

FILED SAPPY CO. NE.
INSTRUMENT NUMBER
2008-24189

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Glenn J. Musson
REGISTER OF DEEDS

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RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

The Katz Law Firm
Attn: Mark J. Musson
435 Nichols Road, Second Floor
Kansas City, MO 64112

TEMPORARY CONSTRUCTION AND MAINTENANCE EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION AND MAINTENANCE EASEMENT AGREEMENT (this "**Agreement**") is entered into as of this 15th day of August, 2008, by and between PAPHILLION DEVELOPMENT SETTLER'S CREEK, LLC, a Nebraska limited liability company (hereinafter referred to as the "**Grantor**") and VILLAGE DEVELOPMENT - 72ND & CORNHUSKER, L.L.C., a Nebraska limited liability company (hereinafter referred to as the "**Grantee**").

RECITALS:

WHEREAS, Grantor is the owner of certain real property and improvements legally described as *Outlot A, Settlers Creek Replat 2, A Subdivision in Sarpy County, Nebraska and Lots 1, 2, 3, 4, 5, 6 and Outlot A, Settlers Creek Replat 3, A Subdivision in Sarpy County, Nebraska* ("**Grantor's Property**");

WHEREAS, pursuant to that certain Real Estate Purchase Agreement dated October 10, 2007, as amended by that First Amendment to Real Estate Purchase Agreement dated March 6, 2008, as further amended by that Second Amendment to Real Estate Purchase Agreement dated April 29, 2008, as further amended by that Third Amendment to Real Estate Purchase Agreement dated May 29, 2008, and as further amended by that Fourth Amendment to Real Estate Purchase Agreement dated July 8, 2008 (collectively referred to as the "**Purchase Agreement**"), Grantee (as Buyer) purchased from Grantor (as Seller) that certain parcel of land and improvements legally described as *Lot 2, Settlers Creek Replat 2, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska* ("**Grantee's Property**");

WHEREAS, under the terms of the Purchase Agreement and that certain Construction Agreement dated even date herewith between Grantor and Grantee ("**Construction Agreement**"), Grantee agreed to complete construction of certain common access drives located upon Grantor's Property as depicted on either the Site Plan attached hereto as **Exhibit A-I** or **Exhibit A-II** made a part hereof (hereafter, individually referred to as the "**Site Plan**"), in

return to

PROFESSIONAL TITLE AND ESCROW CO.
8535 EXECUTIVE WOODS DRIVE, #300
LINCOLN, NE 68512

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the area(s) identified thereon as Access Work (such area(s), hereinafter, collectively the "**Easement Property**");

WHEREAS, Grantee desires to enter onto the Easement Property for the purposes of performing the Access Work (as defined in the Construction Agreement) and Grantor is willing to grant Grantee a non-exclusive easement to enter upon the Easement Property for such purpose thereof; and

WHEREAS, until such time as the Grantor's Property is developed or Grantor assumes responsibility for the maintenance and repair of the Easement Property, Grantor desires to grant a temporary easement to Grantee for purpose of maintaining and repairing the Easement Property.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Subject to the terms and conditions of the Construction Agreement, in the event Grantor obtains approval from the City and/or State to allow for a right-in/right-out onto 72nd Street, Grantor hereby grants to Grantee, its agents, contractors and employees, a non-exclusive temporary construction easement over the Easement Property depicted on the Site Plan attached hereto as **Exhibit A-I** for the limited purpose of performing the Access Work. In the event Grantor is denied approval for a right-in/right-out onto 72nd Street, then Grantor hereby grants to Grantee, its agents, contractors and employees, a non-exclusive temporary construction easement over the Easement Property depicted in the Site Plan attached hereto as **Exhibit A-II** for the limited purpose of performing the Access Work. The activities of Grantee, its agents, contractors and employees shall be limited to only those parts of the Easement Property as are necessary in connection therewith. Grantee will perform the Access Work in accordance with the terms of the Purchase Agreement and/or the Construction Agreement.

2. Grantor hereby grants to Grantee and its tenants and their respective agents, contractors and employees, a non-exclusive temporary easement over the Easement Property for the purpose of the maintenance and repair of the Easement Property.

