

FILED SARPY CO. NE.
INSTRUMENT NUMBER

2013-30783

2013 Sep 30 02:24:20 PM

Lloyd J. Dowling

REGISTER OF DEEDS



COUNTER JS
VERIFY JS
FEES \$ 106.00
CHG SFILE
SUBMITTED PROFESSIONAL TITLE COMPANY

Above Space Reserved for Recorder's Use

This Instrument Prepared by and
When Recorded Return To:

Rich Rosenblatt
Kutak Rock LLP
1650 Farnam Street
OMAHA, NE 68102-2186

PAPILLION, NE (SAM'S)
STORE NO. 6181

**SECOND AMENDMENT TO DECLARATION OF RECIPROCAL
EASEMENTS, COVENANTS AND RESTRICTIONS**

THIS SECOND AMENDMENT TO DECLARATION OF RECIPROCAL EASEMENTS, COVENANTS AND RESTRICTIONS (this "Amendment") is entered into this 30th day of September, 2013 by and between **COLE WG PAPILLION NE, LLC**, a Nebraska Delaware limited liability ("Cole"), and **PAPILLION DEVELOPMENT SETTLER'S CREEK, LLC**, a Nebraska limited liability company ("Developer").

PRELIMINARY STATEMENTS

Developer executed and recorded that certain Declaration of Reciprocal Easements, Covenants and Restrictions dated as of July 28, 2008, and recorded August 14, 2008, as Instrument No. 2008-23219 in the office of the Register of Deeds of Sarpy County, Nebraska (the "**Original ECR**"). Developer and Cole's predecessor in title, Village Development – 72nd & Cornhusker, LLC, a Nebraska limited liability company ("**Village Development**") executed and recorded that certain Amendment to Declaration of Reciprocal Easements, Covenants and

Restrictions dated as of October 1, 2009, and recorded October 8, 2009, as Document No. 2009-32618 in the office of the Register of Deeds of Sarpy County, Nebraska (the "**First Amendment**"). As used in this Amendment, the term "**ECR**" shall collectively refer to the Original ECR, as amended by the First Amendment. Capitalized terms used herein but not defined herein shall have the meanings assigned to them in the ECR.

Developer is the fee owner of certain real property legally described as Lots 1, 2, 3, 4, 5, 6 and Outlot A of Settlers Creek Replat 6, a subdivision in Sarpy County, Nebraska (collectively, the "**Developer Tract**").

Cole is the fee owner of certain real property legally described as Lot 2, Settlers Creek Replat 2, a subdivision in Sarpy County, Nebraska (the "**Cole Tract**").

Developer has leased, as lessor, to Sam's Real Estate Business Trust, a Delaware statutory trust ("**Sam's**"), as lessee, (a) a portion of the Developer Tract legally described as Lot 1 of Settlers Creek Replat 6, a subdivision in Sarpy County, Nebraska (the "**Store Tract**") and (b) a portion of the Developer Tract legally described as Lot 6 of Settlers Creek Replat 6, a subdivision in Sarpy County, Nebraska (the "**Gas Tract**" and, together with the Store Tract, collectively, the "**Sam's Tract**") pursuant to that certain Ground Lease (the "**Lease**") executed by and between Developer and Sam's dated May 1, 2013. Developer and Sam's have also entered into that certain Development Agreement ("**Development Agreement**") executed by and between Developer and Sam's dated May 1, 2013. The parties desire to amend the ECR as provided in this Amendment for the benefit of Sam's and the Sam's Tract. **THE PARTIES INTEND THAT THIS AMENDMENT WILL BE INDEXED AGAINST ALL OF THE REAL PROPERTIES DESCRIBED IN EXHIBIT A (COLLECTIVELY, THE "SHOPPING CENTER").**

NOW, THEREFORE, for and in consideration of the premises, easements, covenants, conditions, restrictions and encumbrances contained herein, the sufficiency of which is hereby acknowledged, the parties and signatories hereto do hereby agree as follows:

