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FILED SARPY CO. NE.
INSTRUMENT NUMBER

2012-08360

2012 Mar 21 11:18:20 AM

Sheryl J. Dowling

REGISTER OF DEEDS



RECORDING COVER PAGE

NAME OF INSTRUMENT: FIRST AMENDMENT TO DECLARATION OF RECIPROCAL EASEMENTS,
COVENANTS AND RESTRICTIONS.

RETURN TO: TITLECORE, LLC
1905 HARNEY STREET, SUITE 210
OMAHA, NE 68102

Legal Description: SEE EXHIBIT "A"

12-114625

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

THIS FIRST AMENDMENT TO DECLARATION OF RECIPROCAL EASEMENTS, COVENANTS AND RESTRICTIONS ("**First Amendment**") is made and entered into as of this 21 day of December, 2011, by and among **PAPILLION DEVELOPMENT, LLC**, a Nebraska limited liability company ("**Developer**"); **HY-VEE, INC.**, an Iowa corporation ("**Hy-Vee**"); **PAPILLION DEVELOPMENT LAND, LLC**, a Nebraska limited liability company ("**PDL**"); **SHADOW LAKE TOWNE CENTER, LLC**, a Delaware limited liability company ("**Shadow Lake**"); **TACO BELL CORP.**, a California corporation ("**Taco Bell**"); **CUSTARD CATS, LLC**, a Kansas limited liability company ("**Custard Cats**"); **FIRST NATIONAL BANK OF OMAHA**, a National Banking Association ("**First National**"); and **CHARTERWEST NATIONAL BANK**, a National Banking Association ("**Charterwest**").

RECITALS

A. Developer and Hy-Vee entered into that certain Declaration of Reciprocal Easements, Covenants and Restrictions dated June 16, 2006, recorded in the Register of Deeds office in Sarpy County, Nebraska, on June 20, 2006, as Instrument Number 2006-20802 (the "**Declaration**"), creating certain easements and containing certain covenants and restrictions governing the use and development of the Shadow Lake Towne Center shopping center (the "**Shopping Center**"). The real property encumbered by the Declaration (the "**Affected Real Property**") is legally described on **Exhibit A** attached hereto and incorporated herein by this reference.

B. PDL, Hy-Vee, Shadow Lake, Taco Bell, Custard Cats, First National and Charterwest (sometimes also herein collectively referred to as the "**Parties**" or "**Owners**") collectively own fee simple title to 100% of the real property comprising the Affected Real Property.

C. The Parties desire to amend the Declaration as more particularly set forth in this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Sections 11 (Prohibited Uses) and 13 (Hazardous Materials)**. The Parties hereby agree that, notwithstanding anything to the contrary set forth in the Declaration (including, without limitation, Sections 11 and 13 thereof), that portion of Lots 10 and 11 of the Affected Real Property that is shown as "hatched" on the Site Plan attached hereto as **Exhibit B** and incorporated herein by this reference, may be used for the operation of a tire sale business and/or automotive service and repair business, including without limitation the sale, service, repair and installation of tires, motor vehicle parts and accessories, and petroleum and petroleum derivatives (except for gasoline, diesel fuel, ethanol fuel, bio fuel or any other type of fuel used to power motorized vehicles), provided that (a) there will be no outdoor product displays or storage of products; (b) there will be no outdoor storage of vehicles during non-business hours; provided, however the drop-off by a customer of a vehicle during non-business hours for service during the immediately subsequent business day shall not be deemed the outdoor storage of vehicles, and (c) all of such uses are conducted in accordance with applicable laws, ordinances and regulations, and otherwise in accordance with the terms and conditions of Section 13 of the Declaration, except as amended and modified pursuant to this Section.

2. **Capitalized Terms.** Except as otherwise specifically provided herein, capitalized terms used in this First Amendment shall have the meanings given to such terms in the Declaration.

