

COUNTER <u>LM</u>
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FEES \$ <u>52.00</u>
CHG <u>SFILE</u>
SUBMITTED <u>NEBRASKA TITLE COMPANY-ON</u>

FILED SARPY CO. NE.
INSTRUMENT NUMBER

2018-20351

2018 Aug 29 08:38:13 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
RIGHTS UNDER DECLARATION OF PERMITTED USE RESTRICTIVE
COVENANTS**

THIS ASSIGNMENT AND ASSUMPTION OF RIGHTS UNDER DECLARATION OF PERMITTED USE RESTRICTIVE COVENANTS (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**"), which REA Affected Real Property is depicted on the site plan attached hereto as Exhibit A.

WHEREAS, Shadow Lake Towne Center, LLC, a Delaware limited liability company ("Seller") is the current owner of a significant portion of the REA Affected Real Property (the "Seller Property"), which Seller Property is more particularly described on Exhibit B attached hereto and incorporated herein by this reference.

WHEREAS, Assignor entered into a certain Declaration of Permitted Use Restrictive Covenants dated April 19, 2010 (the "**Declaration**") with Custard Cats, LLC, a Kansas limited liability company, its successors and/or assigns ("**Custard Cats**"), which Declaration was recorded April 29, 2010 as Instrument No. 2010-10649 in the Sarpy County, Nebraska Register of Deeds.

WHEREAS, the Declaration placed certain restrictions on a portion of the REA Affected Real Property that was owned by Custard Cats and which is more particularly described on attached Exhibit C (the "**Custard Cats Property**"), which restrictions were intended to benefit the remaining portion of the REA Affected Real Property, including without limitation the Seller Property, as evidenced by the attachment and incorporation of the Site Plan of the Shopping Center as an Exhibit to the Declaration.

WHEREAS, concurrently with the execution and delivery of this Agreement, Assignee has acquired ownership of the Seller Property.

WHEREAS, concurrently with the execution and delivery of this Agreement, Assignor has assigned all of its rights, title and interests as Developer under the ECR to Assignee and Seller has assigned all of its rights, title and interests as a property owner of the REA Affected Real Property to Assignee.

NOW, THEREFORE, 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 Declaration as the same benefits the Seller Property. Unless otherwise defined herein, all capitalized terms used in this Agreement shall have the same meanings as is given to such terms in the Declaration. The parties further agree as follows:

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

2. Assignee does hereby accept the foregoing assignment and assumes all of the agreements and obligations of Assignor and Developer under the Declaration accruing from and after the Effective Date and agrees to be bound by all of the terms and conditions of the Declaration.

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. Assignor hereby covenants that it 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, Assignors 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: Me
Name: Michael L. Ebert
Its: Manager

ACKNOWLEDGMENT

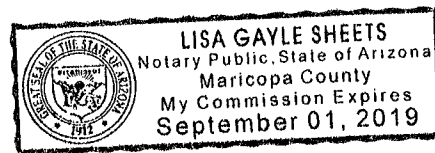
STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

Now on this 28th 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
Lisa Gayle Sheets Notary Public
(Print Name)

My Commission Expires: 9-1-2019



ASSIGNEE:

PPG Shadow Real Estate LLC
a Delaware limited liability company

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

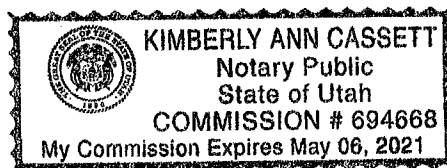
COUNTY OF SUMMIT)
)SS:
STATE OF UTAH)

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 Chief Operating Officer 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
Print Name: *Kimberly A. Cassett*