AGREEMENT

1. **Site Plan.** Exhibit B to the ECR is hereby deleted and replaced in its entirety with Exhibit B attached to this Amendment (the "Site Plan"). Developer has constructed certain parking area improvements and a truck turning area on the Sam's Tract depicted as the "Cross Parking Area" and "Hobby Lobby-Protected Area/Truck Turn-Around Area," respectively, in the Site Plan. Sam's will not obstruct the non-exclusive use of the Cross Parking Area by other tenants and occupants of the Developer Tract together with Sam's. Sam's will not obstruct the non-exclusive use of the Hobby Lobby-Protected Area/Truck Turn-Around Area by other tenants and occupants of the Developer Tract, together with Sam's, until such time as Sam's commences construction of any retail facility upon the Sam's Tract. Upon Sam's commencement of construction of any retail facility upon the Sam's Tract, (a) Sam's may completely shut off access to the Hobby Lobby-Protected Area/Truck Turn-Around Area for a period of 18 months from and after the date of construction commencement and (b) Sam's may thereafter exclusively use that portion of the Hobby Lobby-Protected Area/Truck Turn-Around Area containing Sam's truck wells and dock loading areas during the term of the Lease, provided, however, that upon Sam's completion of such construction, Sam's will not obstruct the non-exclusive use of the remainder of the Hobby Lobby-Protected Area/Truck Turn-Around Area or any truck access drive situated on the Sam's Tract by other tenants and occupants of the Developer Tract together with Sam's.

2. Design. Developer hereby approves of the Site Plan, the Floor Area, the utilities to be constructed and maintained as described in the Development Agreement and the proposed improvements which Sam's may build upon the Sam's Tract, as set forth in plans previously provided to Developer. No other approvals are needed pursuant to the ECR in order for Sam's to lawfully construct and operate on the Sam's Tract. The Sam's Tract is hereby released from the Required Minimum Parking set forth in Section 4.3.3 and any other parking requirements set forth in the ECR, but the parking on the Sam's Tract shall comply with all laws, rules, regulations and codes.

3. Outside Sales Area. Developer hereby approves Sam's use of any portion of the Sam's Tract, other than the Cross Parking Area depicted in the Site Plan and any truck access drive situated on the Sam's Tract, as an "Outside Sales Area", subject to the terms of the Lease.

4. Signage. Sam's may install and maintain, during the effectiveness of the Lease, sign panels of at least 40 square feet (as generally depicted in Exhibit C attached hereto, which panel Sam's may change from time to time) on each side of the two (2) "Pylon Signs" identified in the Site Plan, in the highest positions on such Pylon Signs. Developer's tenant, Hobby Lobby Stores, Inc. ("Hobby Lobby"), may install and maintain, during the effectiveness of its lease, sign panels of at least 20 square feet (as generally depicted in Exhibit C attached hereto, which panel Hobby Lobby may change from time to time) on each side of the two (2) "Pylon Signs" identified in the Site Plan.

5. Common Area Maintenance. Notwithstanding anything in Sections 5.1, 5.2 and 5.6 to the ECR to the contrary, during the term of the Lease, Sam's shall maintain the entire Sam's Tract (i) as required pursuant to Section 5.1 of the ECR, in lieu of Developer and as if Sam's were the Developer for the purposes thereof, and (ii) as required by the Lot Owner pursuant to Section 5.2 of the ECR, in lieu of the Lot Owner and as if Sam's were the Lot Owner for the purposes thereof, and, except as set forth below, in the Lease and the Development Agreement, shall have no duty to contribute to the costs of maintaining the Common Areas. In addition, during the term of the Lease, Sam's shall (a) pay one hundred percent (100%) of the reasonable cost of the maintenance, repair and replacement of the Storm Basin located upon the Store Tract, which will be maintained at all times by Developer, (b) contribute its proportionate share towards the reasonable cost of the maintenance, repair and replacement of the Storm Basin on the north side of the Shopping Center, which share shall be expressed as a percentage, computed from time to time, by dividing the total land area of the Sam's Tract by the total land area of the Shopping Center that uses and drains into the Storm Basin on the north side of the Shopping Center, (c) contribute its proportionate share towards the reasonable cost of the maintenance, repair and replacement of the "Ring Road" identified on the Site Plan, which share shall be expressed as a percentage, computed from time to time, by dividing the total land area of the Sam's Tract by the total land area of the Shopping Center and (d) contribute its proportionate share towards the reasonable cost of the maintenance, repair and replacement of any pylon signs permitted to be used by Sam's, such proportionate share to be determined based upon relative sign panel square footage. All such costs payable by Sam's shall be payable in the manner as set forth in Section 5.5 of the ECR. No Party or its third-party contractor may enter the Sam's Tract to maintain any portion of the Sam's Tract until such Party has provided Sam's with the notice and cure period set forth in Section 5.3 of the ECR.

