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SUBMITTED <u>NEBRASKA TITLE COMPANY-ON</u>

FILED SARPY CO. NE.
INSTRUMENT NUMBER

2018-20358

2018 Aug 29 08:38:20 AM

Sheryl J. Roushney

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

SUPPLEMENTAL AGREEMENT
(Pad 2)

THIS SUPPLEMENTAL AGREEMENT (hereinafter the "**Supplemental Agreement**") made as of the 21 day of August 2018, by and between **PPG SHADOW REAL ESTATE LLC**, a Delaware limited liability company ("**Developer**"), and **PAPILLION DEVELOPMENT LAND, LLC**, a Nebraska limited liability company ("**Owner**").

WHEREAS, Developer purchased and is the owner of certain real property and improvements described in Exhibit A attached hereto (hereafter, the "**Developer Property**") and located between 72nd Street and Highway 370, lying and being situated in the City of Papillion, County of Sarpy, State of Nebraska, which Developer Property, along with certain other adjacent parcels are commonly referred to as Shadow Lake Towne Center (the "**Shopping Center**"); and

WHEREAS, Owner is the fee simple owner of that certain parcel of land described in **Exhibit B** attached hereto (hereafter, the "**Property**") located within the Shopping Center; and

WHEREAS, the parties hereto desire to set forth certain covenants and agreements pertaining to the Property as set forth below.

NOW, THEREFORE, in consideration of the premises and for good and sufficient consideration passing from each of the parties hereto to the other, the receipt and sufficiency of which is hereby acknowledged by each party, and in consideration of the mutual promises contained herein to be performed by the parties hereto, and each party intending to be legally bound hereby, it is agreed as follows:

1. **ECR Defined.** The Developer Property and the Property are subject to that certain Declaration of Reciprocal Easements, Covenants and Restrictions dated June 16, 2006 by and between Papillion Development LLC ("**Original Developer**") and Hy-Vee, Inc. recorded June 20, 2006, as Instrument No. 2006 – 20802, as amended by that certain First Amendment to Declaration of Reciprocal Easements, Covenants and Restrictions, dated December 21, 2011, recorded March 21, 2012 as Instrument No. 2012-08360, as may be assigned and/or amended from time to time (the "**ECR**"). In connection with Developer's purchase of the Developer Property, Original Developer assigned all of its rights as developer under the ECR to Developer. All capitalized terms used herein shall have the same definition as such are defined and used in the ECR. The term of this Supplemental Agreement shall continue through and including the date of expiration or earlier termination of the ECR.

2. **Affirmative Agreements.** Owner and Developer hereby agree to the following:

2.1. **Lot Owner's Responsibility.** Owner shall operate, maintain, secure, manage, insure, repair and replace the areas on the Property as described in Section 5.2 of the ECR, all in accordance with the standards set forth in the ECR (the "**Property Maintenance Obligations**") and shall pay all costs and expenses incurred in connection therewith.

2.2. **Maintenance of Common Areas on Property and CAM Charges.** Notwithstanding Section 5.1 of the ECR, Developer shall have no obligations relative to any Common Area located within or on the Property until such time as an occupant of the Property opens for business to the public ("**Opening Event**"). Until the occurrence of an Opening Event, Owner shall be responsible to operate, maintain and keep in good repair and replace all of the Common Area within and on the Property in accordance with the terms of Section 5.1 of the ECR. Promptly upon an Opening Event, Developer shall resume all operation, maintenance, repair and replacement obligations relative to the Common Areas within or on the Property in accordance with the terms of Section 5.1 of the ECR. Immediately upon the occurrence of an Opening Event, Owner shall pay Developer (as defined in the ECR) the following amount toward the cost of operating, maintaining, securing, managing, insuring, repairing and replacing the Common Area in the Shopping Center (excluding those Common Areas for which Owner is responsible pursuant to Section 5.2 of the ECR): a flat charge equal to the Annual CAM Fee (in lieu of, and not in addition to, Owner's responsibility for the Lot Assessment (as defined in Section 5.5 of the ECR). The Annual CAM Fee shall be an amount equal to \$12,000, using calendar year 2018 as the Base Year and increasing by three percent (3%) on January 1st of each calendar year thereafter. For illustration purposes, if an Opening Event occurs in calendar year 2020, the initial Annual CAM Fee for 2020 would be \$12,730.80 (\$12,000 plus 3%=\$12,360 plus 3%=\$12,730.80. Thereafter, the Annual CAM Fee shall be due and payable in advance in a lump sum on January 1 of each year, except that such charge for the year in which an Opening Event occurs shall be paid in