3. **Confirmation of Declaration.** Except as expressly modified by this First Amendment, all of the terms and provisions of the Declaration shall remain unmodified and in full force and effect.

4. **Counterparts.** This First Amendment may be executed in several counterparts by one or more of the undersigned and all such counterparts so executed shall together be deemed and constitute one final First Amendment, as if one document had been signed by all parties hereto.

5. **Covenants Run with the Affected Real Property.** The covenants and agreements set forth in this First Amendment shall create mutual benefits and servitudes running with the Affected Real Property. This First Amendment shall be binding upon and inure to the benefit of the Parties hereto and the owners of the Affected Real Property from time to time, and their respective successors, heirs, representatives, lessees, and assigns. The singular number includes the plural, and the masculine gender includes the feminine and neuter.

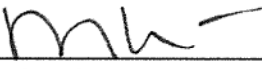
IN WITNESS WHEREOF, the undersigned have executed this First Amendment effective the day and year first written above.

DEVELOPER:

PAPILLION DEVELOPMENT, LLC, a Nebraska limited liability company

By: RED Papillion, LLC, a Missouri limited liability company, its
Manager

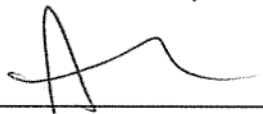
By: E&R Holdings, LLC, an Arizona limited liability
company, Manager

By: 
Michael L. Ebert, Manager

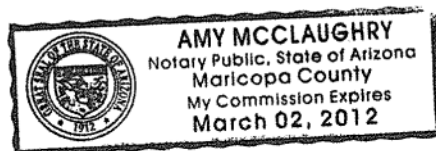
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Now on this 6th day of December, 2011, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, Manager of E&R Holdings, LLC, an Arizona limited liability company, which entity is the Manager of RED Papillion, L.L.C., a Missouri limited liability company, which entity is the Manager of Papillion Development, 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.



Notary Public

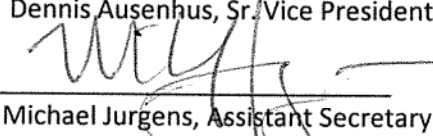
My Commission Expires: 3/2/2012



HY-VEE:

HY-VEE, INC., an Iowa corporation

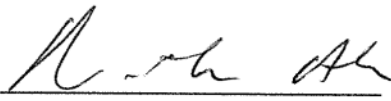
By: 
Dennis Ausehus, Sr. Vice President

By: 
Michael Jurgens, Assistant Secretary

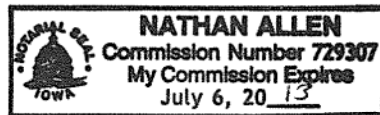
STATE OF IOWA)
) ss.
COUNTY OF POLK)

On November 23, 2011, before me, Nathan Allen, a Notary Public in and for said state, personally appeared Dennis Ausehus and Michael Jurgens, Sr. Vice President and Assistant Secretary, respectively, of Hy-Vee, Inc., an Iowa corporation, known to me and whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


Notary Public in and for said State

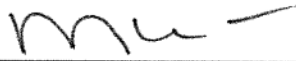
My Commission Expires: 7/6/2013



SHADOW LAKE:

SHADOW LAKE TOWNE CENTER, LLC,
a Delaware limited liability company

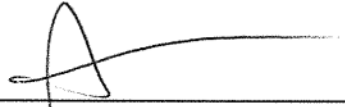
By: Papillion Holdings SPE, LLC,
Managing Member

By: 
Michael L. Ebert, President

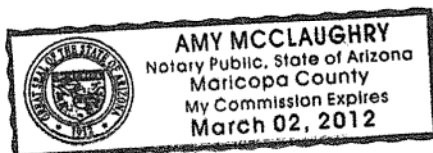
STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Now on this 1st day of December, 2011, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, President of Papillion Holdings SPE, LLC, a(n) _____, which entity is the Managing Member of Shadow Lake Towne Center, LLC, a Delaware 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.