6. Insurance. Notwithstanding anything to the contrary contained in Section 6.1 of the ECR, so long as the net worth of Sam's shall exceed \$100,000,000.00, and so long as Sam's is the owner or lessee of the Sam's Tract, Sam's shall have the right to retain (in whole or in part) the financial risk for any claim. If Sam's elects to self-insure, Sam's in its capacity as

insurer shall be treated in the same manner as an independent third-party insurer would be treated, and such election shall not in any event diminish the rights and privileges to which any Party is otherwise entitled under the terms of the ECR if there was a third-party insurer, including without limitation, any release from liability as set forth in the ECR. Notwithstanding the foregoing, in the event that Sam's assigns the Lease or subleases the Sam's Tract or any portion thereof during the term of the Lease, any assignee or sublessee must comply with Section 6 of the ECR.

7. Use. Notwithstanding anything in the ECR to the contrary, Sam's may use (a) the Store Tract as a typical Sam's Club including all ancillary uses such as pharmacy, tire and battery sales and other items typically sold in a Sam's Club and (b) the Gas Tract as a typical Sam's gas facility.

8. Rules and Regulations. Notwithstanding the Rules and Regulations attached to the ECR as Exhibit C: (a) Sam's shall not be liable for any costs associated with security hired by anyone other than Sam's; (b) Developer hereby approves of the location of the Staging Area on the Sam's Tract as shown on the Site Plan and any other portions of the Sam's Tract, which Staging Areas may only be utilized for one consecutive year and which shall not at any time block the Ring Road or any accessways to the Shopping Center; and (c) Sam's may erect and maintain up to two (2) temporary signs, as typically used by a Sam's Club, on the Sam's Tract for a period not to exceed ninety (90) days without Developer's prior approval.

9. Sam's Exclusive Use Restriction. No portion of the Shopping Center, other than the Sam's Tract, shall be leased or occupied by or conveyed to any other party for use (a) as a wholesale club operation similar to that of a "Sam's Club" as owned and operated by Wal-Mart, as a so-called 'dollar store' or overstock/closeout retailer such as Big Lots, or for the sale of batteries, tires or other automotive products, so long as a Sam's Club is operating on the Sam's Tract (subject to the exceptions below), or (b) as a gas station or automobile service station, so long as a gas station is operating on the Sam's Tract (subject to the exceptions below). "Gas station" as used herein shall mean any retail store or operation of any size dispensing motor fuels or fuel additives by pump, container, or any future method of dispensing and introducing fuel into automobiles, trucks, or other transportation devices whether or not such activities are primary to such store or operation. Notwithstanding the provisions above which may act to limit the effectiveness of the use restrictions above during periods when Sam's is not operating its businesses, the above use restrictions shall be effective (x) for a period of three years after the recording of this Amendment notwithstanding that Sam's has not yet constructed or opened its business, (y) during any period of construction on any portion of the Sam's Tract not to exceed two years and (z) during any period of time when Sam's is precluded from operating its business on any portion of the Sam's Tract due to events beyond Sam's reasonable control; provided, however if Sam's commences construction on the Sam's Tract and then ceases construction or commences operations on the Sam's Tract and then ceases operations the use restrictions above shall cease to be effective on the date three (3) years following the date construction or operations, as the case may be, ceased. Notwithstanding the foregoing, the terms of this Section 9 shall not apply to the property legally described as Lot 2, Settlers Creek Replat 2, a subdivision in Sarpy County, Nebraska, or the owner or occupant thereof.

10. Term of Amendment. This Amendment shall no longer be in effect in the event that the Lease is terminated and Sam's is no longer a tenant at the Shopping Center.

