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FILED SARPY CO. NE. INSTRUMENT NUMBER

2013-14947

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REGISTER OF DEEDS

WHEN RECORDED RETURN ORIGINAL TO: Bridgestone Retail Operations, LLC 333 East Lake Street Bloomgindale, IL 60108 Attn: Law Department – Real Estate Section

CROSS ACCESS AND SIGN EASEMENT AGREEMENT

THIS CROSS ACCESS AND SIGN EASEMENT AGREEMENT ("Agreement") is made as of the ______ day of ______, 2013, by and between SMBC Leasing and Finance, Inc., a Delaware corporation, by its agent, Bridgestone Retail Operations, LLC, a Delaware limited liability company ("Lot 3 Owner") and Papillion Development Land, LLC, a Nebraska limited liability company (sometimes referred to as the "Lot 2 Owner", and sometimes referred to the "Lot 4 Owner") (collectively "Lot Owners") and Papillion Development, LLC, a Nebraska limited liability company ("Developer").

- A. Lot 2 Owner owns that certain parcel of real property which is legally described as Lot 2, Shadow Lake Towne Center Replat 4, a subdivision in Papillion, Sarpy County, Nebraska ("Lot 2").
- B. Lot 3 Owner owns that certain parcel of real property which is legally described as Lot 3, Shadow Lake Towne Center Replat 4, a subdivision in Papillion, Sarpy County, Nebraska ("Lot 3").
- C. Lot 4 Owner owns that certain parcel of real property which is legally described as Lot 4, Shadow Lake Towne Center Replat 4, a subdivision in Papillion, Sarpy County, Nebraska ("Lot 4"). Lot 2, Lot 3 and Lot 4 are sometimes referred to herein individually as a "Lot" and collectively as the "Lots".
- D. The Lots are part of the Shadow Lake Town Center shopping center and are subject to that certain Declaration of Reciprocal Easements, Covenants and Restrictions, by and between Developer and Hy-Vee, Inc., an Iowa corporation, and recorded in the Office of the Register of Deeds, Sarpy County, Nebraska, on June 20, 2006, as Instrument No. 2006 20802, as amended by First Amendment to Declaration of Reciprocal Easements, Covenant and Restrictions, recorded on March 21, 2012, as Instrument 2012 08360 (collectively, the "ECR").

- E. Lot 2 and Lot 3 share a common access point to the interior access road in the shopping center and a shared drive aisle along the common property line of Lot 2 and Lot 3 (the "Northern Common Driveway").
- F. Lot 3 and Lot 4 share a common access point to the interior access road in the shopping center and a shared drive aisle along the common property line of Lot 3 and Lot 4 (the "Southern Common Driveway"). The Northern Common Driveway and the Southern Common Driveway are sometimes referred to herein collectively as "the Common Driveways".
- G. The Lot Owners are recording this Agreement to give notice of the construction and maintenance obligations with respect to the Common Driveways and certain additional matters as set forth below.

ARTICLE I ACCESS EASEMENT OVER COMMON DRIVEWAY

1.1 Access Easement. Each Lot Owner has been granted a non-exclusive easement for pedestrian and vehicular ingress and egress in, on, over, across and through Common Driveways pursuant to the terms and conditions of the ECR.

