

COUNTER LM
VERIFY LM
FEES \$ 46.00
CHG SFILE
SUBMITTED NEBRASKA TITLE COMPANY-ON

FILED SARPY CO. NE.  
INSTRUMENT NUMBER

**2018-20349**

2018 Aug 29 08:38:11 AM

*Sheryl J. Dowling*

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 21, 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, Taco Bell Corp., a California corporation (“**Taco Bell**”) purchased and currently owns a certain parcel of land that is a part of the REA Affected Real Property (the “**Taco Bell Parcel**”), which Taco Bell Parcel is more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

WHEREAS, in connection with such purchase of the Taco Bell Parcel, Taco Bell and Assignor entered into a certain Developer Acquisition Rights Agreement dated March 26, 2008 (the “**ROFR**”), which ROFR was recorded March 31, 2008 as Instrument No. 2008-08777 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 Taco Bell 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 Taco Bell.

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

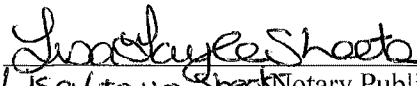
By:   
Name: Michael L. Ebert  
Its: Manager

**ACKNOWLEDGMENT**

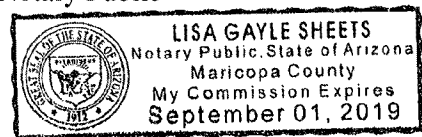
STATE OF Arizona            )  
  ) ss.  
COUNTY OF Maricopa        )

Now on this 2<sup>nd</sup> 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 –  
Taco Bell]*

**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<sup>nd</sup> 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 CEO 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.

*K. A. Cassett*  
Notary Public

My Commission expires: 5-6-2021

*[Signature Page to Assignment and Assumption of Developer Acquisition Rights Agreement –  
Taco Bell]*

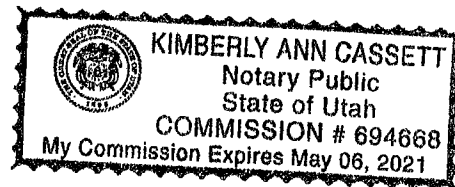


EXHIBIT A

LEGAL DESCRIPTION OF TACO BELL PARCEL

Lot Two (2), Shadow Lake Towne Center, an Addition to the City of Papillion, in 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.