11. Lot(s). Section 1.10 of the ECR is hereby deleted in its entirety and substituted with the following verbiage: "'Lot(s)" shall mean the Lots 1 through 6 and Outlot A of Settlers

Creek Replat 6, a subdivision in Sarpy County, Nebraska, and Lot 2, Settlers Creek Replat 2, a subdivision in Sarpy County, Nebraska, or any of them (as such Lots may be created, consolidated and/or otherwise reconfigured as provided in this Agreement.”

12. Full Force and Effect; Counterparts. To the extent not inconsistent herewith, all other terms and provisions of the ECR shall remain in full force and effect and are ratified by the parties hereto. This Amendment may be executed in counterparts, each of which when taken together shall constitute one entire agreement.

[Remainder of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first above written.

DEVELOPER:

Papillion Development Settlers Creek LLC, a
Nebraska limited liability company

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

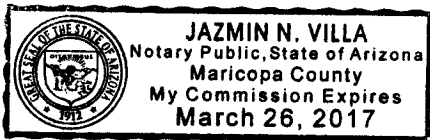
By: RED Consolidated Holdings, LLC,
a Delaware limited liability company, its
Sole Member

By: *Meer*
Michael L. Ebert, Vice President

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The forgoing instrument was acknowledged before me this 10 day of September, 2013 by Michael L. Ebert, Vice President of RED Consolidated Holdings, LLC, a Delaware limited liability company, Sole Member of RED Papillion Settlers Creek, LLC, a Missouri limited liability company, Manager of Papillion Development Settlers Creek, LLC, a Nebraska limited liability company, on behalf of such limited liability company.

 Jazmin N. Villa
Notary Public




IN WITNESS WHEREOF, the parties have executed this Amendment the day and year first above written.

COLE:

COLE WG PAPIILLION NE, LLC, a Nebraska limited liability company

By: Cole REIT Advisors III, a Delaware limited liability company, its Manager

By: 
Name: Todd J. Weiss
Title: SVP


STATE OF ARIZONA

COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me this 17th day of September, 2013 by Todd J. Weiss, Senior Vice Pres. of Cole REIT Advisors III, a Delaware limited liability company, the Manager of Cole WG Papillion NE, LLC, a Nebraska limited liability company, on behalf of that limited liability company.

(Seal and Expiration Date)

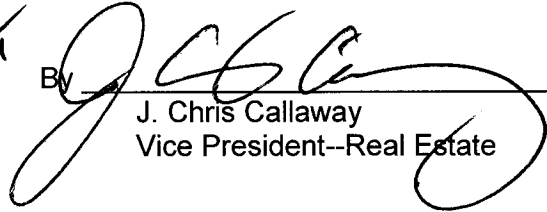



Notary Public

LESSEE'S CONSENT

The undersigned lessee hereby consents to the creation of the easements and other rights contained in the foregoing instrument respecting the parcels of land described therein and further agrees that such lessee's use and occupancy of such parcels shall be subject to the easements and other rights created by such instrument.

SAM'S REAL ESTATE BUSINESS TRUST, a
Delaware statutory trust

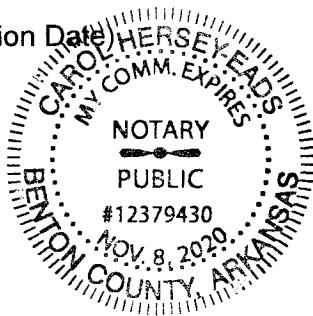
CRT By 
J. Chris Callaway
Vice President--Real Estate

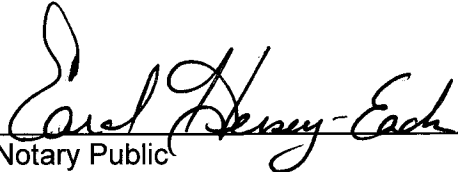
STATE OF ARKANSAS

COUNTY OF BENTON

The foregoing instrument was acknowledged before me this 27 day of Sept, 2013 by J. Chris Callaway, Vice President--Real Estate of Sam's Real Estate Business Trust a Delaware statutory trust, on behalf of the trust.