ARTICLE II CONSTRUCTION AND USE OF COMMON DRIVEWAY

- 2.1 Construction of Common Driveway. Each Lot Owner shall be responsible for constructing the portion of the Common Driveways located on such Lot Owner's Lot. Notwithstanding the foregoing, the Lot 3 Owner shall (i) construct those portions of the Common Driveways located on Lot 3 and (ii) be permitted to construct on Lot 2 and on Lot 4 such portions of the Common Driveways as the Lot 3 Owner deems necessary for the operation and use of the Lot 3. Once the Lot 2 Owner and/or the Lot 4 Owner commences construction on its Lot, if the Lot 3 Owner has not constructed the entire applicable Common Driveway on such Owner's Lot, it shall construct the remainder of the Common Driveway located on its Lot, using similar materials, grading and methods as those used in the construction of the portion of the Common Driveway previously constructed. Construction of the Common Driveways shall include construction or installation of any and all sanitary and storm sewer lines or facilities, storm water drainage, and utility lines required in connection with the construction of the Common Driveway (if any).
- Owners, their successors and assigns, a temporary easement on, over, under, and across that portion of its respective Lot necessary to construct the Common Driveways and any related improvements, together with a temporary easement for ingress and egress by persons, materials, and equipment on, over, under, and across its respective Lot, to the extent reasonably necessary for construction of the Common Driveways, hereinafter the "Temporary Construction Easement". The Temporary Construction Easement shall not be construed to permit the storage of materials or equipment by any Lot Owner upon any Lot owned by another Lot Owner. The Temporary Construction Easement shall terminate upon the earlier of (i) completion of construction of both Common Driveways in their entirety and any related improvements or (ii) the date that is two years after the recording of this Agreement. Each Lot Owner that enters onto the Lot owned by another Lot Owner as provided herein shall promptly restore any portion of such Lot, or improvements thereon that are damaged or otherwise disturbed as a result of the construction of the Common Driveway, at its sole cost and expense.

2.3 Reimbursement for Construction of Common Driveway. Upon commencement of construction of its Lot, the Lot 4 Owner shall reimburse the Lot 3 Owner for the reasonable cost of installing the portion of the Common Driveway on Lot 4 (not to exceed \$15,000.00) no later than thirty (30) days after receiving an invoice (with supporting documentation) from the Lot 3 Owner. Upon request, Lot 3 Owner shall provide written acknowledgment of receipt of such reimbursement payment in recordable form, and Lot 4 Owner shall be entitled to record such acknowledgement in the Office of the Register of Deeds, Sarpy County, Nebraska.

Upon commencement of construction of its Lot, the Lot 2 Owner shall reimburse the Lot 3 Owner for the reasonable cost of installing the portion of the Common Driveway on Lot 2 (not to exceed \$18,000.00) no later than thirty (30) days after receiving an invoice (with supporting documentation) from the Lot 3 Owner. Upon request, Lot 3 Owner shall provide written acknowledgment of receipt of such reimbursement payment in recordable form, and Lot 2 Owner shall be entitled to record such acknowledgement in the Office of the Register of Deeds, Sarpy County, Nebraska.

- 2.4 No Modifications; No Buildings. Once construction of the Common Driveways is completed, the Common Driveways may not be modified or relocated without the prior written consent of each applicable Lot Owner. No building or permanent structure or other improvements shall be constructed or maintained in the Common Driveways.
- 2.5 Unimpeded Access. Once construction of the Common Driveway is completed, the Common Driveways (and access on, over and across the same) shall be subject to the provision of Section 4.5 of the ECR; provided that a Lot Owner will have the right to temporarily erect barriers as legally necessary to avoid creating prescriptive rights therein, or for maintenance of such areas in the least restrictive manner and for the least restrictive duration as is reasonably necessary.

