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Deb Houghtaling

COUNTY CLERK/REGISTER OF DEEDS

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RC

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DOCUMENT COVER SHEET

TITLE OF DOCUMENT: Declaration of Restrictive Covenants

DATE OF DOCUMENT: February 25, 2020

GRANTOR/GRANTEE(S) NAME: Papillion Development Settlers Creek, LLC
MAILING ADDRESS: Attn: Director of Legal/Leasing
One East Washington Street, #300
Phoenix, AZ 85004

LEGAL DESCRIPTION: See Exhibit A

REFERENCE BOOK AND PAGE NUMBER: n/a

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
Papillion Development Settlers Creek, LLC
c/o RED Development
Attn: Melissa Goodson
One East Washington Street, #300
Phoenix, AZ 85004

THIS DECLARATION OF RESTRICTIVE COVENANTS ("Declaration"), made and entered into this 25th day of February, 2020, by **Papillion Development Settlers Creek, LLC**, a Nebraska limited liability company ("**Declarant**"), and its successors or assigns.

WITNESSETH:

WHEREAS, Declarant is the current owner of the real property legally described on **Exhibit A** attached hereto (hereafter, the "**Property**") located at Settlers Creek Shopping Center in Sarpy County, Nebraska (the "**Shopping Center**"), and depicted as "Pad 5" on the site plan attached hereto as **Exhibit B** (the "**Site Plan**");

WHEREAS, Declarant is the Developer under that certain Declaration of Reciprocal Easements, Covenants and Restrictions recorded August 14, 2008, with the Sarpy County Recorder as Document No. 2008-23219, as amended by that certain Amendment filed October 8, 2009 as Document No. 2009-32618, as further amended by that certain Second Amendment to Declaration of Reciprocal Easements, Covenants and Restrictions filed September 30, 2013 as Document No. 2013-30783 (as amended, the "**ECR**"), which encumbers and binds the Property; and

WHEREAS, the Property is further restricted as set forth below.

NOW, THEREFORE, in consideration of the foregoing promises and for the purpose of establishing certain covenants and restrictions, Declarant declares that the Property shall be held and/or sold and conveyed subject to the covenants and restrictions stated herein.

1. Declarant expressly covenants and agrees that neither it, nor any successor owner, ("**Owner**") shall operate or permit any operation in the Property so as to violate or permit the violation of any of the exclusives and/or restrictions which have been negotiated to date, which are set forth in **Exhibit C** attached hereto and incorporated herein by reference (collectively, the

are set forth in **Exhibit C** attached hereto and incorporated herein by reference (collectively, the "**Exclusives**"). In the event that Owner's use conflicts with any use protected by the Exclusives, Declarant or the benefitted party, shall give Owner written notice of same and Owner shall immediately cease the use of the Property for such prohibited use. In the event Owner fails to cease such prohibited use, then Owner agrees to indemnify, defend, and hold harmless Declarant from and against any and all claims, demands, actions, causes of action, losses (including, but not limited to, loss of rents resulting from the termination by a tenant of its lease), damages, costs, and expenses, including court costs and attorneys' fees, including any cost or legal expenses of Declarant in enforcing the restriction as and against Owner, and including any cost or legal expenses of Declarant arising from or related to wholly or in part, the use of the Property for any purpose prohibited or listed in **Exhibit C** hereto. In the event Owner violates any of the provisions of this Declaration, Declarant shall have all rights and remedies provided herein and in the Declaration, in addition to all rights and remedies available to Declarant at law or in equity, including, but not limited to, injunctive relief and specific performance.

2. This Declaration and the provisions contained herein shall inure to the benefit of Declarant and its heirs, legal representatives, successors and assigns, shall be binding upon Owner and its heirs, legal representatives, successors (including successors-in-title to all or any portion of the Property) and assigns, shall be appurtenant to the Property, and shall run with the land which constitutes the Property. Declarant shall have the right, but not the obligation, to assign all of its rights under this Declaration to any person, and to have its obligations assumed by such person, including, without limitation, any purchaser of land within the Shopping Center; provided, however, no person shall be a successor or assignee of Declarant as to any such rights (or assume such obligations), including the right to amend this Declaration, except by a written assignment of such rights which refers specifically to this Declaration and this Section 2 and which has been executed by Declarant and recorded in the Official Records of Sarpy County, Nebraska. Any such successor or assignee of Declarant shall have the right to further assign such rights as permitted above.

3. The laws of the state in which the Property is located shall govern the validity, performance and enforcement of this Declaration.

4. This Declaration contains the entire Declaration with respect to its subject matter and may not be amended without the prior written consent of the Declarant and Owner. Any amendment shall be in writing and shall be recorded in the Official Records of Sarpy County, Nebraska.