(Seal and Expiration Date)

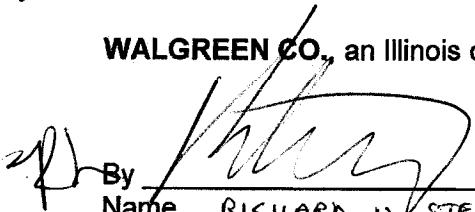



Notary Public

LESSEE'S CONSENT

The undersigned lessee hereby consents to the creation of the easements and other rights contained in the foregoing instrument respecting the parcels of land described therein and further agrees that such lessee's use and occupancy of such parcels shall be subject to the easements and other rights created by such instrument.

WALGREEN CO., an Illinois corporation

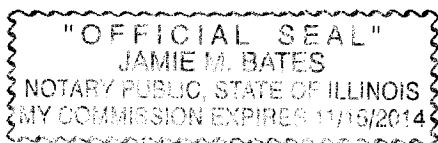
By 
Name RICHARD N. STEINER
Title DIRECTOR

STATE OF ILLINOIS

COUNTY OF LAKE

The foregoing instrument was acknowledged before me this 11th day of SEPTEMBER, 2013 by RICHARD N. STEINER, DIRECTOR of Walgreen Co., an Illinois corporation, on behalf of the corporation.

(Seal and Expiration Date)




Notary Public

LESSEE'S CONSENT

The undersigned lessee hereby consents to the creation of the easements and other rights contained in the foregoing instrument respecting the parcels of land described therein and further agrees that such lessee's use and occupancy of such parcels shall be subject to the easements and other rights created by such instrument.

HOBBY LOBBY STORES, INC., an Oklahoma corporation

By *Randy Childers*
Randy Childers, Vice President

Notices to Hobby Lobby shall be delivered to the address as set forth below:

7707 Southwest 44th Street
Oklahoma City, Oklahoma 73179
Attention: Real Estate Department

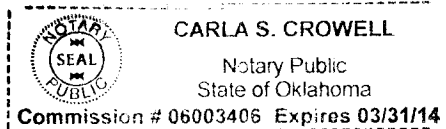
STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

The foregoing instrument was acknowledged before me this *9th* day of *September*, 2013 by Randy Childers, Vice President of Hobby Lobby Stores, Inc., an Oklahoma corporation, on behalf of the corporation.

(Seal and Expiration Date)

Carla S. Crowell
Notary Public



MORTGAGEE'S CONSENT

The undersigned mortgagee hereby consents to the creation of the easements and other rights created by the foregoing instrument respecting the parcels of land described therein and further agrees that the same shall not be terminated upon any foreclosure of any parcel of land encumbered by said instrument.

**FIRST NATIONAL BANK OF OMAHA, a
national banking association**

By Eric W. Musgaard
Name Eric W. Musgaard
Title Vice President

ACKNOWLEDGEMENT

STATE OF NEBRASKA)
) SS.
COUNTY OF DOUGLAS)

The forgoing instrument was acknowledged before me on this 5TH day of SEPTEMBER, 2013 by ERIC W. MUSGAARD, VICE PRESIDENT of First National Bank of Omaha, a national banking association, on behalf of the association.

(Seal and Expiration Date)



Tracy Morrison
Notary Public

MORTGAGEE'S CONSENT

The undersigned mortgagee hereby consents to the creation of the easements and other rights created by the foregoing instrument respecting the parcels of land described therein and further agrees that the same shall not be terminated upon any foreclosure of any parcel of land encumbered by said instrument.

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, IN TRUST FOR HOLDERS OF RBS COMMERCIAL FUNDING INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2010-MB1

By: Wells Fargo Bank National Association, solely in its capacity as Master Servicer, as authorized under that certain Pooling and Servicing Agreement dated as of April 22, 2010

By: Michael S. Benner
Name: Michael S. Benner
Title: Vice President

ACKNOWLEDGEMENT

STATE OF NORTH CAROLINA)
)
COUNTY OF MECKLENBURG)

On this 16th day of Sept., 2013, personally appeared before me Michael S. Benner, as Vice President of Wells Fargo Bank National Association, acting in its authorized capacity as Master Servicer for and on behalf of U.S. Bank National Association, as Trustee, in trust for Holders of RBS Commercial Funding Inc., Commercial Mortgage Pass-Through Certificates, Series 2010-MB1, signer and sealer of the foregoing instrument and acknowledged the same to be his/her free act and deed and the free act and deed of said entities, before me. He/she is personally known to me or has produced a driver's license as identification.