Notary Public

My Commission Expires: 3/2/2012



TACO BELL:

TACO BELL CORP.,
a California corporation

~~By~~ By: Scott Catlett

Name: Scott Catlett

Title: Attorney-in-Fact

STATE OF KENTUCKY)
) ss.
COUNTY OF JEFFERSON)

On July 22, 2011, before me, Laura Mulhall, a Notary Public in and for said state, personally appeared Scott Catlett, Attorney-in-Fact of Taco Bell Corp., a California corporation, known to me and whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Laura Mulhall
Notary Public in and for said State

My Commission Expires: July 27, 2014



CUSTARD CATS:

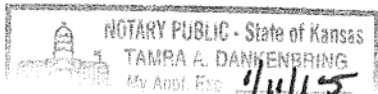
CUSTARD CATS, LLC,
a Kansas limited liability company

By: [Signature]
Name: J. Mark Wittenburg
Title: Member

STATE OF Kansas)
) ss.
COUNTY OF Shawnee)

On December 6, 2011, before me, Tamra Dankenbring, a Notary Public in and for said state, personally appeared J. Mark Wittenburg, Member of Custard Cats, LLC, a Kansas limited liability company, known to me and whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]
Notary Public in and for said State

My Commission Expires: 1/11/15

FIRST NATIONAL:

FIRST NATIONAL BANK OF OMAHA,
a National Banking Association

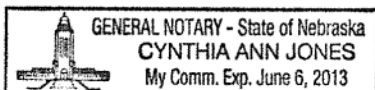
By: First National Buildings, Inc.,
a Nebraska corporation, its agent

By: [Signature]
Name: Brenda Dooley
Title: President

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

On December 5, 2011, before me, Cynthia Ann Jones, a Notary Public in and for said state, personally appeared Brenda Dooley, President, of First National Buildings, Inc., a Nebraska corporation, known to me and whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]
Notary Public in and for said State

My Commission Expires: June 6, 2013

CHARTERWEST:

CHARTERWEST NATIONAL BANK,
a National Banking Association

By: *Kevin Larson*

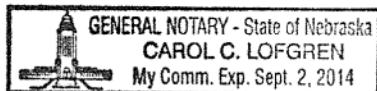
Name: Kevin Larson

Title: President

STATE OF NEBRASKA)
) ss.
COUNTY OF CUMING)

On August 26, 2011, before me, Carol C Lofgren, a Notary Public in and for said state, personally appeared Kevin Larson, President, of Charterwest National Bank, a National Banking Association, known to me and whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacity, and that by their signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.




Carol C Lofgren
Notary Public in and for said State

My Commission Expires: 9-2-14

PAPILLION DEVELOPMENT LAND, LLC,
a Nebraska limited liability company

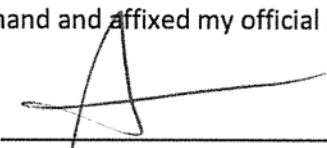
By: RED Consolidated Holdings, LLC, a Delaware limited liability company, its manager

By: 
Michael L. Ebert, Principal

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

Now on this 6th day of December, 2011, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Michael L. Ebert, Principal of RED Consolidated Holdings, LLC, a Delaware limited liability company, which entity is the Manager of Papillion Development Land, LLC, a Nebraska 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.