5. This Declaration and the restrictions contained herein constitute covenants running with the land which shall bind subsequent owners and users of the Property.

IN WITNESS WHEREOF, the undersigned have duly executed this Declaration as of the day and year first above written.

"DECLARANT"

PAPILLION DEVELOPMENT SETTLERS
CREEK, LLC, a Nebraska limited liability company

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

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

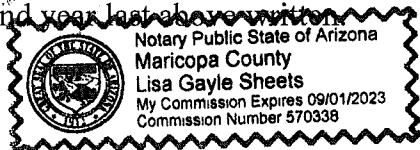
By: [Signature]
Michael L. Ebert, President

Date of Execution: February 25, 2020

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Now on this 25th day of February, 2020, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, who is personally known to me to be the same person who executed the within instrument and who duly acknowledged the execution of the same to be his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year last above written.



[Signature]
Notary Public

My Commission Expires: 9-1-2023

EXHIBIT A
to Declaration of Permitted Use Restrictive Covenant

THE PROPERTY

Lot 5, Settlers Creek, Replat 6, a subdivision as surveyed, platted and recorded in Sarpy County, Nebraska.

EXHIBIT B
to Declaration of Permitted Use Restrictive Covenant

SITE PLAN

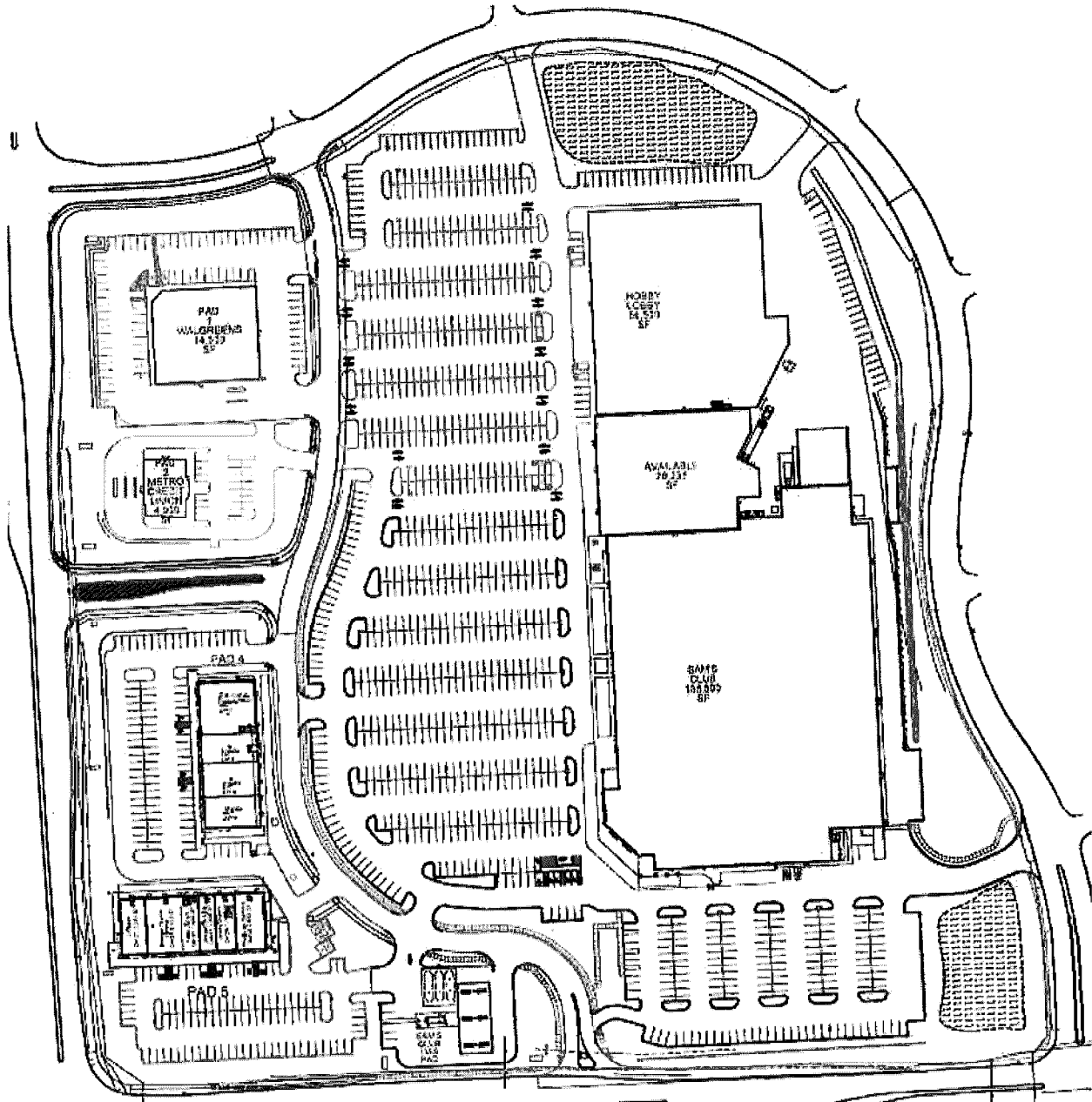


EXHIBIT C
to Declaration of Permitted Use Restrictive Covenant

EXCLUSIVES

Papillion Development Settlers Creek, LLC, a Nebraska limited liability company, its successors and assigns shall be referred to hereinafter as “**Declarant.**” As used hereinafter, the term “**Property**” shall mean the land legally described on Exhibit A attached hereto. The term “**Shopping Center**” shall be with regard to those lots as shown on the Site Plan attached hereto as Exhibit B. Neither Declarant, or any future owner of the Property, shall violate the following existing exclusives. Absent written consent of the beneficiary of the exclusivity restriction (for example—Walgreen’s with respect to exclusivity restriction number one hereof), any owner of the Property agrees to be bound by the exclusives as if it had specifically agreed as to its Property not to sell or allow others to sell the particular item, and this obligation shall survive the closing of the sale transaction. A violation of these exclusives is an event of default.

Walgreen's:

The Property shall not be used for the operation of a drug store or so-called prescription pharmacy of prescription ordering, processing or delivery facility whether or not a pharmacist is present at such facility, or for any other purpose requiring the presence of a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind, except as may be incidentally sold or dispensed within the Property in conjunction with medical, dental, veterinarian or other services.

Sam's:

No portion of the Property shall be leased or occupied by or conveyed to any other party for use as (a) 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, or (b) as a gas station, convenience store or automobile service station, so long as a gas station is operating on the Sam’s Tract. “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.

Hobby Lobby:

