

FILED SARPY CO. NE.
INSTRUMENT NUMBER

2013-30785

2013 Sep 30 02:24:22 PM

Sheryl J. Dowling

REGISTER OF DEEDS

COUNTER JS
VERIFY JS
FEES \$ 58.00
CHG SFILE
SUBMITTED PROFESSIONAL TITLE COMPANY



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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

**FIRST AMENDMENT TO DECLARATION OF
RESTRICTIVE COVENANT(S)**

THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANT(S)
(this "Amendment") is entered into this 30th day of September, 2013 by and
among **COLE WG PAPILLION NE, LLC**, a Delaware limited liability company ("Cole"),
PAPILLION DEVELOPMENT SETTLER'S CREEK, LLC, a Nebraska limited liability company
("Developer"), **SAM'S REAL ESTATE BUSINESS TRUST**, a Delaware statutory trust
("Sam's") and Walgreen Co., an Illinois corporation ("**Walgreens**").

PRELIMINARY STATEMENTS

Cole, as successor to Village Development – 72nd Cornhusker, LLC, and Developer are parties to that certain Declaration of Restrictive Covenant(s) dated as of August 15, 2008, and recorded August 26, 2008, as Instrument No. 2008-24187 in the Real Property Records of Sarpy County, Nebraska (the "**Declaration**"). Capitalized terms used herein but not defined herein shall have the meanings assigned to them in the Declaration.

Developer is the fee owner of certain real property legally described as Lots 1 through 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 "Premises"). Cole, as lessor, leases the Premises to Walgreens, as lessee.

Developer has leased, as lessor, to 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. The parties desire to amend the Declaration as provided in this Amendment. **THE PARTIES INTEND THAT THIS AMENDMENT WILL BE INDEXED AGAINST ALL OF THE REAL PROPERTIES DESCRIBED IN EXHIBIT A.**

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. Assignment of Permitted Pharmacy Use. Pursuant to Section 1 of the Declaration, Cole, Developer, and Walgreens acknowledge and agree that the Owner's Exclusive Use, as defined in the Declaration, shall not apply to Sam's in its use or occupancy of the Sam's Tract, provided that (i) the primary purpose of Sam's use or occupancy of the Sam's Tract is not a drug store or prescription pharmacy such as CVS, Osco or Rite-Aid, and (ii) Sam's occupies at least 25,000 square feet of building improvements on the Sam's Tract, as contemplated by the exclusion set forth in Section 1 of the Declaration.

2. Full Force and Effect; Counterparts. To the extent not inconsistent herewith, all other terms and provisions of the Declaration 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: M. Ebert
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 PAPILLION NE, LLC, a Delaware 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 Sr. Vice Pres. of Cole REIT Advisors III, a Delaware limited liability company, the Manager of Cole WG Papillion NE, LLC, a Delaware limited liability company, on behalf of that limited liability company.

(Seal and Expiration Date)

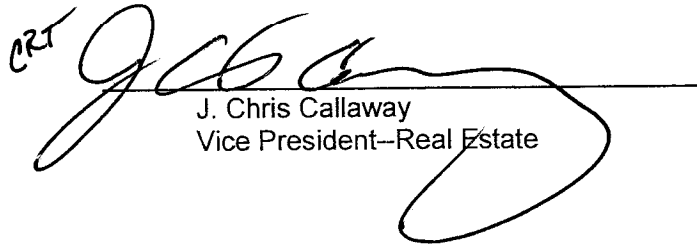



Notary Public

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

SAM'S:

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

CRS


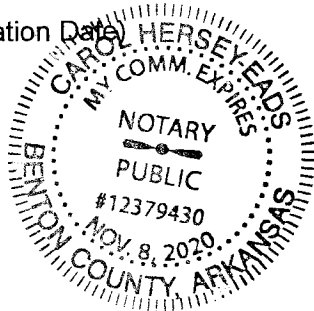
J. Chris Callaway
Vice President--Real Estate

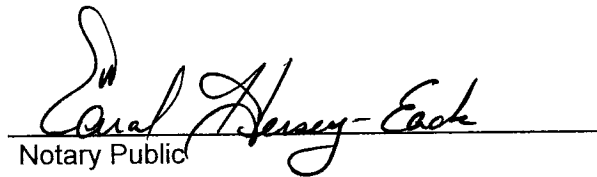
STATE OF ARKANSAS

COUNTY OF BENTON

Sept 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, on behalf of the trust.

(Seal and Expiration Date)



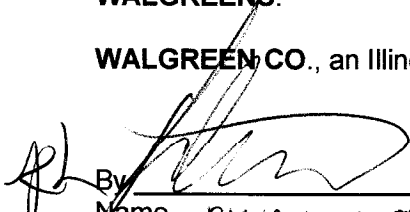


Notary Public

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

WALGREENS:

WALGREEN CO., an Illinois corporation

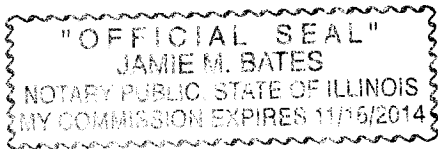
By 
Name RICHARD N. STEINER
Title DIRECTOR

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

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**

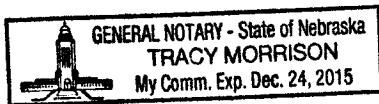
By Eric W. Musgjer
Name Eric W. Musgjer
Title Vice President

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. MUSGJER, 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: 2-22-2015

(Notary Seal)

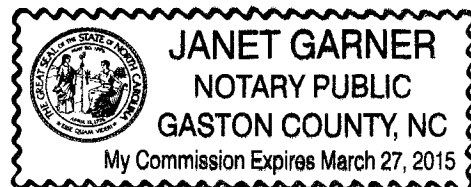


EXHIBIT A

LEGAL DESCRIPTION OF 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.