

Tax Parcel No. 07-026.00-094  
Return to: Richard P. Beck, Esquire  
Morris James LLP  
500 Delaware Avenue, Suite 1500  
P.O. Box 2306  
Wilmington DE 19899-2306

## **DECLARATION OF RESTRICTIONS**

### **FOR THE GREENVILLE CENTER**

This Declaration of Restrictions (this "Declaration") is made under Seal as of the \_\_\_\_ day of February, 2011, by Greenville Center Associates, LLC., a Delaware limited liability company, as "Declarant"), for the benefit of Citizens For Responsible Growth in New Castle County, Inc., a non-profit Delaware corporation ("CRG").

#### BACKGROUND

A. Declarant is the owner and Developer of certain parcels of land situate in Christiana Hundred, New Castle County, State of Delaware, consisting of approximately 10.536 acres of land commonly known as Greenville Center, 3801 Kennett Pike, located at the intersection of Route 52 and Buck Road, and being New Castle County Tax Parcel No. 07-026.00-094 (the "Property"), as more particularly shown on the reduced plans appended hereto as Exhibit "A" (the "Compromise Plan").

B. CRG is a non-profit membership organization formed for the purpose of supporting responsible development in New Castle County, and aligned with various other civic, community and non-profit membership organizations including, but not limited to, The Kennett Pike Association, Inc. and Delaware Greenways, Inc., both non-profit corporations dedicated to preserving and enhancing Delaware's natural, scenic, historic, cultural and recreational resources.

C. Declarant initially sought development approvals for the Property based on various

applications, plans and submissions, known as Application No. 2008-0272 (the “Pending Application”) that were of concern to CRG. Declarant and CRG subsequently negotiated an Agreement containing terms and conditions whereby Declarant filed a Compromise Plan for the development of the Property in accordance with which Declarant would obtain a parking variance and land development plan approvals for the Property, as more particularly shown on the Compromise Plan. To induce CRG’s support of such variance and land development plan approvals and in appreciation of such support, Declarant has made and offered these voluntary assurances as to the manner in which the Property would be improved and used if the requested variance and land development approvals were granted, obtained, approved and not overturned on appeal.

#### COVENANTS

Now, therefore, know all men by these presents, that Declarant hereby covenants and declares under Seal for itself, its successors, assigns, grantees and all others claiming an interest in the Property under or through Declarant (all of whom or which shall be bound hereby the same as Declarant), that upon recordation of this Declaration, and unless and until such Declaration shall after recordation be rescinded (if ever) on appeal as hereinafter provided, Declarant holds and stands seized of the Property under and subject to the following covenants and agreements, which shall be covenants running with the land and which shall be binding upon Declarant, its respective successors, assigns, grantees and all other subsequent owners or holders of any right, title to or interest in all or any portion of the Property, for the general benefit of the adjoining community and for the specific benefit of The Kennett Pike Association, Inc. (“KPA”) and Delaware Greenways, Inc. (“Greenways”), which two organizations shall have the sole right to enforce this Declaration.

1. Building Heights. Heights of buildings at Greenville Center shall not exceed fifty (50) feet, plus rooftop mechanical equipment not exceeding an additional ten (10) feet in height, except that the 4,000 square foot building proposed at the intersection of Buck Road and Route 52 (the

“Drive Through Building”) which shall exceed neither one (1) story nor twenty five (25) feet in height, plus mechanical systems not more than an additional ten (10) feet in height, and except that heights of all structures used exclusively for vehicular parking purposes (in contrast with structures with parking under office or commercial floors) shall exceed neither a ground level floor plus three stories, nor thirty-six (36) feet in height. As used herein, and throughout this Declaration, the term “height” shall have the meaning as set forth in Section 40.33.300 of the UDC in effect as of the time of execution of this Declaration. Declarant shall not make grade changes to the Property which have the effect of increasing the present average grade of the Property at the site(s) of the proposed new construction and thereby materially increasing the height of the building(s) to be constructed at such site(s); provided, however, that grade changes needed to fill in low areas on the Property to achieve proper grade transitions in accordance with sound engineering principles and in compliance with applicable law, and grade changes necessary to provide for proper drainage and to comply with applicable stormwater regulations will not be construed so as to violate the provisions hereof pertaining to prohibitive grade changes. Decorative spires, cupolas, architectural chimneys and flag poles shall not be subject to the height limitations of this Declaration. Declarant shall use best efforts to design garages so that the walls closest to the residential subdivision of Greenville Manor will be constructed so as to substantially block the direct shining of vehicular headlights towards homes in Greenville Manor.

