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SUBMITTED PROFESSIONAL TITLE COMPANY

NEBRASKA DOCUMENTARY  
STAMP TAX  
Sep 30, 2013  
\$ Ex023 By JS

FILED SARPY CO. NE.  
INSTRUMENT NUMBER

**2013-30788**

2013 Sep 30 02:24:25 PM

*Sheryl J. Dowling*

REGISTER OF DEEDS



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

### DECLARATION OF EASEMENT

**THIS DECLARATION OF EASEMENT** (this "Easement") is made and declared as of the Effective Date, as defined herein, by **PAPILLION DEVELOPMENT SETTLER'S CREEK, LLC**, a Nebraska limited liability company ("Grantor"). The "Effective Date" of this Easement is the date that the same is duly executed and acknowledged by Grantor.

### PRELIMINARY STATEMENTS

Grantor is the fee simple owner of the real property legally described in Exhibit A attached hereto (the "Grantor Property"). Sam's Real Estate Business Trust, a Delaware statutory trust ("Sam's") is the lessee of a portion of the Grantor Property (the "Premises") pursuant to that certain Ground Lease (the "Lease") executed by and between Grantor, as lessor, and Grantee, as lessee, on or about May 1, 2013. Grantor desires to declare, for the benefit of Grantor and its successors and assigns, the easements as set forth herein, subject to the terms and conditions hereinafter set forth.

## AGREEMENT

For and in consideration of \$10 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor hereby agrees as follows:

**Section 1. Grant of Easements.** Grantor hereby declares and creates the following non-exclusive easements, for the benefit of Grantor's successors and assigns, including Sam's and its agents during the term of the Lease, to enter upon those portions of the Grantor Property reasonably necessary to demolish, construct and maintain:

- (a) the "Utilities" depicted in Exhibit B attached hereto (the "Site Plan");
- (b) each "Sidewalk and Utility Relocate (Typ)" depicted in the Site Plan;
- (c) each "Driveway Connection", "Driveway Connection and Utility Relocate", "Driveway for Adjacent Lot", and "Median" depicted in the Site Plan;
- (d) a set of exit stairs upon that portion of the Grantor Property crossing the "Property Line" as depicted in Exhibit D attached hereto; and
- (e) the "Pavement Reconstruction Area" depicted in Exhibit C attached hereto. With respect to this Section 1 (e) Sam's will give 30 days prior written notice to Hobby Lobby Stores, Inc. ("**Hobby Lobby**") and to Grantor prior to the commencement of the Pavement Reconstruction Area depicted in Exhibit C (the "Hobby Lobby Work"), shall take reasonable steps to minimize restrictions upon and interruptions to Hobby Lobby's use of areas affected by the Hobby Lobby Work and shall provide a good-faith estimate of the duration of the Hobby Lobby Work with such notice, which duration shall not exceed 30 days.

**Section 2. Maintenance.** Any improvements constructed pursuant to this Easement shall be maintained, removed or replaced in accordance with that certain Declaration of Reciprocal Easements, Covenants and Restrictions dated July 28, 2008 and recorded in the Office of Recorder of Deeds of Sarpy County, Nebraska at Instrument number 2008-23219.

**Section 3. Binding Upon Property.** The easements, rights and obligations created pursuant to the terms of this Easement shall run with and be binding upon the Grantor Property, including future subdivisions and/or reconfigurations of such properties, shall be binding on all entities having or acquiring any right, title or interest in such properties and shall inure to the benefit of each owner, tenant, subtenant, employee or invitee thereof.

**Section 4. No Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Grantor Property to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no rights, privileges or immunities of any party hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained in this Easement.

**Section 5. Title.** Grantor confirms with its successors and assigns that Grantor is seized in fee of the Grantor Property, that it has the right to grant and convey the easement and rights granted herein.

**Section 6. Notice.** All notices, requests, demands and other communications required or permitted under this Easement must be in writing and will be deemed to have been delivered, received and effective: (i) on the date of service, if served by hand delivery on the party to whom notice is to be given; or (ii) on the date that is the next business day after deposit of the notice properly addressed to the party at the address shown below, if sent by overnight Federal Express or equivalent overnight delivery; or (iii) three days after deposit of the notice properly addressed, if sent by U.S. certified mail, return receipt requested. The addresses shown below are the places delivery of all notices. Each party may change the place or number for delivery of notice by notifying the other party.