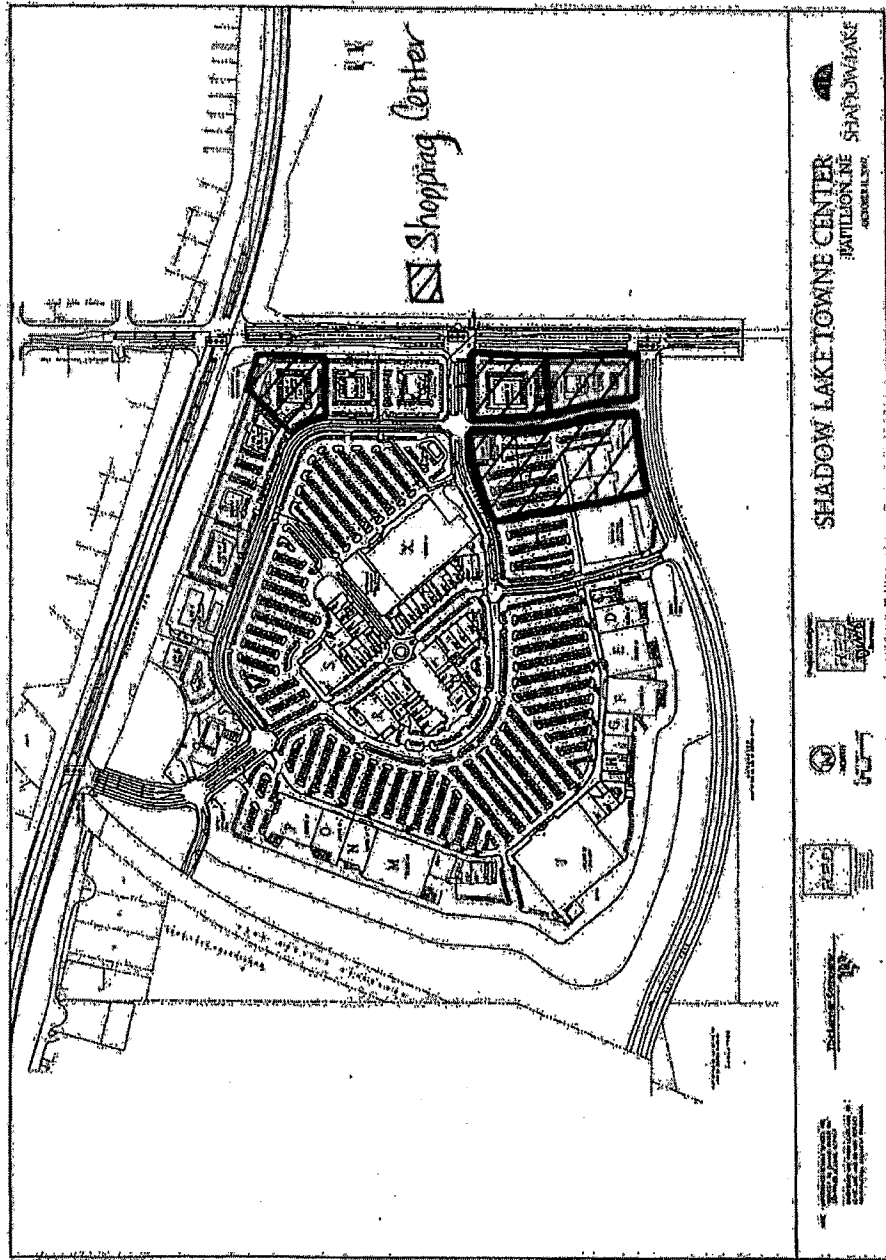
My Commission expires: *5-6-2021*



[PPG Shadow Real Estate LLC ASSIGNMENT AND ASSUMPTION OF
RIGHTS UNDER DECLARATION OF PERMITTED USE RESTRICTIVE COVENANTS – CUSTARD CATS]

EXHIBIT A

REA AFFECTED REAL PROPERTY
SITE PLAN OF SHADOW LAKE SHOPPING CENTER



Ex. A-1

EXHIBIT B

Legal Description of Seller 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.

EXHIBIT C

LEGAL DESCRIPTION OF CUSTARD CATS PROPERTY

Lot Fifteen (15), Shadow Lake Towne Center, an Addition to the City of Papillion, in Sarpy County, Nebraska,

Ex. C-1