2. Drive-Through Building Limitations. The height of the proposed Drive-Through Building shall not exceed one story nor be greater than twenty-five (25) feet in height, plus mechanical systems not more than an additional ten (10) feet in height which shall be fully screened from all sides. The size of the Drive-Through Building shall not exceed (exclusive of the physical area constituting any drive through space, which shall not be counted) 4,000 square feet of gross floor area (“GFA”), and it shall be completely finished on all four (4) sides. As used herein and throughout this Declaration, the term “gross floor area or GFA” shall have the meaning as set forth in Section

40.33.300 of the UDC in effect at the time of the execution of this Declaration, which pursuant to the provisions of Section 40.05.050K of the UDC excludes the square footage of parking structures. The Drive-Through Building shall not be used for a convenience store, gas station or automobile repair or service station, nor for a fast food restaurant as such use is reasonably defined by McDonalds, Burger King, Wendy's, Arbys, Kentucky Fried Chicken, Taco Bell, Chick-fil-A, Hardees, Jack in the Box, Dairy Queen, Popeyes, Sonic, Subway, Pizza Hut, Papa John's, Dominios Pizza, Bojangles, Quiznos, Roy Rogers, Little Caesar's and Church's Chicken. In the event of a challenge by KPA or Delaware Greenways as to whether future evolutions of such uses, or presently existing businesses not named above, fall within the genre illustrated by the businesses named above, the matter will be submitted to mediation for resolution pursuant to the provisions of Paragraph 13 of this Declaration.

3. Expansion/Replacement. The Compromise Plan for Greenville Center provides, including the Drive-Through Building, for the addition of approximately 19,423 square feet of expansion and/or replacement GFA, by means of "squaring off" into a rectangle the building presently occupied as a post office and jewelry store (the "Expansion") , and by replacing the existing two story building occupied by Wells Fargo as shown on the attached Compromise Plan (the "Replacement Building"). The 19,423 square feet is arrived at as follows: demolition of Wells Fargo building of 16,846 square feet and construction of Replacement Building of 28,800 square feet, Expansion consisting of 3,469 square feet and approximately 4,000 square feet for Drive Through Building. Expansion shall not increase the present height of the building occupied presently by the post office and jewelry store. Expansions or replacements of existing buildings shall not be located closer to Route 52 than the closest existing building at Greenville Center. No parking garage or elevated parking structure shall be located along Route 52. As to expansions or replacements of existing buildings or construction of new buildings that abut Greenville Manor, Declarant shall use best efforts to buffer sound emanating from the rooftop mechanical equipment against homes in Greenville Manor.

4. Parking Space Variance. In the event that Declarant receives the parking variance needed to proceed with the Compromise Plan (the “Variance”), Declarant shall not undertake to add GFA at Greenville Center, beyond the GFA proposed by the Compromise Plan, until the required parking spaces for which a variance was sought and obtained are replaced on site and the Variance is thereafter surrendered or extinguished; provided, however, that Declarant may construct a new parking structure under the Replacement Building without replacing any parking spaces.

5. Buck Road Entrance. Declarant shall make such improvements to the Buck Road entrance into Greenville Center as may be required by the Delaware Department of Transportation or its successor.

