEET FROM THE NORTHEAST CORNER OF SECTION 20, TOWNSHIP 14 SOUTH, RANGE 10 EAST, SALT LAKE BASE AND MERIDIAN, RUNNING THENCE SOUTH 89°26'13" WEST 502.17 FEET ALONG THE SOUTH LINE OF SAID HIGHWAY; THENCE SOUTH 9°38'59" EAST 446.94 FEET; THENCE SOUTHEASTERLY 510.12 FEET ALONG THE ARC OF A 636.197 FOOT RADIUS CURVE TO THE LEFT (LONG CHORD BEARS SOUTH 32°37'14" EAST 496.57 FEET); THENCE SOUTH 55°35'29" EAST 91.37 FEET; THENCE NORTH 14°48'42" WEST 61.24 FEET; THENCE NORTH 55°35'29" WEST 45.00 FEET; THENCE NORTHWESTERLY 5.00 FEET ALONG THE ARC OF A 596.197 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS NORTH 55°21'05" WEST 5.00 FEET); THENCE EAST 444.13 FEET; THENCE NORTH 429.092 FEET (RECORD) (428.73 FEET - MEASURED); THENCE NORTHWESTERLY 533.19 FEET ALONG THE ARC OF A 413 FOOT RADIUS CURVE TO THE RIGHT (LONG CHORD BEARS NORTH 37°34'27" WEST 496.925 FEET); THENCE NORTH 0°35'21" WEST 5.02 FEET TO THE POINT OF BEGINNING.

Save and except:

BEGINNING AT A POINT LOCATED S89°14'04"W ALONG THE SECTION LINE, 2516.58 FEET AND SOUTH 86.60 FEET FROM THE NORTHEAST CORNER OF SECTION 20, T.14 S., R.10 E., S.L.B. & M.; SAID POINT OF BEGINNING BEING AT THE NORTHWEST CORNER OF THE CREEKVIEW SHOPPING CENTER PARCEL; THENCE N89°26'13"E ALONG THE NORTH LOT LINE OF SAID PARCEL, 271.70 FEET; THENCE SOUTH 105.80 FEET; THENCE S80°36'34"W 250.56 FEET TO WEST LINE OF SAID PARCEL; THENCE N09°38'59"W ALONG SAID WEST LINE, 146.08 FEET TO THE POINT OF BEGINNING.

**EXHIBIT B**

**LEGAL DESCRIPTION OF OUTPARCEL**

BEGINNING AT A POINT LOCATED S89°14'04"W ALONG THE SECTION LINE, 2516.58 FEET AND SOUTH 86.60 FEET FROM THE NORTHEAST CORNER OF SECTION 20, T.14 S., R.10 E., S.L.B. & M.; SAID POINT OF BEGINNING BEING AT THE NORTHWEST CORNER OF THE CREEKVIEW SHOPPING CENTER PARCEL; THENCE N89°26'13"E ALONG THE NORTH LOT LINE OF SAID PARCEL, 271.70 FEET; THENCE SOUTH 105.80 FEET; THENCE S80°36'34"W 250.56 FEET TO WEST LINE OF SAID PARCEL; THENCE N09°38'59"W ALONG SAID WEST LINE, 146.08 FEET TO THE POINT OF BEGINNING.



## EXHIBIT C

### PROHIBITED USES

The Outparcel shall never be used for any of the purposes set forth below:

- Grocery store, supermarket, or meat market
- Single price point variety retail store, which is hereby defined as a store that offers all of its merchandise for sale at a single price point
- A retail store that sells variety retail merchandise at a single price point in twenty-five percent (25%) or more of the sales floor area (including one-half [1/2] of the adjacent aisle space)
- Variety retail operation with the word "Dollar" in its trade name
- Pornographic bookstore, cinema, or video store
- Massage parlor
- Modeling studio
- Tanning salon
- Any business which would tend to injure the family-oriented reputation of the Shopping Center
- Topless/bottomless nightclub or restaurant or similar venue for adult entertainment
- Auction, going out of business, fire or bankruptcy sales or similar merchandise liquidators
- Army-navy surplus store, second-hand store, or salvage or "odd-lot" store
- Roller skating rink
- Video arcade, pool or gaming hall
- Nightclub, bar or dance hall
- Flea market, swap meet or similar enterprise
- Manufacturing or processing plant
- Pawn shop
- Check cashing, cash advance, short term loan or paycheck advance service or any so called "credit service organization"
- Bowling alley
- Cinema or theater
- Sports, health or fitness club
- Gas station
- Bingo parlor
- Offtrack betting parlor
- Funeral home or mortuary
- Any use that is inconsistent with a family-oriented, first class shopping center, including, without limitation, any use of any medium that might constitute a nuisance such as loud speakers, sound amplifiers, phonographs, radios, televisions or any other sound producing device which will carry sound outside of the premises
- The sale or display of any one or any combination of more than one of the following items: ladies' ready-to-wear and wearing apparel; men's ready-to-wear and wearing

apparel; children's and infants' ready-to-wear and wearing apparel; and children's furniture. The foregoing restriction shall apply to, without limitation, Goody's, Belk's, Dunlap's, J. C. Penney's, Dillard's and May Co.'s, T.J. Maxx, Stein Mart, Loehman's, Kohl's, and Burlington Coat Factory.

- Sale of cellular phones, accessories, and cellular services