3. Grantee shall, and hereby covenants and agrees to, indemnify, protect, defend and save Grantor and its respective affiliates, and each of its respective members, directors, officers, employees and agents from and against any and all claims, actions, suits, demands, liabilities, fees, costs and expenses (including, but not limited to, attorneys' fees) [including, without limitation, any of the foregoing alleged or claimed by any tenants of Grantor] arising from or related in any way to (a) any loss, damage or injury (actual or claimed, of whatsoever kind or character) to persons or property, or death of any person(s) occurring or allegedly occurring in, on or about the Easement Property arising directly or indirectly from (i) the exercise by Grantee of its rights under this Agreement, or (ii) any breach by Grantee of any of its obligations and/or responsibilities hereunder; (b) any mechanics' or materialmen's claims or liens with respect to any work performed on the Easement Property by or on behalf of Grantee or its agents, contractors and employees; or (c) any breach or failure by Grantee of the terms of this Agreement.

4. Grantee shall, in exercising its rights hereunder, comply with all applicable laws, ordinances, orders, resolutions and regulations, and any other requirements of any applicable governmental authorities.

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5. Grantee will not at any time hold itself out as owning any right, title or interest in or to the Easement Property, other than its rights hereunder, and will not allow any of its agents, employees or contractors, or others acting by, through or under it, to do so.

6. Subject to the terms of the Construction Agreement, Grantee shall promptly pay any and all fees, cost, charges, expenses or other sums arising in connection with the Access Work such that no lien or other encumbrance may be placed or filed upon the Easement Property. If any mechanics lien, or any other lien or encumbrance is placed upon the Easement Property in connection with the Access Work (or in connection with any other matter involving Grantee or any of its affiliates) Grantee shall immediately discharge the same at its sole cost and expense.

7. If Grantee shall fail to keep or perform any of its obligations as provided in this Agreement then Grantee shall, upon Grantee's receipt of written notice of such failure at the address provided herein, have thirty (30) days to cure such failure, provided, however, that if the nature of Grantee's failure is such that it cannot be cured solely by the payment of money and more than thirty (30) days is reasonably required for such cure, then Grantee shall not be in default of this Agreement if Grantee shall commence such cure within such thirty (30) day period and shall thereafter diligently pursue such cure to completion. Subject to the foregoing cure periods, Grantor shall have such rights and remedies as are set forth herein or otherwise exist at law or in equity and, in addition thereto, Grantor may (but shall not be obligated to do so) upon the continuance of such failure on Grantee's part for (x) a period of thirty (30) days after Grantee's receipt of written notice (at the address provided herein) of monetary failure and (y) a period of sixty (60) days after Grantee's receipt of written notice (at the address provided herein) for a non-monetary failure, and without waiving or releasing Grantee from any obligation hereunder, as an additional but not exclusive remedy, make such payment or perform any such obligation, and all sums so paid by Grantor and all necessary incidental costs and expenses incurred by Grantor in performing such obligation (including, without limitation, any attorney's fees incurred in connection therewith), with interest at the prime rate plus two percent (2%), shall be paid to Grantor upon demand.

8. The easement granted to Grantee under this Agreement shall expire upon the earlier to occur of: (a) a Terminating Event (as defined below), or (b) with respect to the construction easement set forth in Section 1 above, completion of the Access Work, and with respect to the maintenance easement set forth in Section 2 above, upon receipt of written notice from Grantor to Grantee that Grantor is assuming responsibility for the maintenance and repair of the Easement Property. In the event of any default by Grantee under this Agreement, which default continues beyond any cure period set forth in Section 7 hereof, Grantor shall have the right to terminate this Agreement and the easement granted hereunder. This right of termination is in addition to, and not in limitation of, Grantor's other rights and remedies set forth in this Agreement and/or the Construction Agreement.

9. For purposes of this Agreement, a "**Terminating Event**" shall be deemed to exist if (i) Grantee is in default under this Agreement, which default continues beyond the cure period (following notice) set forth in Section 7 hereof; or (ii) under the terms of the Construction Agreement, Grantee is in default and Grantor has elected to exercise its self help rights therein and complete 100% of the remaining Access Work; and Grantor exercises its right to terminate this Agreement and the easement granted hereunder.

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10. Upon the occurrence of a Terminating Event, the Access Work, if still in progress, shall be stopped immediately and Grantee shall vacate the Easement Property and remove all equipment therefrom.

11. During the term of this Agreement, Grantor shall have the right to access and inspect the Easement Property for any reason, including without limitation, for purposes of inspecting the Easement Property or the Access Work.

12. Grantee hereby acknowledges and agrees that Grantor has made no representations or warranties, express or implied, with respect to the Easement Property or its condition or fitness for a particular purpose (and Grantor hereby expressly disclaims any such representation or warranty).