ARTICLE III MAINTENANCE OF COMMON DRIVEWAY

- 3.1 Maintenance of Common Driveway. Upon completion of the Common Driveways, the Lot 3 Owner shall, at its sole cost and expense, maintain the Common Driveways in good condition and repair consistent with the standards set forth in Section 5 of the ECR. Once the other Lot Owners have commenced construction of a building on its respective Lot, the Lot Owners shall each assume responsibility for maintaining the portion of the Common Driveways located on its respective Lot in good condition and repair consistent with the standards set forth in Section 5 of the ECR at its sole cost and expense.
- 3.2 Taxes. Without limiting the provisions of Section 7 of the ECR regarding the payment of Real Property Taxes applicable to each Lot, each Lot Owner shall promptly pay all real estate taxes, special assessments, water charges, sewer rents and other governmental charges levied against its Lot, including portions of the Common Driveways located within its Lot (collectively, a "Tax"), the non-payment of which would give rise to a lien superior to any other Lot Owner's rights under this Agreement. Each Lot Owner may contest, in good faith, the validity or amount of any Tax on its Lot, but upon final determination as to the validity and amount thereof, such Lot Owner shall promptly pay the Tax.
- 3.3 Mechanic's Liens. In the event a mechanic's lien is filed against any Lot due to work performed on or materials supplied in connection with the Common Driveways at the request of a Lot Owner, the Lot Owner shall discharge, bond or stay the mechanic's lien on or before the thirtieth (30th) day after filing thereof. If the Lot Owner who ordered the work or materials fails to discharge or bond the

lien within such 30 days, the Lot Owner upon whose Lot the lien was placed may (without obligation to do so) pay and discharge the lien and collect reimbursement for the same, along with interest and reasonable attorneys' fees and costs, from the offending Lot Owner.

ARTICLE IV SIGN PANEL EASEMENT

- 4.1 Grant of Sign Panel Easement. Developer is entitled, pursuant to the terms of the ECR (i) to install, maintain, construct, use, repair and replace pylon sign(s) in the location(s) shown on Exhibit B-1 attached hereto and incorporated herein, and (ii) to determine which parties shall have the right to install and use panels on such pylon sign and the terms and conditions of such use. Developer hereby creates, reserves and grants to the Lot 3 Owner a perpetual easement to install, maintain, construct, repair and replace a sign panel (the "Lot 3 Panel") on the pylon sign labeled "Pylon Sign #1" on Exhibit B-1, subject to the terms and conditions contained herein. Such easement shall be solely for the purpose of advertising an operating business located on Lot 3 and for no other purpose. The size and location for the Lot 3 Panel shall be as shown on Exhibit B-2 attached hereto and made a part hereof.
- **4.2 Maintenance of Sign Panel**. The Lot 3 Owner shall be responsible for installing, maintaining, repairing and replacing the Lot 3 Panel at all times in good working and attractive condition and in compliance with all applicable legal requirements, all at the sole expense of the Lot 3 Owner. Developer shall cause the pylon sign structure to be maintained, repaired and replaced as appropriate to keep the pylon sign structure in good working condition and as required under the terms of the ECR. The Lot Owner shall immediately repair any damages caused to the pylon sign or any other property by the installation, maintenance, repair, replacement or other activities undertaken or directed by the Lot 3 Owner related to the Lot 3 Panel. The Developer and Seller hereby grant a license to the Lot 3 Owner to enter upon the property on which Pylon Sign #1 is located as reasonably necessary to maintain, repair and replace the Lot 3 Panel.

ARTICLE V

DEFAULTS; REMEDIES

- 5.1 Owner's Right to Cure. If any Lot Owner (the "Defaulting Owner") fails to perform any of the covenants on its part to be performed as set forth in this Agreement, including the construction or maintenance of the applicable Common Driveway, any other Lot Owner may (but shall not be required to) (i) if no emergency exists, perform the same after giving ten (10) days' written notice to the Defaulting Owner (unless within such ten (10) day period the Defaulting Owner shall commence the necessary action and thereafter continue the same with diligence), and (ii) in an emergency situation, perform the same with as much notice to the Defaulting Owner as is practical. The Defaulting Owner shall, on demand, reimburse the curing Lot Owner for the reasonable cost thereof.
- 5.2 Lien. If a Defaulting Owner is required by the terms of this Agreement to pay another Lot Owner any sum, then such Lot Owner shall have and is hereby granted, as security for such sum, a valid and enforceable lien ("Lien") upon the Defaulting Owner's right, title and interest in and to its Lot and the improvements thereon from and after such Lot Owner's filing of a notice of the Lien, which shall set forth the facts giving rise to the Lien, the amount thereof and the legal description of the Lot to which the Lien attaches.