If to Grantor: Papillion Development Settler's Creek, LLC  
c/o RED Development, LLC  
One East Washington  
Suite 300  
Phoenix, AZ 85004  
Attention: Director of Legal/Leasing

with copy to: Daspin & Aument, LLP  
227 West Monroe  
Suite 3500  
Chicago, IL 60606  
Attention: Nicole Rudman Brown, Esq.

**Section 7. Governing Law.** This Easement will be governed by and construed in accordance with the procedural and substantive laws of the State of Nebraska.

**Section 8. Severability.** If any provision of this Easement or the application of this Easement to any party to this Easement or any other person is held to be invalid, void or illegal, the remaining provisions will nonetheless remain in full force and effect and not be affected by the invalidity or illegality.

**Section 9. Authority.** Each person executing this Easement personally represents and warrants that he or she has the requisite authority to bind the party on whose behalf the Easement is being executed.

**Section 10. Binding Effect.** This Easement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

**Section 11. Amendments.** This Easement may be amended only by a recordable written instrument properly executed and notarized on behalf of Grantor or its successors and assigns.

**Section 12. Counterparts.** If executed by more than one party, this Easement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original, and all of which shall constitute collectively one agreement.

[Signature page(s) to follow.]

IN WITNESS WHEREOF, this Easement has been executed as of the Effective Date.

GRANTOR

Papillion Development Settlers Creek LLC, a  
Nebraska limited liability company

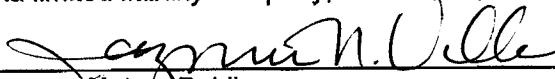
By: RED Papillion Settler's Creek, LLC  
a Missouri limited liability company, its Manager

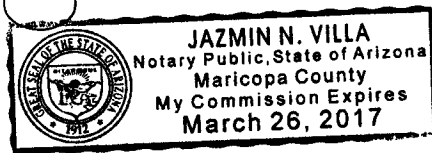
By: RED Consolidated Holdings, LLC,  
a Delaware limited liability company, its  
Sole Member

By:   
Michael L. Ebert, Vice President

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

The forgoing instrument was acknowledged before me this 4 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.

  
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**

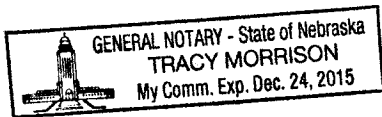
By Eric W. Musgjerd  
Name Eric W. Musgjerd  
Title Vice President

ACKNOWLEDGEMENT

STATE OF NEBRASKA     )  
                                  ) SS.  
COUNTY OF DOUGLAS    )

The forgoing instrument was acknowledged before me on this 5<sup>TH</sup> day of SEPTEMBER, 2013 by ERIC W. MUSGJERD, 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

**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:

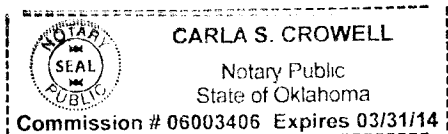
7707 Southwest 44<sup>th</sup> Street  
Oklahoma City, Oklahoma 73179  
Attention: Real Estate Department

STATE OF OKLAHOMA

COUNTY OF OKLAHOMA

The foregoing instrument was acknowledged before me this 29 day of August, 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

