

FILED SARPY CO. NE.
INSTRUMENT NUMBER

2013-14949

2013 May 13 08:30:53 AM

Sheryl J. Dowling

REGISTER OF DEEDS



COUNTER JS
VERIFY JS
FEES \$ 46.00
CHG SFILE
SUBMITTED NEBRASKA TITLE COMPANY - O

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:
Papillion Development Land, LLC
c/o RED Development, LLC
One East Washington Street, Suite 300
Phoenix, AZ 85004
Attn: Director of Legal - Leasing

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT (this "**Declaration**") is made as of this 9 day of MAY, 2013, by **PAPILLION DEVELOPMENT LAND, LLC**, a Nebraska limited liability company ("**Seller**"), **PAPILLION DEVELOPMENT, LLC**, a Nebraska limited liability company ("**Developer**") and **SHADOW LAKE TOWNE CENTER, LLC**, a Delaware limited liability company ("**Shadow**", and together with Seller and Developer, collectively the "**Declarant**").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in Papillion, Nebraska, which real property is more particularly described in **Exhibit A** attached hereto and made a part hereof and is shown on **Exhibit C** attached hereto and made a part hereof (the "**Restricted Property**"); and

WHEREAS, Seller is also the owner of certain real property located in Papillion, Nebraska which real property is more particularly described in **Exhibit B** attached hereto and made a part hereof (the "**Bridgestone Property**"); and

WHEREAS, Seller intends to sell the Bridgestone Property to Bridgestone Retail Operations, LLC, a Delaware limited liability company, or its nominees or assigns ("**Bridgestone**"); and

WHEREAS, Declarant has agreed to grant a restrictive covenant for the benefit of Bridgestone encumbering the Restricted Property pursuant to the terms of this Declaration.

NOW, THEREFORE, in consideration of the preceding premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Declarant hereby declares as follows:

1. **Recitals**. The above recitals are true and correct and are incorporated herein by reference.

2. **Restrictive Covenant/Exclusive.** The Declarant hereby declares that, so long as this Declaration remains in full force and effect, no part of the Restricted Property shall be used for all or any portion of the following (the “**Exclusive Use**”): (a) sales, service or installation of any motor vehicle parts, such as tires, automobile batteries, brakes, mufflers, and motor vehicle air conditioning systems; or (b) motor vehicle servicing or repairs, including, without limitation, tune-ups, lube and oil changes, cooling system flushing, filling and repair, electrical work, wheel alignments and suspension repair and replacement. Declarant will not use, or lease or consent to use, lease or sell any space within the Restricted Property whereupon the tenant or occupant has the right to operate a business in violation of this Exclusive Use. Notwithstanding the foregoing, the provisions of this paragraph shall not apply to or prohibit the following: (i) the retail sale of automobile batteries for off-site installation by any retailer that offers a variety of batteries for sale (which may include, by way of example only and not of limitation, batteries for laptop computers, household items such as flashlights, motorcycles, ATV’s, cameras, cordless tools, etc.), such as the retail store operating under the trade name “Batteries Plus;” as of the date of this Declaration; or (ii) the retail sale, installation and/or repair of audio and/or video systems for motor vehicles (including all related components thereof, such as tuners, CD and DVD players, DVD screens, amplifiers, speakers and related wiring and equipment). Additionally, notwithstanding the foregoing, (a) the provisions of this paragraph shall not apply to any tenant or occupant of the Restricted Property whose lease or other occupancy agreement was executed prior to the date of this Declaration or to any tenant or occupant of the Restricted Property whose premises contain 10,000 or more square feet of floor area, and (b) the provisions of this paragraph shall expire and be of no further effect if the occupant of the Bridgestone Property ceases to use the Bridgestone Property for all or any portion of the Exclusive Use for a period of two (2) consecutive years (not including periods of closure for casualty, remodeling, condemnation or events of force majeure).

3. **Remedies.** In the event any breach of the provisions of paragraph 2 above continues for more than 30 days after receipt of written notice thereof from the occupant of the Bridgestone Property to the party violating such provisions on the Restricted Property, Bridgestone or any successor tenant or subtenant of the Bridgestone Property shall have all remedies available at law or in equity against such party, including, without limitation, the right to injunctive relief and damages.

4. **Binding Effect.** The restrictions contained herein shall run with the land and shall inure to the benefit of Bridgestone, its tenants, subtenants, successors and assigns and shall be binding upon Declarant and Declarant’s successors and assigns.

5. **Modification or Waiver of Exclusive.** Any modifications or waiver of the Exclusive Use contained herein shall require the prior written approval of the owner and the tenant, if any, of the Bridgestone Property.

[Signatures follow on next page]

{00140977.DOCX;1}

SHADOW LAKE TOWNE CENTER, LLC,
a Delaware limited liability company

By: Papillion Holdings SPE, LLC,
Managing Member

By: Michael L. Ebert
Michael L. Ebert, President

STATE OF ARIZONA)
COUNTY OF MARICOPA) ss.

Now on this 3 day of May, 2013, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, President of Papillion Holdings SPE, LLC a _____, which entity is the Managing Member of Shadow Lake Towne Center, LLC, a Delaware limited liability company, who is personally known to me to be the same person who executed in such capacity the within instrument on behalf of said entity, and who duly acknowledged the execution of the same to be the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.

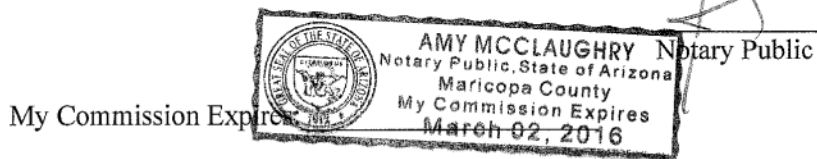


EXHIBIT A

LEGAL DESCRIPTION OF RESTRICTED PROPERTY

Lots 4, 7, 8, and 9 and Outlots A, B, D and E, Shadow Lake Towne Center, a subdivision in Papillion, Sarpy County, Nebraska.

Lots 1 and 2, and Outlots A, B and C, Shadow Lake Towne Center Replat 1, a subdivision in Papillion, Sarpy County, Nebraska.

Lot 2, Shadow Lake Towne Center Replat 2, a subdivision in Papillion, Sarpy County, Nebraska.

Lot 1, Shadow Lake Towne Center Replat 3, a subdivision in Papillion, Sarpy County, Nebraska.

Lots 1, 2 and 4, Shadow Lake Towne Center Replat 4, a subdivision in Papillion, Sarpy County, Nebraska.

EXHIBIT B

LEGAL DESCRIPTION OF BRIDGESTONE PROPERTY

Lot Three (3), Shadow Lake Towne Center Replat 4, an Addition to the City of Papillion, in Sarpy County, Nebraska, according to the Plat recorded December 12, 2011 as Inst. No. 2011-31456 in the records of Sarpy County, Nebraska.