Notary Public

My Commission Expires: 3/2/2012

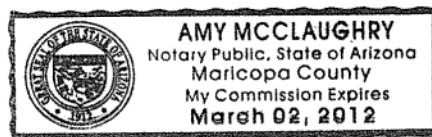


EXHIBIT A

LEGAL DESCRIPTION OF AFFECTED REAL PROPERTY

Lots 1, 2, 3, 4, 7, 8, 9, 14 and 15, and Outlots A, B, D and E, Shadow Lake Towne Center, a subdivision in Sarpy County, Nebraska, according to the recorded plat thereof

Lots 1 and 2 and Outlots A, B and C, Shadow Lake Towne Center – Replat 1, being a replat of Lot 13 and Outlot C, Shadow Lake Towne Center, a subdivision in Sarpy County, Nebraska

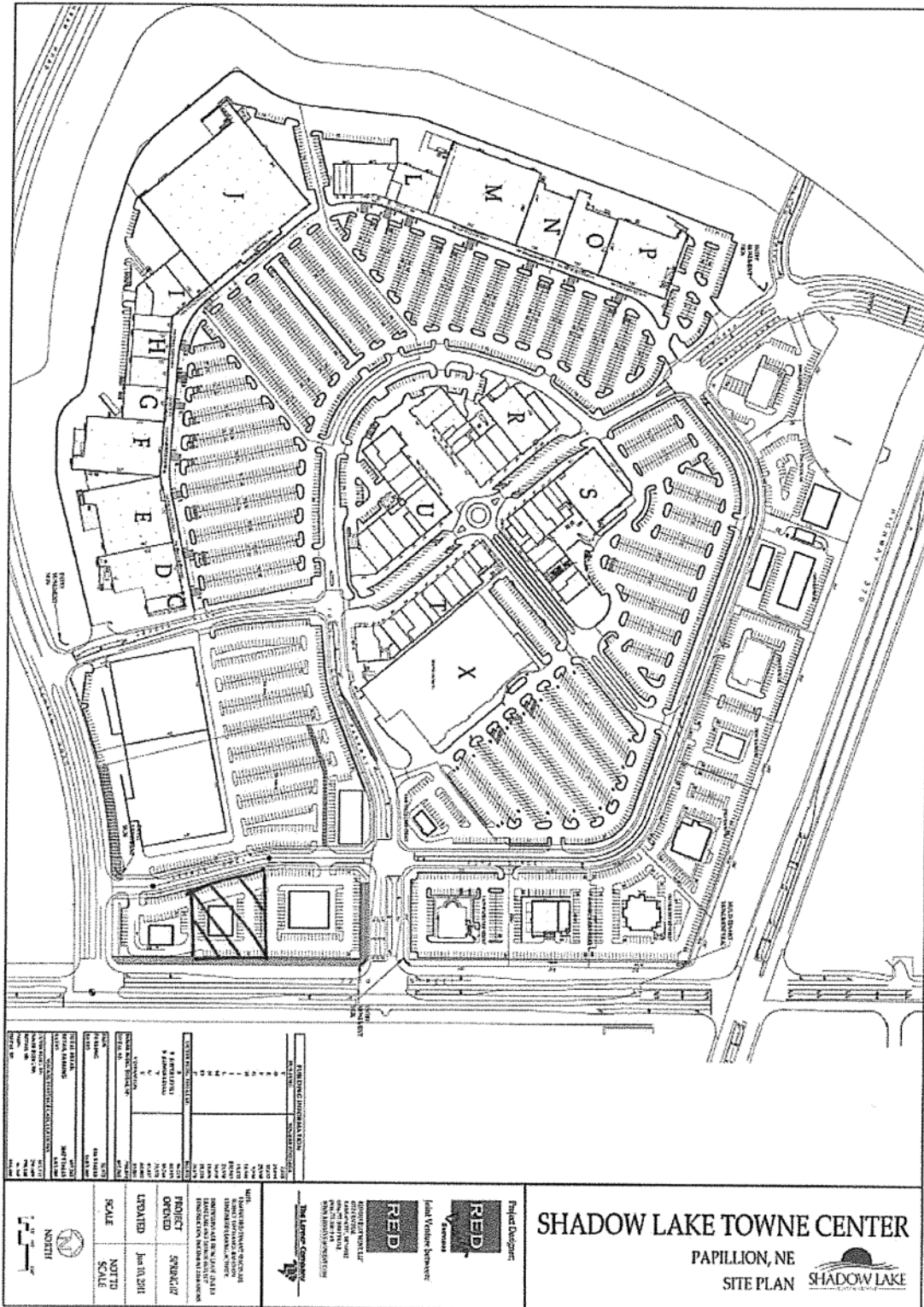
Lots 1 and 2, Shadow Lake Towne Center – Replat 2, being a replat of Lots 5 and 6, Shadow Lake Towne Center, a subdivision in Sarpy County, Nebraska