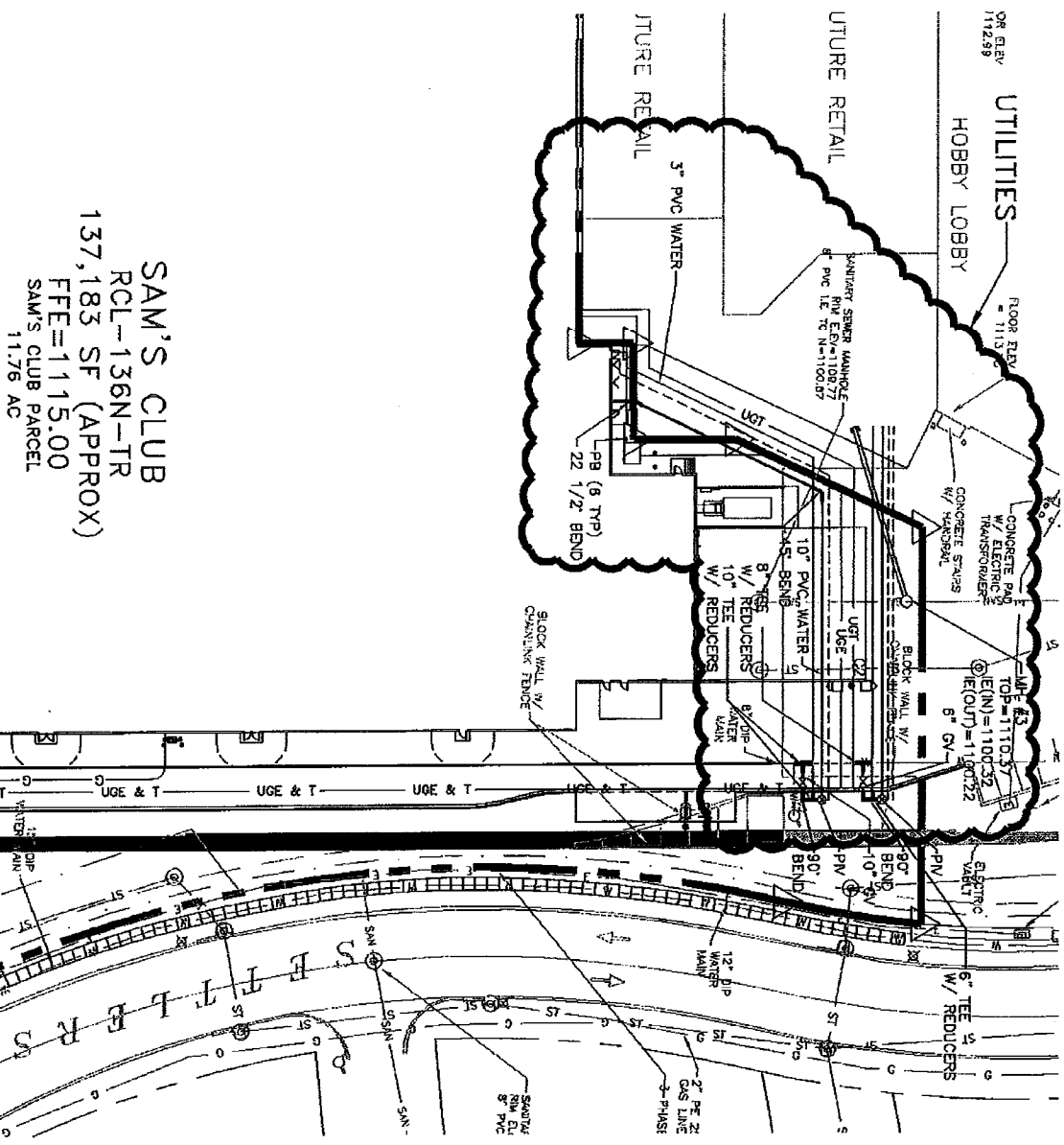
**EXHIBIT A**

**LEGAL DESCRIPTION OF GRANTOR PROPERTY**

Outlot A, Settlers Creek Replat 2, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska,

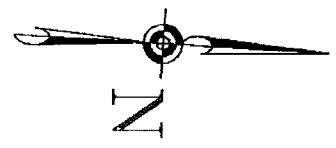
together with

Lots 1, 2, 3, 4, 5, 6 and Outlot A, Settlers Creek Replat 6, a subdivision, as surveyed, platted and recorded in Sarpy County, Nebraska.



**SAM'S CLUB**  
 RCL-136N-TR  
 137,183 SF (APPROX)  
 FFE=1115.00  
 SAM'S CLUB PARCEL  
 11.76 AC

- LEGEND**
- PROPERTY LINE
  - UNDERGROUND ELECTRIC
  - UNDERGROUND TELEPHONE
  - UNDERGROUND ELECTRIC/TELEPHONE
  - GAS LINE
  - SANITARY SEWER PIPE
  - PIPE BOLLARD



**CARLSON CONSULTING ENGINEERS, INC.**  
 1400 INTERNATIONAL CENTER  
 P.O. BOX 13000 OMAHA NE 68113-0000  
 FAX: (402) 551-9451 • TEL: (402) 551-0700