6. Mortgage Subordination. Declarant is not required to obtain subordination by the holder of the present mortgage against Greenville Center to the restrictions set forth in this Declaration. However, any new mortgage shall be subordinated to this Declaration, and Declarant shall use best efforts to obtain subordination of any renegotiated mortgage.

7. Effectiveness. This Declaration is executed, attested, sealed, acknowledged and delivered into escrow, to be recorded concurrently with recordation of the approved Final Record Compromise Plan. In the event that the Compromise Plan is not recorded, then this Declaration shall not be recorded; provided, however, that no use shall be made of the Property based on any parking variance or other land use approval granted for the Property based on the Compromise Plan without prior recordation of this Declaration.

8. Context. This Declaration is intended to stand on its own. However, it derives from and implements a more comprehensive agreement dated as of December 31, 2010 between CRG on one hand and Declarant, Barley Mill, LLC, 20 Montchanin Associates, LLC and 3704 Kennett, LLC on the other hand (the “Agreement”). So long as the Agreement remains in force and effect, which shall be a minimum of five (5) and maximum of ten (10) years from the date of this Declaration, as

defined in the Agreement, this Declaration shall be construed in accordance with and not contrary to the Agreement. Following expiration of the Agreement, this Declaration shall stand on its own if not previously extinguished as provided below.

9. Extinguishment. The Agreement relates not only to Greenville Center, defined in this Declaration as the Property, but also to three other properties known as (i) Barley Mill Plaza at the intersection of Routes 141 and 48, (ii) the former Columbia Gas Campus at 20 Montchanin Road, and (iii) the former Kirkwood Fitness property on Route 52 across from Greenville at 3704 Kennett Pike; all four of which properties (collectively the “Properties”) are located in Christiana Hundred, New Castle County, Delaware, and all of which have certain common ownership and/or are under common management. A rezoning, subdivision and land development approvals are being sought for Barley Mill Plaza; a subdivision, and a rezoning of a two acre parcel with deed restriction amendment and land development approval is being sought for a portion of 20 Montchanin Road; and a parking variance is being sought for 3704 Kennett Pike; all as part of a global compromise relating to the Properties announced in the Fall of 2010 by Senator Christopher Coons. In the event that all approvals required for all compromises plans for all of the aforesaid Properties is not obtained, or the Agreement is terminated, then Declarant has the right to extinguish this Declaration by restoring the status quo ante as to all of the Properties and recording a Consent to Extinguishment signed by CRG. Extinguishing the Declaration shall mean that Declarant is free to pursue any and all land use approvals for the Property that are otherwise available under the law; and that CRG is free to oppose or support such pursuit of other approvals.

10. Enforcement. Following its recordation and so long as it has not been extinguished, the terms of this Declaration may be enforced solely by The Kennett Pike Association, Inc. and/or Delaware Greenways, Inc. Notwithstanding any language contained herein to the contrary, neither The Kennett Pike Association, Inc. nor Delaware Greenways, Inc., nor any party claiming any rights as a third party beneficiary, shall have the right, obligation or authority to prohibit the termination and

extinguishment of this Declaration or the revocation of the Variance or any conditions imposed in connection with the Variance. Declarant accepts jurisdiction over all matters arising under this Declaration by the Delaware Courts sitting in New Castle County, Delaware, and agrees that there is no adequate remedy for breach hereof and that any action hereunder may be properly brought in the Delaware Chancery Court. The provisions hereof shall be governed by the laws of the State of Delaware applicable to sealed instruments. The provisions hereof shall be fairly construed in accordance with their plain intent without limitation or frustration by technical rules of construction, special presumptions or policy considerations governing ambiguities or deed restrictions.