No portion of the Property shall be leased or occupied for the permitted purpose of conducting as a primary business the sale of art supplies, craft supplies, and fabrics (the “Tenant’s Exclusive”). Incidental sales by other tenants of items included in Tenant’s Exclusive equal to the lesser of i) three thousand (3,000) square feet of such tenant’s premises measured from the center of the aisles, or ii) ten percent (10%) of such tenant’s premises, measured from the center of the aisles, shall not be deemed to violate Tenant’s Exclusive. Tenant’s Exclusive shall not apply to any tenant or occupant which owns or leases space in excess of seventy-five thousand (75,000) square feet.

Jersey Mike's

No portion of the Property, except for the existing Jersey Mike's, shall be leased or occupied for the permitted purpose of conducting as a primary business the operation of a quick serve restaurant selling, at retail, cold or hot deli submarine or deli style sandwiches, such as Subway, Quiznos, Schlotzsky's, Potbelly Sandwiches or Which Wich; provided, however: (i) the terms and provisions of this paragraph shall not apply to nor be of any force or effect with respect to (a) any...tenant or occupant of the Property leasing or occupying more than 10,000 square feet of space within the Property, or (b) any tenant or occupant operating as a Jason's Deli, McAlister's Deli or Panera Bread and such tenant's or occupant's successors and assigns...For purposes hereof, the operation of a quick serve restaurant selling, at retail, cold or hot deli submarine or deli style sandwiches as a primary business, with respect to a...tenant or occupant, shall mean twenty percent (20%) or more of any...tenant's or occupant's revenues from the operation of such primary business conducted at such...tenant's or occupant's premises consist of the operation of such primary business.

Chipotle:

No portion of the Property, except for the existing Chipotle, shall be leased or occupied for the purpose of engaging in the retail sale of burritos, wraps, fajitas or tacos ("**Exclusive Use**") provided, however, other tenants within the Property shall have the right to sell burritos, wraps, fajitas and tacos if such tenant's sale of burritos, wraps, fajitas and tacos if the aggregate does not equal or exceed fifteen percent (15%) of such tenant's annual gross revenues derived from its business operations.

Smoothie King

No portion of the Property, except for the existing Smoothie King, shall be leased or occupied for the permitted purpose of conducting as a primary business the operation of a smoothie and nutritional products store selling, at retail, (i) smoothie drinks or blended products and (ii) fruit, yogurt, protein or ice cream based drinks. For purposes hereof, the operation of a smoothie and nutritional products store selling, at retail, (i) smoothie drinks or blended products and (ii) fruit, yogurt, protein or ice cream based drinks as a primary business, with respect to a ...tenant or occupant, shall mean that twenty percent (20%) or more of any ...tenant's or occupant's revenues from the operation of such primary business conducted at such ...tenant's or occupant's premises consist of the operation of such primary business.