- 5.3 Survival. The rights and easements granted under this Section shall survive the termination or expiration of this Agreement for the purpose of performing and enforcing compliance with the provision of this Agreement.
- 5.4 Enforcement. Each Lot Owner shall have the right to enforce any provision of this Agreement in any court of competent jurisdiction by injunction, specific performance or any other means, whether in law or in equity.
- 5.5 Remedies Cumulative. All rights, privileges, and remedies afforded any Lot Owner by this Agreement shall be deemed cumulative and the exercise of any one of such remedies shall not be deemed to be a waiver of any other right, remedy or privilege provided for herein.
- 5.6 No Termination; No Waiver. No breach of this Agreement will entitle any Lot Owner to cancel, rescind or otherwise terminate this Agreement. The foregoing limitation will not affect, in any manner, any other right or remedy which any Lot Owner might have by reason of any breach of this Agreement. No waiver of any default by a Defaulting Owner will be implied from the failure by any other Lot Owner to take action in respect of any default by a Defaulting Owner. No express waiver of any default will affect any default by a Defaulting Owner or extend any period of time for performance by a Defaulting Owner other than as specified in such express waiver. One or more waivers of any default by a Defaulting Owner in the performance of any provision of this Agreement will not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision by a Defaulting Owner.
- 5.7 Costs. If any Lot Owner institutes any actions or proceedings against another Lot Owner relating to the provisions of this Agreement or any default by a Defaulting Owner hereunder, the unsuccessful Lot Owner in such action or proceeding will reimburse the successful Lot Owner therein for the reasonable expenses of attorneys' fees and disbursements incurred by the successful Lot Owner.

ARTICLE VI INSURANCE

6.1 Coverage Required. Each Lot Owner shall cause to be maintained a policy or policies of insurance required under Section 6 of the ECR.

ARTICLE VII MISCELLANEOUS

- 7.1 No Partnership. Nothing contained in this Agreement and no actions by the Lot Owners will be deemed or construed by the Lot Owners or Developer or by any third person to create the relationship of principal and agent, or a partnership, or a joint venture, or any association between or among any of the Lot Owners or Developer.
- 7.2 Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Nebraska.
- 7.3 Modifications. Subject to the limitations set forth in this Agreement, any alteration, change or modification hereof, in order to become effective, shall be made by written instrument or endorsed hereon and, in each such instance, executed by each Lot Owner.

- 7.4 Severability. If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to person or circumstances other than those in respect of which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.
- 7.5 Captions. The captions of the paragraphs of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.
- 7.6 Notice. Any notice, request, demand, approval or consent given or required to be given under this Agreement, shall be in writing and shall be deemed as having been given when mailed by United States registered or certified mail, postage prepaid to the other party at the addresses stated below or at the last changed address given by the party to be notified as hereinafter specified:

Lot 3 Owner:

SMBC Leasing and Finance, Inc.

c/o Bridgestone Retail Operations, LLC

333 E. Lake Street Bloomingdale, IL 60108

Attention: Legal Department - Real Estate Law

Lot 4 Owner:

c/o RED Development, LLC

One East Washington Street, Suite 300

Phoenix, AZ 85004 Facsimile: (480) 947 7997

Attn: Director of Development - Legal

With copy to:

Sean D. Ervin

Payne and Jones, Chartered

11000 King Street

Overland Park, Kansas 66210

In the event any Lot Owner transfers an ownership interest in all or a portion of its Lot, such Lot Owner shall notify the other Lot Owners of the transferee and its address. The Lot Owners hereto agree to thereafter provide any notices required hereunder to said transferee(s).