13. Any notice pursuant hereto shall be given in writing by (a) personal delivery, or (b) expedited delivery service with proof of delivery, or (c) registered or certified United States Mail, postage prepaid, return receipt requested, or (d) prepaid telegram, telex or facsimile transmission (provided that such telegram, telex or facsimile transmission is confirmed by expedited delivery service or by mail in the manner previously described), sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or, in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of telegram, telex or facsimile transmission, upon receipt, provided some evidence of such receipt is obtained by the sender of such notice. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant hereto shall be as follows:

To Developer: Papillion Development Settler's Creek, LLC
c/o RED Development
Attn: Director of Development - Legal
6263 N. Scottsdale Road
Suite 330
Scottsdale, AZ 85250
Facsimile: (480) 947 7997

With copy to: Papillion Development Settler's Creek, LLC
c/o RED Development
Attn: General Counsel
4717 Central
Kansas City, MO 64112
Facsimile: (816) 777 3501, and

With copy to: Richard B. Katz, Esq.
The Katz Law Firm, L.C.
435 Nichols Road, Second Floor
Kansas City, MO 64112
Facsimile: (816) 714-1047

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To Village Development: Village Development - 72nd & Cornhusker, L.L.C.
Attn: Tamas R. Allan, Manager
1045 Lincoln Mall, Suite 300
Lincoln, NE 68508

With copy to: Woods & Aitken, L.L.P.
Attn: Jennifer J. Strand, Esq.
301 South 13th Street, Suite 500
Lincoln, NE 68508

14. All obligations set forth herein shall survive the termination of this Agreement for any reason.

15. This Agreement may not be assigned by either of the parties hereto without the prior written consent of the other party.

16. This Agreement shall be governed by the laws of the State of Nebraska.

17. This Agreement may be executed in counterparts, and each executed counterpart shall be effective as a complete document.

18. Each of the parties executing this Agreement represents and warrants to each other party that it is properly organized and existing, has legal power, authority and capacity to execute and enter into this Agreement and that the same constitutes a legal, valid and binding obligations on each of the parties and is enforceable in accordance with its terms.

IN WITNESS WHEREOF, Owner and Developer have caused this Declaration to be executed effective as of the latest date executed, as shown below.

[Signature Page to Follow]

E

OWNER:

VILLAGE DEVELOPMENT - 72ND &
CORNHUSKER, L.L.C., a Nebraska limited liability
company

By: Tamas R. Allan

Name: Tamas R. Allan

Title: Manager

Date: August 15, 2008

DEVELOPER:

PAPILLION DEVELOPMENT SETTLER'S CREEK,
LLC, a Nebraska limited liability company

By: RED Papillion Settler's Creek, LLC, a
Missouri limited liability company, Manager

By: E&R HOLDINGS, LLC, an Arizona limited
liability company, Manager

By: _____
Michael L. Ebert, Manager

F

OWNER:

VILLAGE DEVELOPMENT - 72ND &
CORNHUSKER, L.L.C., a Nebraska limited liability
company

By: _____

Name: _____

Title: _____

Date: _____

DEVELOPER:

PAPILLION DEVELOPMENT SETTLER'S CREEK,
LLC, a Nebraska limited liability company

By: RED Papillion Settler's Creek, LLC, a
Missouri limited liability company, Manager

By: E&R HOLDINGS, LLC, an Arizona limited
liability company, Manager

By: 
Michael L. Ebert, Manager

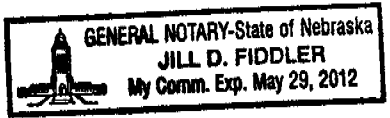
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ACKNOWLEDGEMENT

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

Now on this 15th day of August, 2008, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Tamas R. Allah, Manager of Village Development – 72nd & Cornhusker, L.L.C., a Nebraska limited liability company, personally known to me to be the same person who executed the within instrument on behalf of said company and who duly acknowledged the execution of the same to be his free act and deed of said company.

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



Jill D. Fiddler
Notary Public

My Commission Expires: _____

ACKNOWLEDGEMENT

STATE OF ARIZONA)
)ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me, a Notary Public duly commissioned and qualified in and for said county and state, on this ____ day of _____, 2008, by Michael L. Ebert, who is the Manager of E&R Holding, LLC, which entity is the Manager of RED Papillion Settler's Creek, LLC, which entity is the Manager of Papillion Development Settler's Creek, LLC, a Nebraska limited liability company, and acknowledges that this is his voluntary act and deed and the voluntary act and deed of Papillion Development, LLC.