Janet Garner
Notary Public

My commission expires: 3-27-2015

(Notary Seal)

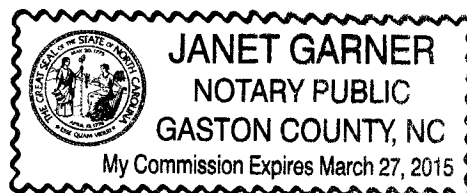


EXHIBIT A

LEGAL DESCRIPTION OF THE SHOPPING CENTER

Lots 1 through 6 and Outlot A of Settlers Creek Replat 6, a subdivision in Sarpy County, Nebraska,

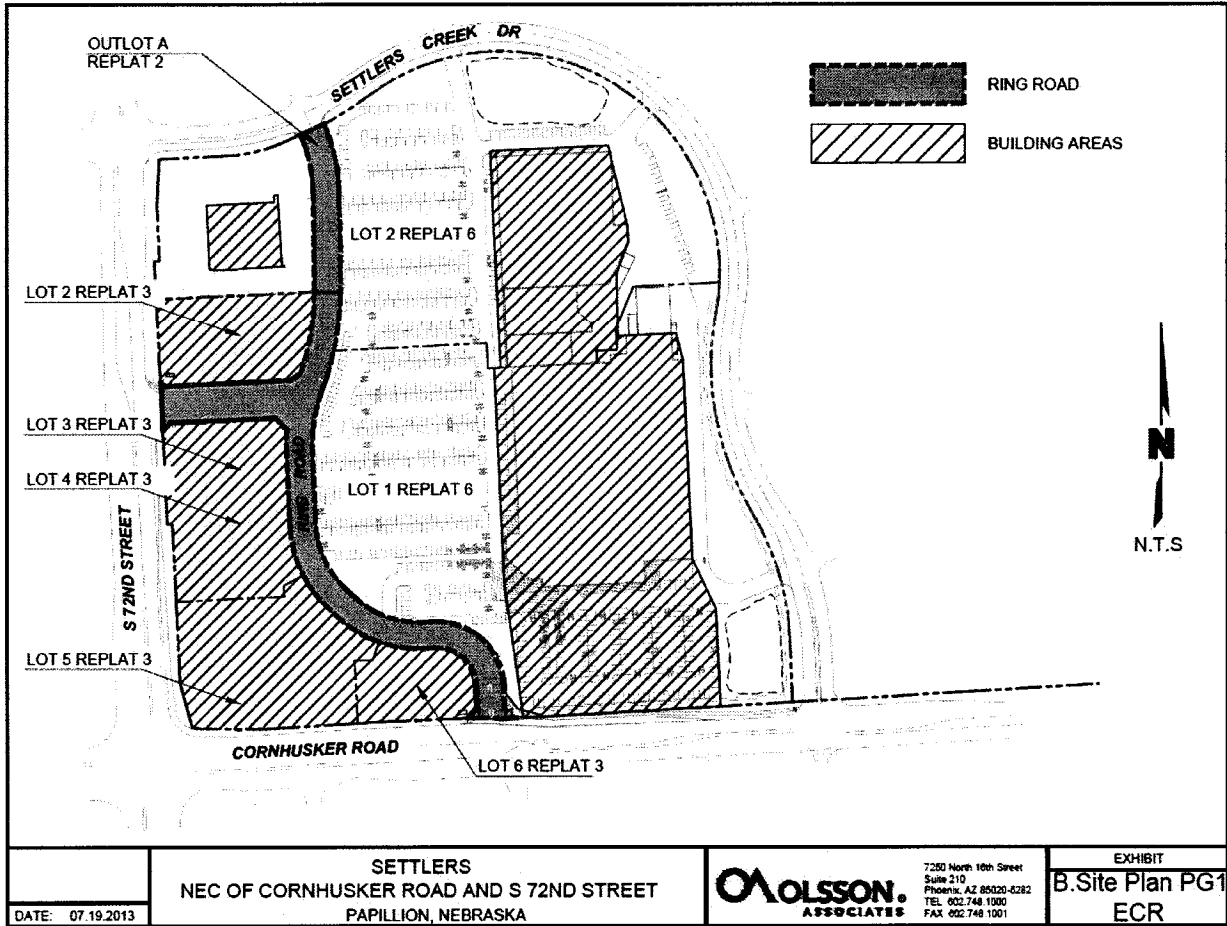
together with

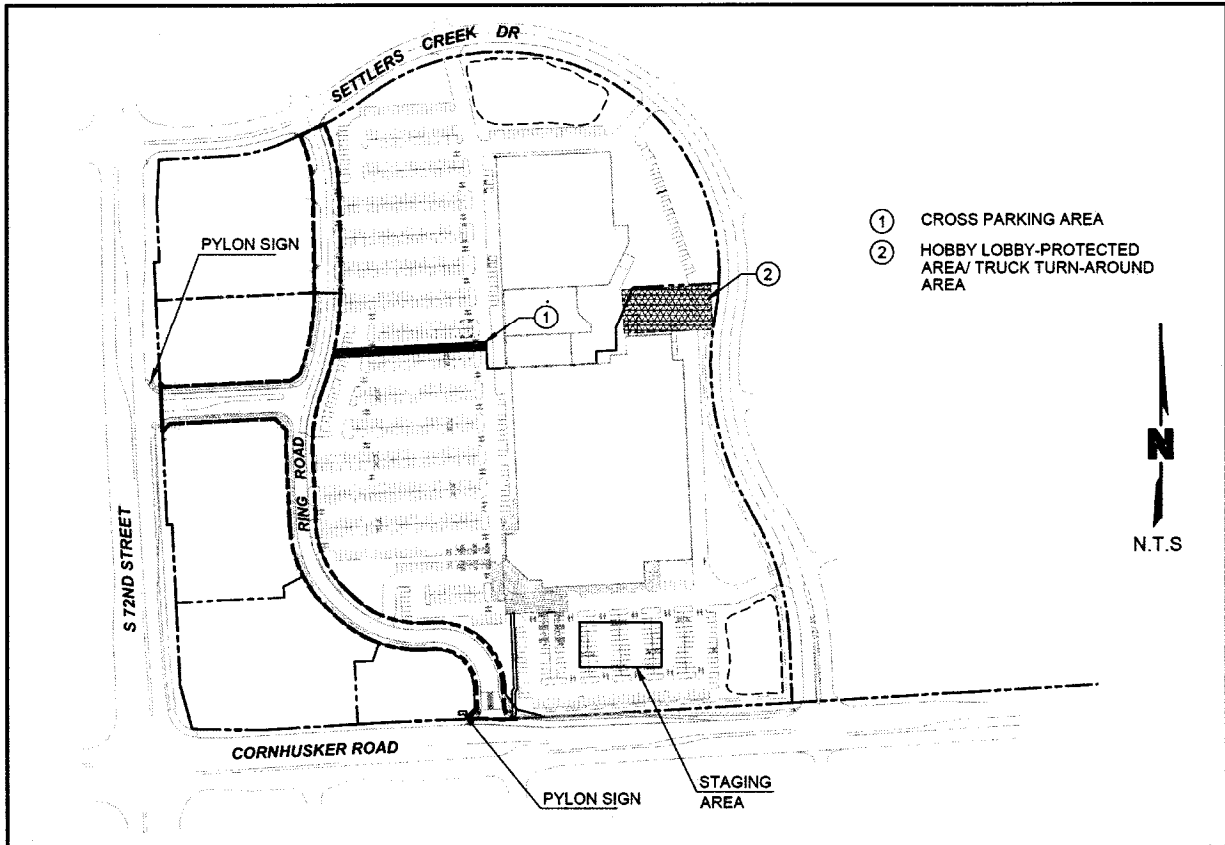
Lot 2, Settlers Creek Replat 2, a subdivision in Sarpy County, Nebraska.