Lot 1, Shadow Lake Towne Center – Replat 3, being a replat of Lot 12, Shadow Lake Towne Center, a subdivision in Sarpy County, Nebraska

Lots 1, 2, 3 and 4, Shadow Lake Towne Center – Replat 4, being a replat of Lots 10 and 11, Shadow Lake Towne Center, and replatting of Lot 2, Shadow Lake Towne Center Replat 3, both subdivisions in Sarpy County, Nebraska

EXHIBIT B

SITE PLAN



CONSENT

Mortgage Electronic Registration Systems, Inc., a Delaware corporation, solely as nominee for U.S. Bank National Association, successor to Bank of America, N.A. (successor by merger to LaSalle Bank National Association), as Trustee for the registered holders of Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 2008-TOP29 ("Noteholder"), is the beneficiary of that certain Deed of Trust and Security Agreement dated October 17, 2007, and recorded as Instrument No. 2007-31848 in the Official Records of Sarpy County, Nebraska (the "Security Instrument"), and is the holder of that certain Promissory Note made by Shadow Lake Towne Center, LLC, a Delaware limited liability company ("Grantor"), in favor of Noteholder, which is secured by the Security Instrument, and as such beneficiary and holder, consents and subordinates the lien of its Security Instrument to the annexed First Amendment to Declaration of Reciprocal Easements, Covenants and Restrictions (as amended, the "Agreement") and consents to the imposition of the covenants, restrictions, conditions and easements contained in the Agreement upon Grantor's property. Notwithstanding the immediately prior sentence, nothing contained in this Consent shall be deemed to subordinate the Security Instrument to any financial obligation set forth in the Agreement nor shall anything in this Consent be deemed to obligate Noteholder with respect to any financial obligation or payment for any lien that may arise from the Agreement, and the Security Instrument shall remain prior and superior to all financial obligations set forth or created therein.

Except as expressly stated herein, nothing contained herein shall be deemed to modify or amend the terms of the Security Instrument, and the Security Instrument shall remain in full force and effect without change. The Agreement shall not be amended without the prior written consent of Noteholder.

Dated as of January __, 2012.

NOTEHOLDER:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
a Delaware corporation, solely as nominee for U.S. Bank National
Association, successor to Bank of America, N.A. (successor by
merger to LaSalle Bank National Association), as Trustee for the
registered holders of Morgan Stanley Capital I Inc., Commercial
Mortgage Pass-Through Certificates, Series 2008-TOP29

By: _____

Name: Brent Lloyd

Title: Assistant Vice President

STATE OF CALIFORNIA)

) §.

COUNTY OF ALAMEDA)

Now on this 23rd day of January, 2012, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came BRENT LLOYD, ASSISTANT Vice President of Mortgage Electronic Registration Systems, Inc., a Delaware corporation, solely as nominee for U.S. Bank National Association, successor to Bank of America, N.A. (successor by merger to LaSalle Bank National Association), as Trustee for the registered holders of Morgan Stanley Capital I Inc., Commercial Mortgage Pass-Through Certificates, Series 2008-TOP29, who is personally known to me to be the same person who executed the within instrument on behalf of said entity, and who duly acknowledged the execution of the same to be his/her free act and deed and the free 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.

Noreen Sutterfield
NOREEN SUTTERFIELD, Notary Public

My Commission Expires: JAN 5, 2013

(Print Name)

