

COUNTER <u>LM</u>
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CHG <u>SFILE</u>
SUBMITTED <u>NEBRASKA TITLE COMPANY-ON</u>

FILED SARPY CO. NE.
INSTRUMENT NUMBER

2018-20345

2018 Aug 29 08:38:07 AM

Sheryl J. Roudsney

REGISTER OF DEEDS



RECORDING REQUESTED BY,
AND WHEN RECORDED, RETURN TO:

PREP Property Group LLC
5905 E. Galbraith Road,
Suite 1000
Cincinnati, OH 45236
Attn: Vivian M. Knight

The consideration for this Agreement is included in the consideration paid for the Deed being recorded concurrently herewith.

**ASSIGNMENT AND ASSUMPTION OF
DEVELOPER ACQUISITION RIGHTS AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPER ACQUISITION RIGHTS AGREEMENT (this "Agreement") is made as of August 27, 2018 (the "Effective Date"), by **PAPILLION DEVELOPMENT, LLC**, a Nebraska limited liability company ("Assignor"), in favor of **PPG SHADOW REAL ESTATE LLC**, a Delaware limited liability company ("Assignee").

WHEREAS, Assignor is the developer under that certain Declaration of Reciprocal Easements, Covenants and Restrictions recorded June 20, 2006 as Document No. 2006-20802, in the Sarpy County, Nebraska Register of Deeds, as amended by that certain First Amendment to Declaration of Reciprocal Easements, Covenants and Restrictions recorded March 21, 2012, as Document No. 2012-08360, and as may be amended or supplemented from time to time (the "ECR") governing the use and development of the Shadow Lake Towne Center shopping center (the "REA Affected Real Property").

WHEREAS, CharterWest National Bank, a National Banking Association ("CharterWest") purchased and currently owns a certain parcel of land that is a part of the REA

Affected Real Property (the "**CharterWest Parcel**"), which CharterWest Parcel is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

WHEREAS, in connection with such purchase of the CharterWest Parcel, CharterWest and Assignor entered into a certain Developer Acquisition Rights Agreement dated February 19, 2008 (the "**ROFR**"), which ROFR was recorded February 20, 2008 as Instrument No. 2008-04537 in the Sarpy County, Nebraska Register of Deeds.

WHEREAS, the ROFR provides, among other items, that Assignor, upon the occurrence of certain events, has the option to repurchase the CharterWest Parcel.

WHEREAS, concurrently with the execution and delivery of this Agreement and pursuant to the terms and conditions set forth in a Contract of Purchase and Sale dated May 11, 2018 ("**Purchase Contract**"), Assignee has acquired from Shadow Lake Towne Center, LLC, a Delaware limited liability company certain parcels of land that are a part of the REA Affected Real Property, (the "**Assignee Property**"), which Assignee Property is more particularly described on Exhibit B attached hereto and incorporated herein by reference.

WHEREAS, concurrently with the execution and delivery of this Agreement and pursuant to the terms and conditions of the Purchase Contract, Assignor has assigned all of its rights, title and interests as Developer under the ECR to Assignee.

NOW, THEREFORE, pursuant to the terms and conditions of the Purchase Contract, and in consideration of Ten Dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor desires to assign to Assignee all of Assignor's right, title and interest in, to and under the ROFR. Unless otherwise defined herein, all capitalized terms used in this Agreement shall have the same meanings as is given to such terms in the ROFR. The parties further agree as follows:

1. Assignor does hereby ASSIGN, SET OVER AND DELIVER to Assignee, its successors and assigns, all of Assignor's rights, titles and interest under the ROFR.

2. Assignee does hereby accept the foregoing assignment and assumes all of the agreements and obligations of Assignor as the Developer under the ROFR accruing from and after the Effective Date and agrees to be bound by all of the terms and conditions of the ROFR that are applicable to the Developer thereunder. Further in accordance with Section 9 of the ROFR, the parties hereto agree that a copy of this Agreement shall be delivered to CharterWest.

3. The provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

4. The Agreement shall be construed under and enforced in accordance with the laws of the State of Nebraska.

5. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the

same instrument. The signature and acknowledgment pages of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) and acknowledgment(s) thereon, provided such signature and acknowledgment pages are attached to any other counterpart identical thereto except having additional signature and acknowledgment pages executed and acknowledged by other parties to this Agreement attached thereto.