EXHIBIT B

SITE PLAN

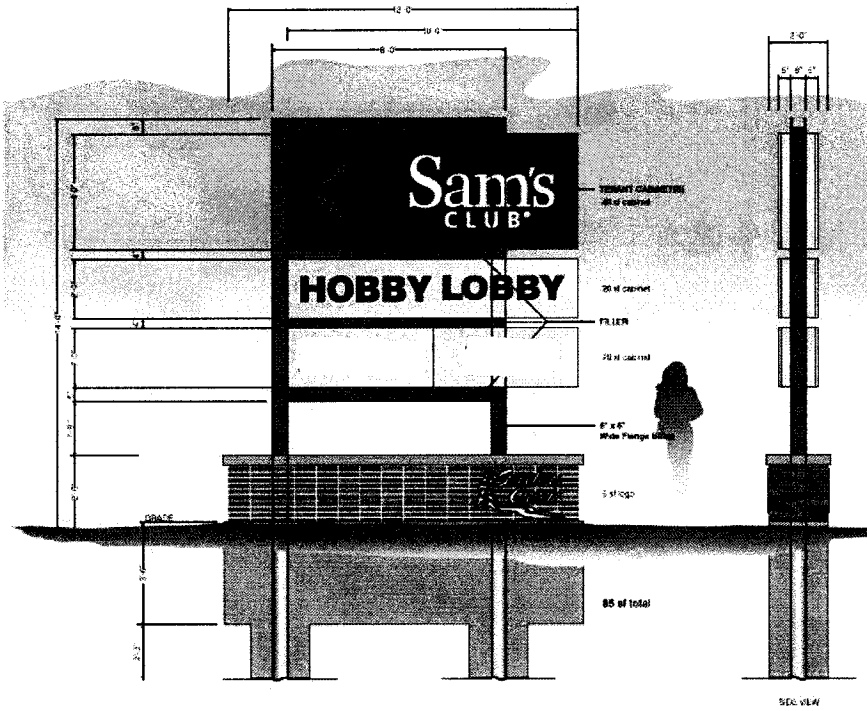
[See attachments.]





DATE: 07.19.2013	<p style="text-align: center;">SETTLERS NEC OF CORNHUSKER ROAD AND S 72ND STREET PAPILLION, NEBRASKA</p>	<p style="text-align: center;">MOLSSON ASSOCIATES</p> <p style="font-size: small;">7250 North 16th Street Suite 210 Phoenix, AZ 85020-5282 TEL: 602.748.1000 FAX: 602.748.1001</p>	<p style="text-align: center;">EXHIBIT B.Site Plan PG2 ECR</p>
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**EXHIBIT C
PYLON SIGNS**



MAIN ID PYLON SIGN
Scale 3/8" = 1'

Furnish and Install (2) two row DiF Main ID Pylon Sign(s)

TENANT CABINET(S)

5' deep cabinets built from aluminum with routed aluminum face painted MP 30135 BRUSHED ALUMINUM, push thru logos illuminated with WHITE LEDs. Colors lbr.
VECTOR LOGOS REQUIRED PRIOR TO FABRICATION.

W-BEAM(S)

6' x 6' Wide Flange Beam with aluminum flr (as shown) painted MP 25448 LMBRA GRLY METALIC

CENTER LOGO

FCD letters painted MP 30135 BRUSHED ALUMINUM, stud mounted to 1/2" x 1/2" slatpost

<p>Setiers Creek 67430 24960c</p>	<p>Rev: 1.7.13.15 1/13/15 1/13/15</p>	<p>Author: [blank] Designer: [blank] Checker: [blank]</p>	<p>Designer: [blank] Checker: [blank] Reviewer: [blank]</p>	<p>Client: [blank] Project: [blank] Location: [blank] Contract: [blank]</p>	<p>Project Manager: [blank] Sales: [blank] Production: [blank] Shipping: [blank]</p>	<p>Customer: [blank] Date: [blank] Time: [blank] Status: [blank]</p>	<p>SIGNWORKS INC. 4713 E. Street, Denver, NE 68117, 402-344-5447, 402-344-5750 fax, signworks@signworks.com A Family Tradition of Quality Signs Since 1935</p>
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