Pie 5

No portion of the Property, except for the existing Pie 5 Pizza, shall be leased or occupied for the permitted purpose of conducting as a primary business the operation of a (A) fast casual restaurant selling, at retail, prepared and cooked pizza for on premises or off premises consumption (such as by way of example, Uncle Maddio's, Pizza Hut, Domino's Pizza, Papa John's or Little Caesar's or similar type use), and (B) pizza store selling, at retail, "take 'n' bake" pizzas for off premises consumption (such as by way of example, Papa Murphy's or similar type use) ... for purposes hereof, the operation of a fast casual restaurant selling, at retail, prepared and cooked pizza (and not "take 'n' bake" pizzas) as a primary business, with respect to a ... tenant or occupant, shall mean that thirty percent (30%) or more of any ... tenant's or occupant's revenues are derived from the operation of such primary business at such ... tenant's or occupant's premises ... for purposes hereof, the operation of a pizza store selling, at retail, "take 'n' bake" pizzas (and not prepared and cooked pizzas) as a primary business, with respect to a ... tenant or occupant, shall mean that thirty percent (30%) or more of any ... tenant's or occupant's

revenues are derived from the operation of such primary business at such ... tenant's or occupant's premises.

Custom Communications

No portion of the Property, except for the existing Custom Communications, shall provide, offer, service and/or sell the following goods and services to the public: (i) communication products and services including, but not limited to wireless communications products and services, (ii) long and local distances products and services; (iii) cable television products and services, (iv) Internet access products and services, and (v) any substitutes which are the technological evolution of the foregoing, excluding from subsections (i) – (v) above, the offer, service and/or sale of computers, televisions, headphones and wired telephones, and accessories (including accessories for wireless telecommunication equipment) related thereto (collectively "Tenant's Exclusive")... For purposes hereof, the operation of a store whose primary business is providing telecommunication products and services, with respect to a ... tenant or occupant, shall mean that twenty percent (20%) or more of the retail floor area of such ... tenant's or occupant's premises is dedicated to, the operation of such primary business.

Lady Jane

No portion of the Property, except for the existing Lady Jane's, shall be leased or operated for the permitted purpose of conducting the operation of a barber shop, salon serving only men, or a salon operating under the trade name of Sports Clips, Great Clips, Fantastic Sam's, BoRics Hair Cuttery, and Floyds Barbershop... For purposes hereof, the operation of a barber shop or salon for men as a primary business, with respect to a ...tenant or occupant, shall mean that the greater of 25% or more of any ... tenant's or occupant's revenues from the operation of such primary business conducted at such ...tenant's or occupant's premises consist of the operation of such primary business.

Orangetheory

No portion of the Property, except for the existing Orangetheory Fitness, shall be leased or operated for the permitted purpose of conducting as a primary business the operation of a boot camp style fitness facility or instructional personal or group fitness studio or a fitness facility that offers heart rate focused training, including group heart rate monitoring on screens or devices that allow members to track their progress compared to other members... Notwithstanding the foregoing, this restriction shall not prohibit another tenant or occupant utilizing its space (i) for the operation of a studio or facility offering classes or instruction in yoga or a barre studio or (ii) that utilizes fitness machines which monitor the user's heart rate such as, for example and not by way of limitation, a treadmill that monitors an individual's heart rate.

Prohibited Uses:

1. Any use prohibited by the ECR.
2. No store selling liquor, beer, or wine, other than grocery stores or other than restaurants having no more than 40% of their gross sales from the sale of alcohol; (ii) bowling alley, billiard parlor, arcade, or other place of amusement or recreation (except for Dave & Busters or a similar establishment, or children's entertainment uses such as Jump 'n Shout, Chuck E. Cheese or Peter Piper or similar uses, provided any such entertainment uses are not located within 200 feet of the premises demised to Hobby Lobby); (iii) second-hand store whose principal business is selling used merchandise; (iv) pawn shop; (v) head shop; (vi) payday loan provider; (vii) funeral home or mortuary; (viii) church, or other place of worship; (ix) flea market; (x) tattoo parlor or body piercing establishment; (xi) theater in excess of 65,000 square feet of leasable space; (xii) adult video store and adult book store; (xiii) night club; (xiv) massage parlor (excluding Massage Envy or similar establishment); (xv) place of betting, gambling, bingo, or other gaming; (xvi) self-service laundry facility; (xvii) hotel, motel, or other place of residence; (xviii) auto rental

business or junk yard; (xix) animal facility; (xx) manufacturing operation; or (xxi) anything constituting a public or private nuisance.

At such times as Sam's is open and operating for business, the Property must at all times contain the minimum parking as required by applicable law.

No more than sixty-four percent (64%) of the leasable square feet of the building located on the Property, including the Chipotle premises, shall be leased or occupied by tenants or occupants for the permitted use of restaurant use.