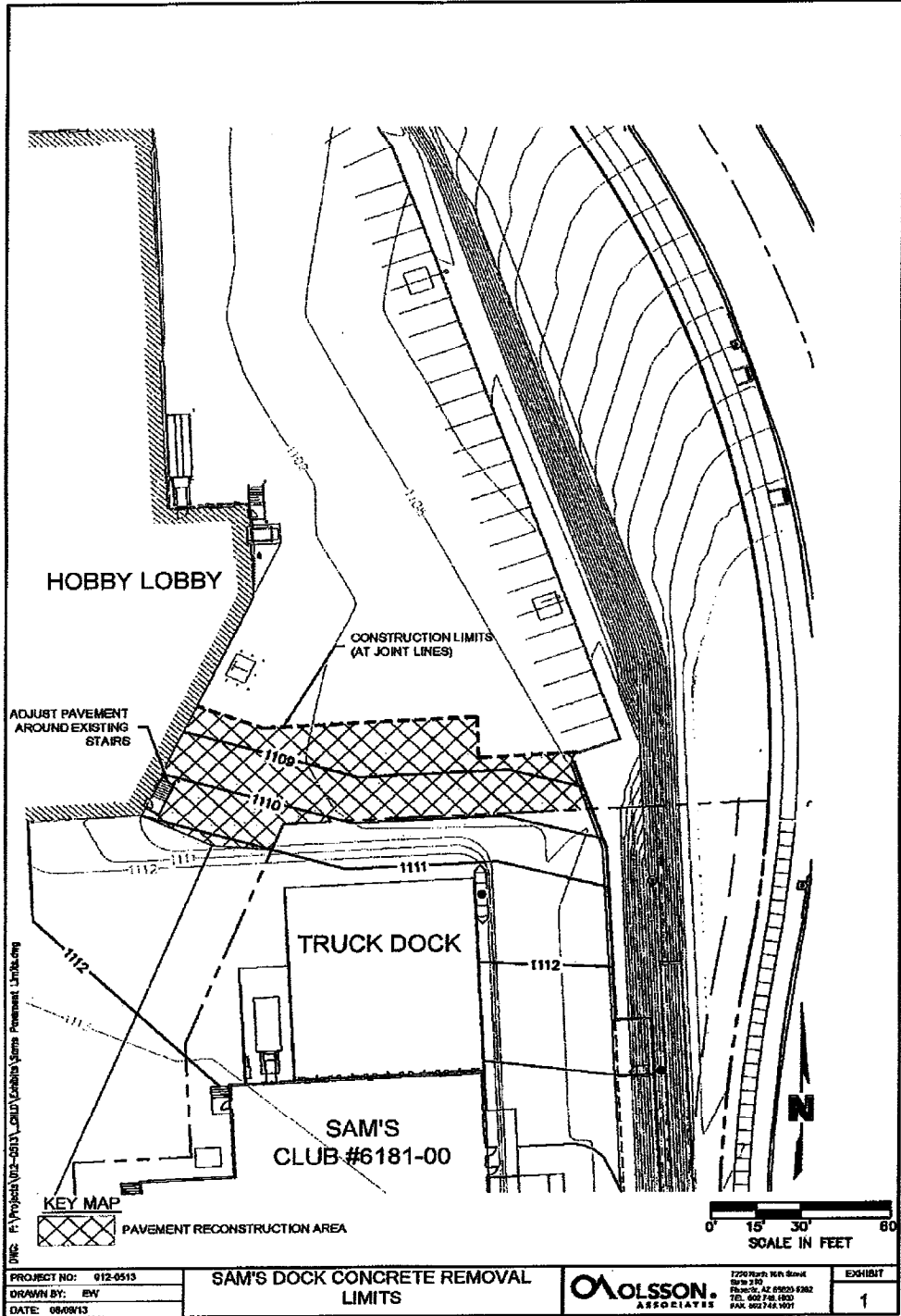
PROJECT: **EXHIBIT B**  
 SAM'S CLUB #6181-00  
 PAPPILLION, NEBRASKA