advance on the first day of the month immediately following the Opening Event (prorated from the opening date through the end of such year).

3. Compliance with Design Criteria. The parties acknowledge that development of the Property is subject to the provisions of the ECR, including compliance with the Design Criteria. Notwithstanding anything herein to the contrary in the ECR, Developer covenants and agrees that for a period of three (3) years commencing on the date of this Agreement, Developer shall not modify the Design Criteria as the same relates to the Property.

4. Approval of Plans and Specs. The parties acknowledge that pursuant to Section 4.1 of the ECR, Owner is required to submit plans and specifications for the proposed improvements to Developer for written approval. Notwithstanding anything in Section 4.1 of the ECR to the contrary, Developer agrees that within ten (10) days following receipt of submission of the plans and specifications (i.e., site layout, exterior building materials and colors, landscaping and parking layouts), for development of the Property, Developer shall either approve or disapprove the same, which approval shall not be unreasonably withheld or conditioned provided that the plans and specifications complies with the Design Criteria and otherwise complies with all applicable governmental regulations. In the event that Developer disapproves the plans and specifications, Developer shall specify in detail the reason(s) for such disapproval, and in such case, Owner shall resubmit revised plans and specifications addressing Developer's objections. The parties hereto agree that if Developer fails to respond within the ten (10) day period set forth herein, the Owner's plans and specifications shall be deemed approved and Owner may proceed with the development of the Property in accordance with such plans and specifications.

5. Binding Effect. This Supplemental Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective legal representatives, grantees, successors and assigns. All of the covenants, conditions, restrictions, terms and provisions of this Supplemental Agreement are and shall be deemed to be covenants running with the property described herein and shall burden and benefit such property as described herein and, with respect to such property, each owner, the holders or owners of any mortgage, indenture, deed of trust or deed to secure debt encumbering any of such property, any Owner at a foreclosure sale, any other person or entity acquiring any right, title or interest in such property and their respective heirs, executors, administrators, representatives, successors and assigns.

6. Governing Law. The parties hereby agree that the execution and performance of all of the terms and provisions of this Supplemental Agreement shall be controlled and governed by the laws of the State of Nebraska.

7. Attorneys' Fees, Etc. If either party hereto be made or becomes a party to any litigation commenced by or against the other party involving the enforcement of any of the rights and remedies of such party, or arising on account of the default of the other party in the performance of any of the other party's obligations hereunder, then the prevailing party in any such litigation shall also receive from the other party all costs and reasonable attorney's fees incurred by such party in such litigation.

8. Survival. The provisions of this Agreement shall survive the Closing and the transfer of the Shopping Center Developer.

9. Severability. In the event any term or provision of this Supplemental Agreement is determined by an appropriate judicial authority to be illegal, invalid or unenforceable for any reason, such illegality, invalidity or unenforceability shall not affect the remaining provisions of this Supplemental Agreement, and this Supplemental Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been inserted herein.

10. Headings. The section or paragraph headings shown in this Supplemental Agreement are for convenience of reference only and shall not be held to explain, modify, simplify or aid in the interpretation, construction or meaning of the provisions of this Supplemental Agreement.

11. Complete Agreement; Modification. This Supplemental Agreement, together with the ECR, contains the entire agreement between the parties relating to the subject matter hereof. Any prior negotiations, correspondence, memorandum or other agreements are superceded in total by this Supplemental Agreement and the ECR, and the respective exhibits attached thereto. This Supplemental Agreement may be amended only by a written agreement signed by the parties hereto, or their respective legal representatives, grantees, successors or assigns. Each party may consider, approve or disapprove any proposed amendment to this Supplemental Agreement in its sole and absolute discretion without regard to reasonableness or timeliness.