6. Assignors hereby covenant that they will, at any time and from time to time upon written request therefor, execute and deliver to Assignee, and/or its successors and assigns, any new or confirmatory instruments and take such further acts as Assignee may reasonably request to fully evidence the assignment contained herein and to enable Assignee, and/or its successors and assigns, to fully realize and enjoy the rights and interests assigned hereby.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]


IN WITNESS WHEREOF, Assignor and Assignee have caused their duly authorized representatives to execute this Agreement as of the date first above written.

ASSIGNOR:

PAPILLION DEVELOPMENT, LLC,
a Nebraska limited liability company

By: RED Papillion, LLC, Its Manager

By: E & R Holdings, LLC, Its Manager

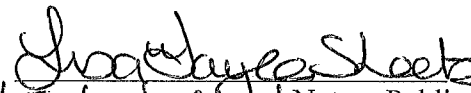
By: 
Name: Michael L. Ebert
Its: Manager

ACKNOWLEDGMENT

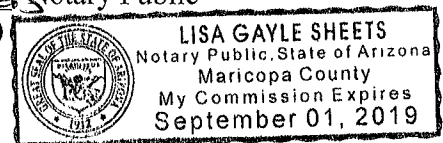
STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

Now on this 20th day of August, 2018, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, Manager of E & R Holdings, LLC, Manager of RED Papillion, LLC, Manager of Papillion Development, LLC, a Nebraska limited liability company, who is 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 and the 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.


Lisa Gayle Sheets Notary Public
(Print Name)

My Commission Expires: 9-1-2019



[Signature Page to Assignment and Assumption of Developer Acquisition Rights Agreement – Charter West]

ASSIGNEE:

PPG Shadow Real Estate LLC,
a Delaware limited liability company

By: *Sara Brennan*
Name: Sara J. Brennan
Its: Chief Operating Officer

COUNTY OF SUMMIT)
)SS:
STATE OF UTAH)

BE IT REMEMBERED that on this 22 day of August, 2018, before me, a Notary Public in and for the said county and state, personally appeared Sara J. Brennan, Chief Operating Officer of PPG Shadow Real Estate LLC, a Delaware limited liability company, who is personally known to me and who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free and voluntary act and deed as the COO of such limited liability company.

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

Notary Public

K. A. Cassett

My Commission expires: 5-6-2021

*[PPG Shadow Real Estate LLC Signature Page to
Assignment and Assumption of Developer Acquisition Rights Agreement – Charter West]*

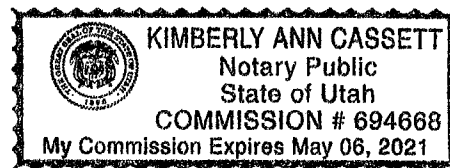


EXHIBIT A

LEGAL DESCRIPTION OF CHARTERWEST PARCEL

Lot One (1), Shadow Lake Towne Center Replat 2, an Addition to the City of Papillion, in Sarpy County, Nebraska, according to the Plat recorded April 3, 2007 as Instr. No. 2007 – 09702 in the records of Sarpy County, Nebraska.

Ex.A-1

EXHIBIT B

LEGAL DESCRIPTION OF ASSIGNEE PROPERTY

Lots Four (4), Seven (7), Eight (8) and Nine (9), and Outlots A and B, Shadow Lake Towne Center, an Addition to the City of Papillion, in Sarpy County, Nebraska;

Lots One (1), Two (2) and Outlots A, B and C, Shadow Lake Towne Center Replat 1, an Administrative Subdivision, in Sarpy County, Nebraska;

Lot Two (2), Shadow Lake Towne Center Replat 2, an Administrative Subdivision in Sarpy County, Nebraska;

Lot (1), Shadow Lake Towne Center Replat 3, an Administrative Subdivision in Sarpy County, Nebraska; and

Lots One (1) and Two (2), Shadow Lake Town Center Replat 5, an Addition to the City of Papillion, in Sarpy County, Nebraska.