11. Interpretation. Paragraph headings are for convenience only and shall not affect the meaning of the language herein. The singular shall include the plural, and tenses and genders shall be interchangeable, as the context reasonably warrants. The word “including” and its variants shall be by way of illustration and not by way of limitation; and unless the context otherwise indicates, the word “or” means “and/or.” This Declaration shall not be amended except by a writing duly executed, sealed and acknowledged by Declarant, The Kennett Pike Association, Inc. and Delaware Greenways, Inc., and properly recorded in the Office of the Recorder of Deeds in and for New Castle County, Delaware (or any successor office or agency). The termination and extinguishment of this Declaration and the revocation of the Variance and any conditions imposed in connection with the Variance shall not be considered an amendment or modification of this Declaration for which the approval of The Kennett Pike Association, Inc. and Delaware Greenways, Inc. is required.

12. Severability. In the event that any provision of this Declaration is deemed to be illegal or unenforceable, the balance of this Declaration shall remain in full force and effect; and at the request of Declarant or CRG, they shall endeavor to negotiate in good faith a commercially reasonable equivalent replacement provision that shall be memorialized by recording an amendment hereto. If they are unable to agree on such a provision, then either Declarant or CRG may apply to the Court of Chancery for reformation of this Declaration to compensate for the illegal or

unenforceable provision.

13. Mediation/Arbitration. In the event of any dispute or controversy between the parties concerning the provisions of Paragraph 2 of this Declaration pertaining to proposed uses for the Drive Through Building and future evolutions of prohibited uses falling into the categories of convenience stores or fast food restaurants shall be resolved first by having the parties representatives, initially Keith Stoltz for Greenville Center Associates, LLC and initially John Danzeisen for CRG, and thereafter their respective successors, promptly discuss in good faith ways to resolve such issues in a manner that achieves the reasonable and legitimate objectives of each party. If the parties are unable to agree, then either of them (the “Initiating Party”) may submit the matter to binding mediation, by providing the other with the name and curricula vitae of an independent, unbiased person trained or experienced in commercial matters and in mediation. Within ten (10) business days of receiving such name, the other party (“Responding Party”) shall provide the Initiating Party with the name and curricula vitae of an independent, unbiased person trained or experienced in commercial matters and in mediation, failing which, the Responding Party shall be deemed to have accepted the person named by the Initiating Party as the sole mediator. If each side has named a mediator, those two shall appoint a third independent, unbiased person with experience in commercial matters to serve as the binding decision maker (the “arbitrator”). The parties’ disagreement shall then expeditiously be mediated in accordance with such procedures as the mediators and arbitrator, after considering the suggestions and schedules of the parties, shall determine. The objective of the mediation shall be to arrive at a consensus between the parties, utilizing the services of the two mediators but without participation of the arbitrator, other than listening to such presentations (if any) as the parties may make to each other during the course of the mediation. If a consensus can be reached, the parties shall act in accordance therewith. If no such consensus can be achieved, the mediators shall report to the arbitrator as to (i) the compromise (if any) that each party was willing to make with the other in order to resolve the dispute, and (ii) the good faith with which each party did, or did not, engage in the

mediation and seek to achieve a reasonable compromise. Each party shall also have an opportunity to address the arbitrator, who shall then make a determination as to how the matter should be resolved. The arbitrator's decision shall be binding, final and non-appealable, and enforceable by and against the parties in any court of competent jurisdiction; provided, however, that the arbitrator cannot amend or contradict the express terms of this Declaration, or of any applicable law

*{Signatures appear on the following page}*

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed and sealed as of the day and year first above written.

WITNESS:

GREENVILLE CENTER ASSOCIATES, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_ (Seal)  
Keith D. Stoltz  
Authorized Member

STATE OF DELAWARE    )  
                                  : SS.  
NEW CASTLE COUNTY    )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, Keith D. Stoltz, Authorized Member of Greenville Center Associates, LLC., a Delaware limited liability company, party to this Indenture, personally known to me to be such, and acknowledged this Indenture to be his act and deed and the act and deed of said company, that the signature of the Authorized Member thereto is in his own proper handwriting and the seal affixed is the common and official seal of said company, and that his act of sealing, executing, acknowledging and delivering said Indenture was duly authorized by a resolution of the voting members of said company.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
**COMPROMISE PLAN**