Notary Public

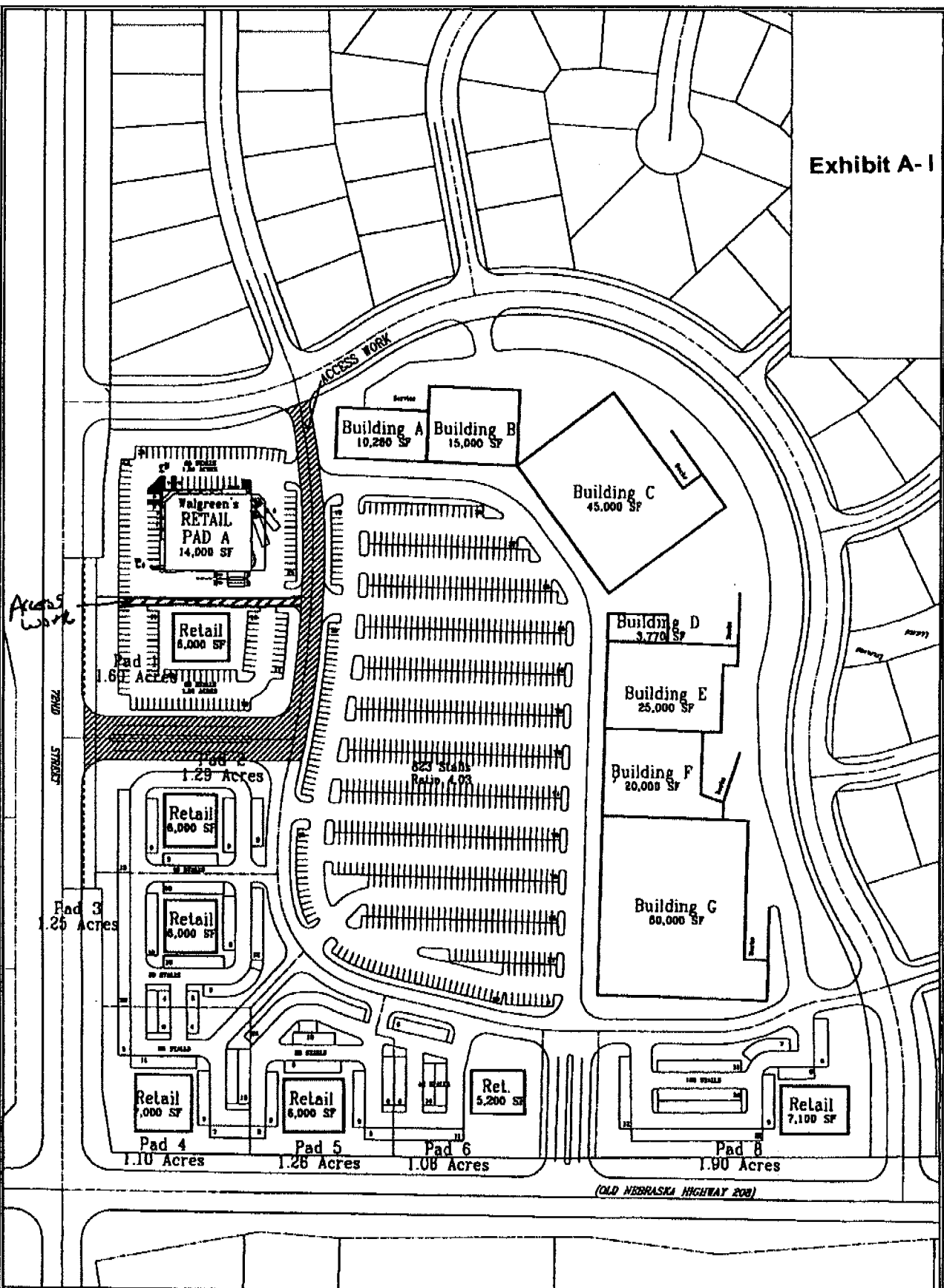
Commission Expires: _____

I

EXHIBIT A-I

Site Plan Depicting the Easement Property

Exhibit A-1



NOTE: DIMENSIONS SHOWN SPACE ARE SUBJECT TO CHANGE BASED ON CONTRACTOR MEASUREMENTS. DIMENSIONS ARE FROM MAIN LANE TO MAIN LANE AND DO NOT INCLUDE CURB/PAVING DIMENSIONS UNLESS NOTED.