12. Confidentiality. Owner agrees to treat this Supplemental Agreement as confidential and proprietary. The parties agree not to disclose any such information and will require that their employees and agents not disclose such information without the prior written consent of the other party.

13. Notices. Any notice to be given or to be served upon any party hereto in connection with this Supplemental Agreement must be in writing and shall be given by certified or registered mail, or may be delivered by courier delivery, overnight delivery by a reputable overnight delivery service, or by facsimile or by all or any combination of the above. Any such notice shall be considered given and received on the earliest date of: such hand or courier delivery; the next business day after deposit with overnight courier for next business day delivery (if actually received); or upon transmission on a business day by facsimile (provided that confirmation of transmission is received by the sender), or five (5) business days following deposit in the United States mail in certified form, return receipt requested. Time periods in which to respond to such notice shall commence on the date of hand or courier delivery, one business day after deposit with an overnight courier (if actually delivered by such carrier), or on a business day by facsimile but confirmation must be received within five business days, or on the date received following deposit in the United States mail as provided above. Any notice from counsel for either party shall be deemed an official notice from such party. Any party hereto may at any time, by giving five (5) days' written notice to the other party hereto, designate any other address in substitution of any of the foregoing addresses to which such notice shall be

given and other parties to whom copies of all notices hereunder shall be sent Such notice shall be given the parties hereto at the following addresses:

To Developer: c/o PREP Property Group LLC
Attn: Mark Wilhoite, Chief Development Officer
5905 E. Galbraith Road, Suite 1000
Cincinnati, OH 45236
Facsimile: (513) 828-6020

With copy to: PREP Property Group LLC
5905 E. Galbraith Road, Suite 1000
Cincinnati, Ohio 45236
Attn: Vivian Knight, Legal Services
Facsimile: (513) 828-6020

To Owner: c/o RED Development
Attn: Director of Legal
One E. Washington St.
Suite 300
Phoenix, AZ 85004
Facsimile: (480) 947 7997


With copy to: c/o RED Development
Attn: Director of Legal
7500 College Blvd., Suite 750
Overland Park, KS 66210
Facsimile: (913) 214 4639

14. Counterparts. This Supplemental Agreement may be executed in counterparts, each of which will be an original, but such counterparts taken together shall constitute one and the same instrument.

15. Exhibits. The following exhibits are incorporated in this Supplemental Agreement as if set out in full.

EXHIBIT A LEGAL DESCRIPTION OF THE DEVELOPER PROPERTY
EXHIBIT B LEGAL DESCRIPTION OF THE PROPERTY

[Remainder of Page Intentionally Left Blank]

 **KIMBERLY ANN CASSETT**
Notary Public
State of Utah
COMMISSION # 694668
My Commission Expires May 06, 2021

OWNER:

**PAPILLION DEVELOPMENT LAND,
LLC, a Nebraska limited liability
company**

By: RED Consolidated Holdings, LLC, a
Delaware limited liability company, its
Manager

By: Michael L. Ebert
Michael L. Ebert, President

Date of Execution: Aug 20, 2018

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, President of Red Consolidated Holdings, LLC, which entity is the Manager of RED Papillion, L.L.C., a Missouri limited liability company, which entity is the Manager of Papillion Development Land, LLC, a Nebraska limited liability company, who is personally known to me to be the same person who executed in such capacity the within instrument on behalf of said entity, and who duly acknowledged the execution of the same to be the act and deed of said entity.

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

My Commission Expires: 9-1-2019



[Signature Page to Supplemental Agreement (Pad 2)]

EXHIBIT A

THE DEVELOPER 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 B

THE PROPERTY

Lot Two (2), Shadow Lake Towne Center Replat 4, an Addition to the City of Papillion, in Sarpy County, Nebraska, according to the Plat recorded December 12, 2011 as Inst. No. 2011-31456 in the records of Sarpy County, Nebraska.

Ex. B-1