- 7.7 No Merger. This Agreement is not subject to merger, even if the underlying fee ownership of the Lots is vested in one party.
- 7.8 Sale by an Owner. If a Lot Owner sells all or any portion of its interest in its Lot, upon such sale such Lot Owner shall be entirely released and relieved from liability with respect to the performance of any covenants and obligations on the part of such Lot Owner to be performed under this Agreement which accrue from and after the date of such sale (but not before the date of such sale) with respect to that portion of such Lot Owner's Lot which was sold; it being intended hereby that the covenants and obligations on the part of each Lot Owner to be performed under this Agreement shall be binding on each Lot Owner, its successors and assigns. All sums owed by the selling Lot Owner hereunder shall be paid prior to the closing of any sale of all or any portion of its interest in its Lot.
- 7.9 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original.

- 7.10 Agreement to Run with Land. The Lot Owners hereby declare that each Lot is and shall be conveyed, encumbered, leased, occupied, used, improved and/or transferred (in whole or in part), subject to the provisions of this Agreement and that this Agreement shall run with each Lot and shall be binding upon and inure to the benefit of and be enforceable by each Lot Owner and their respective successors and assigns.
- 7.11 No Dedication. Nothing contained in this Agreement will be deemed to constitute a gift, grant or dedication of all or any portion of the Common Driveway or any Lot to the general public or for any public purpose whatsoever.

(Signature pages follow)

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed the day and year first above written.

Lot 3 Owner:	a Deláware corporation
	By: BRIDGESTONE RETAIL OPERATIONS, LLC, a Delaware limited liability company Its Agent
₹5	By: Kenton Girard, Director Real Estate Assets and New Store Development
	Date: May 3 Day 3
STATE OF ILLINOIS)) ss.
COUNTY OF DUPAG	iE)
Public, in and for the New Store Developme Finance, Inc., who is	day of
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 Expir	res: 3/7/50015
3 NOTARY PUBI	CIAL SEAL" AR. BOECHER LIC, STATE OF ILLINOIS SION EXPIRES 5/7/2015

Lot 4 Owner:

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)
COUNTY OF MARICOPA)
Now on this
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year
last above written.
AMY MCCLAUGHRY Notary Public, State of Arizona
Notary Public Maricopa County My Commission Expires March 02, 2016
My Commission Expires:

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

its Manager

By:

Michael L. Ebert, Manager

Date of Execution:

STATE OF ARIZONA

) ss

COUNTY OF MARICOPA

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day

and year last above written.

AMY MCCLAUGHRY lotary Public State of Arizon: Maricopa County My Commission Expires

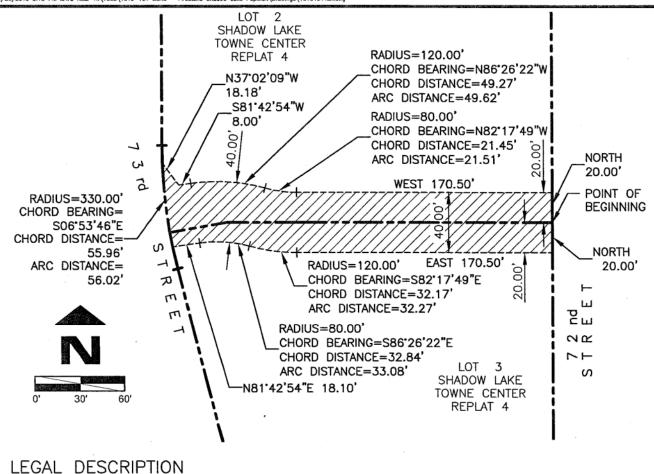
March 02, 2016

Notary Public

My Commission Expi

EXHIBIT A-1

NORTHERN COMMON DRIVEWAY



THAT PART OF LOTS 2 AND 3, SHADOW LAKE TOWNE CENTER REPLAT 4, A SUBDIVISION IN SARPY COUNTY, NEBRASKA, DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 2; THENCE NORTH (ASSUMED BEARING) 20.00 FEET ON THE EAST LINE OF SAID LOT 2; THENCE WEST 170.50 FEET ON A LINE 20.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE

OF SAID LOT 2; THENCE NORTHWESTERLY ON AN 80.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING

N82°17'49"W, CHORD DISTANCE 21.45 FEET AN ARC DISTANCE OF 21.51 FEET; THENCE NORTHWESTERLY ON A 120.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING N86°26'22"W, CHORD DISTANCE 49.27 FEET AN ARC DISTANCE OF 49.62 FEET;

THENCE S81°42'54"W 8.00 FEET;

THENCE N37°02'09"W 18.18 FEET TO THE WEST LINE OF SAID LOT 2;

THENCE SOUTHEASTERLY ON THE WEST LINES OF SAID LOTS 2 AND 3 ON A NON-TANGENT 330.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING SO6*53'46"E, CHORD DISTANCE 55.96 FEET AN ARC DISTANCE OF 56.02 FEET;

THENCE N81'42'54"E 18.10 FEET ON A NON-TANGENT LINE;

THENCE SOUTHEASTERLY ON AN 80.00 FOOT RADIUS CURVE TO THE RIGHT, CHORD BEARING S86'26'22"E, CHORD DISTANCE 32.84 FEET AN ARC DISTANCE OF 33.08 FEET;

THENCE SOUTHEASTERLY ON A 120.00 FOOT RADIUS CURVE TO THE LEFT, CHORD BEARING

S82*17'49"E, CHORD DISTANCE 32.17 FEET AN ARC DISTANCE OF 32.27 FEET; THENCE EAST 170.50 FEET ON A LINE 20.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE

THENCE NORTH 20.00 FEET ON THE EAST LINE OF SAID LOT 3 TO THE POINT OF BEGINNING.



Job Number: 1610-104-4EX

OF SAID LOT 3 TO THE EAST LINE THEREOF;

thompson, dreessen & dorner, inc. 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.5866 td2co.com Date: MARCH 21, 2013 Drawn By: RJR Reviewed By: DHN Revision Date:

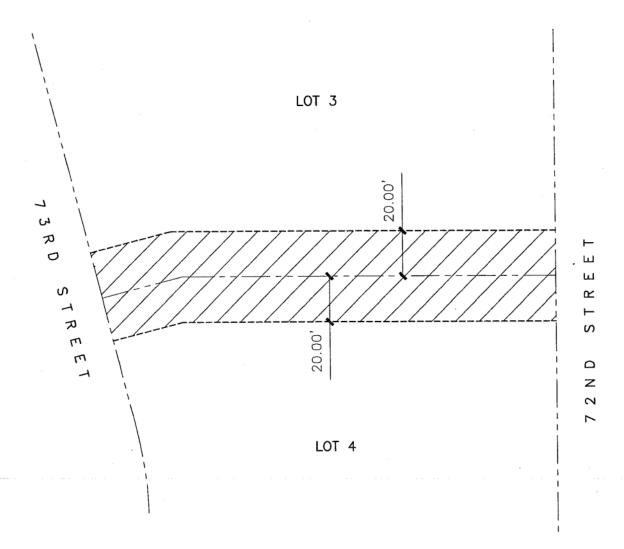
EXHIBIT A-1

Book Page

EXHIBIT A-2

SOUTHERN COMMON DRIVEWAY





LEGAL DESCRIPTION

THE SOUTH 20.00 FEET IN WIDTH OF LOT 3, TOGETHER WITH THE NORTH 20.00 FEET IN WIDTH OF LOT 4, ALL IN SHADOW LAKE TOWNE CENTER REPLAT 4, A SUBDIVISION IN SARPY COUNTY, NEBRASKA.