SETTLER'S CREEK
PAPILLION, NE

JULY 11, 2007

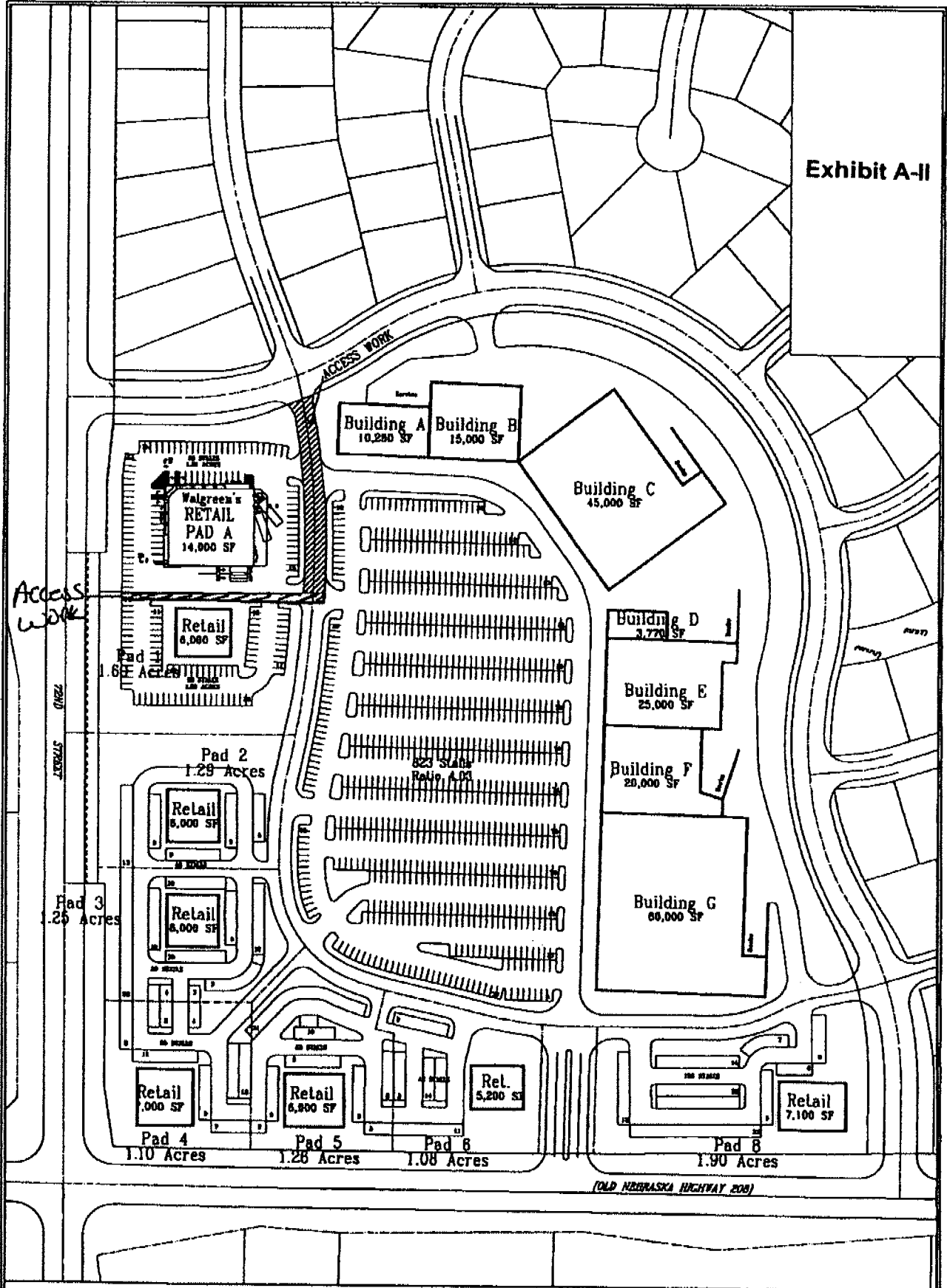
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EXHIBIT A-II

Site Plan Depicting the Easement Property

2008-24189 L

Exhibit A-II



ALL DIMENSIONS SHOWN (SPACE AND WEIGHT) TO CENTER UNLESS OTHERWISE SPECIFIED.

SHOWING THE FIRM LINE AND TO BE USED AS A REFERENCE FOR CONSTRUCTION OF THE IMPROVEMENTS.



SETTLER'S CREEK
PAPILLION, NE

JULY 11, 2007