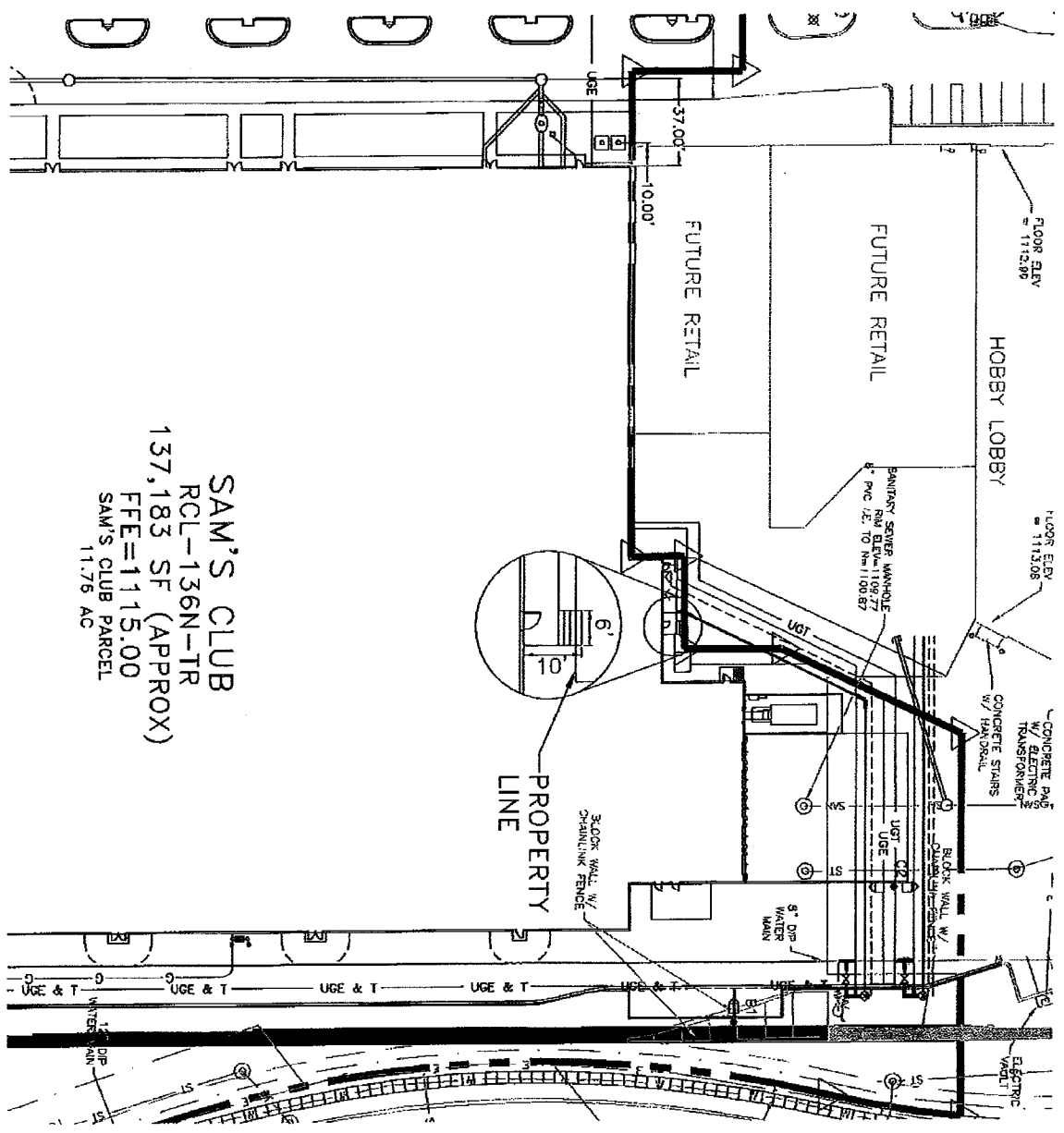


NO.	REVISION



EXHIBIT C





**SAM'S CLUB**  
 RCL-136N-TR  
 137,183 SF (APPROX)  
 FFE=1115.00  
 SAM'S CLUB PARCEL  
 11.76 AC

**LEGEND**

- PROPERTY LINE
- UNDERGROUND ELECTRIC
- UNDERGROUND TELEPHONE
- UNDERGROUND ELECTRIC/TELEPHONE
- GAS LINE
- SANITARY SEWER PIPE
- PIPE BOLLARD