Job Number: 1610-104-2

thompson, dreessen & dorner, inc 10836 Old Mill Rd Omaha, NE 68154 p.402.330.8860 f.402.330.5866

p.402.330.8860 f.402.330.586 td2co.com Date: 03/26/2012
Drawn By: MRS
Reviewed By: DHN
Revision Date:

EXHIBIT A-2

Book Page

EXHIBIT B-1

Pylon Sign Locations

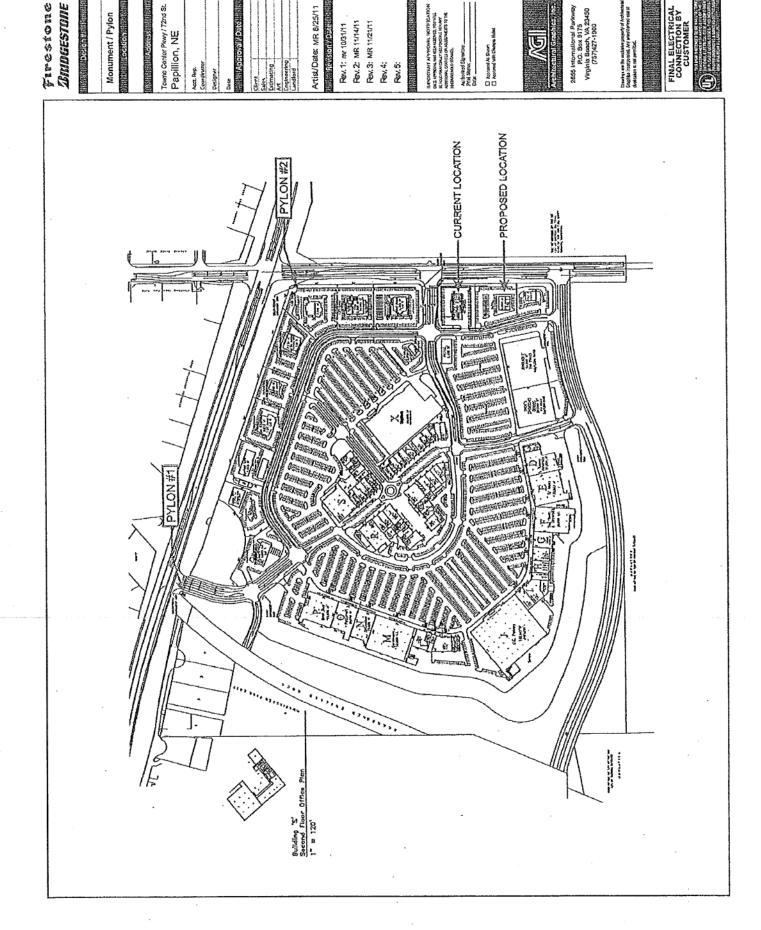


Exhibit B-2

Lot 3 Sign Panel

PYLON #1

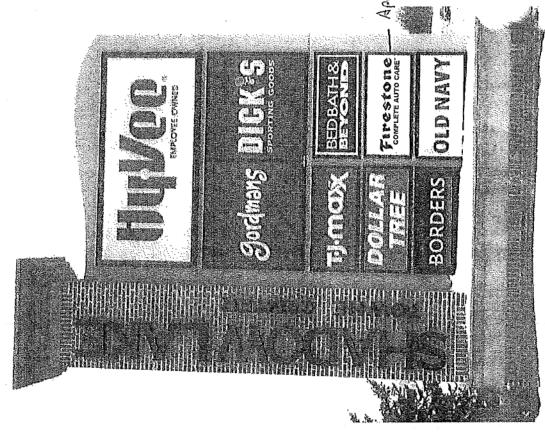
Firestone ZRIDGESTORE

Monument / Pylon

Location

Address 🐘

Design #



Tenant Panel on Non-Standard Monument One required - Manufacture and Install

Towne Center Pkwy i 72nd St. Papillion, NE

Artist/Date: MR 8/25/11 Revision / Date

Rev. 2: MR 11/14/11 Pev. 3: MR 11/21/11 Rev. 1: mr 10/31/11

Rev. 4: MR 12/27/11 Pev. 5: MR 3/23/12

2555 International Parkway P.O. Box 9175 Virginia Goach, VA 23450 (757)427-1900

CONNECTION BY CUSTOMER