

2013-21176

07/02/2013 12:12:54 PM

*Clay J. Dowling*

REGISTER OF DEEDS

COUNTER P C.E. P  
VERIFY P D.E. P  
PROOF LM  
FEES \$ 82.00  
CHECK# 18166913  
CHG \_\_\_\_\_ CASH \_\_\_\_\_  
REFUND \_\_\_\_\_ CREDIT \_\_\_\_\_  
SHORT \_\_\_\_\_ NCR \_\_\_\_\_



**MORTGAGE LOAN MODIFICATION AGREEMENT**  
**(Settler's Creek Hobby Lobby)**

THIS MORTGAGE LOAN MODIFICATION AGREEMENT ("Agreement") is executed effective as of the 31<sup>st</sup> day of May, 2013, by and between PAPILLION DEVELOPMENT SETTLER'S CREEK, LLC, a Nebraska limited liability company ("Borrower"), and FIRST NATIONAL BANK OF OMAHA, a national banking association ("Lender").

**Preliminary Matters**

1. **Original Loan.** On or about the 28th day of February, 2013, Borrower secured a loan from Lender in the original amount of Four Million One Hundred Sixty Thousand and 00/100 Dollars (\$4,160,000.00) (the "Loan"), as evidenced by Borrower's Promissory Note to Lender dated February 28, 2013, in the amount of \$4,160,000.00 (the "Original Promissory Note"). The Original Promissory Note is secured by a Deed of Trust, as hereinafter described, on the real estate in Sarpy County, Nebraska, as legally described on Exhibit "A" attached hereto (the "Mortgaged Property"). Lender and Borrower have agreed to modify the Loan to increase the Loan Amount to \$4,320,000.00.

2. **Loan Documents.** The obligations of Borrower in connection with the Loan are evidenced, secured and/or guaranteed by documents and agreements executed contemporaneously with the closing of the Loan and execution of the Original Promissory Note which, are hereinafter referred to as the "Loan Documents", that include the following:

- i. Building Loan Agreement between Borrower and Lender dated February 28, 2013;
- ii. Deed of Trust, Security Agreement and Assignment of Rents from Borrower to Lender dated February 28, 2013, and recorded with the Sarpy County, Nebraska Register of Deeds on March 4, 2013, as Instrument No. 2013-06476 (the "Deed of Trust");
- iii. Assignment of Rents and Leases from Borrower to Lender dated February 28, 2013, and recorded with the Sarpy County, Nebraska Register of Deeds on March 4, 2013, as Instrument No. 2013-06477 (the "Assignment of Rents");

WHEN RECORDED, PLEASE RETURN TO:  
Mortgage Loan Department  
First National Bank of Omaha  
Third Floor, First National Plaza  
11404 West Dodge Road  
Omaha, ~~South~~ Dakota 68154  
**NE**

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- iv. Notice of Commencement executed by Borrower on February 28, 2013, and recorded with the Sarpy County, Nebraska Register of Deeds on March 4, 2013, as Instrument No. 2013-06478;
- v. Assignment of Plans, Specifications, Construction, Management and Service Contracts from Borrower to Lender dated February 28, 2013;
- vi. UCC-1 Financing Statement filed with the Nebraska Secretary of State;
- vii. Environmental Indemnity Agreement from Borrower to Lender dated February 28, 2013;
- viii. Guaranty of Payment of 50% of the Secured Obligations by RED Papillion Settler's Creek, LLC, Michael L. Ebert, Scott Rehorn and Daniel Lowe dated February 28, 2013; and
- ix. Guaranty of Payment of 50% of the Secured Obligations by Papillion Settlers Creek LLC, Jay R. Lerner and Salvadore Carta dated February 28, 2013.

3. **Present Ownership.** Borrower represents, covenants and warrants to Lender that it remains the owner of fee title to the Mortgaged Property, subject only to the liens and security interests arising out of the Loan Documents and the exceptions to title set forth in Stewart Title Guaranty Insurance Company ALTA Loan Policy of Title Insurance (Policy Number M-9302-00855429) issued at the Loan closing and any subsequent endorsements thereto.

4. **Modification of Loan.** The parties hereto have agreed to modify the Loan terms by increasing the principal amount of the Loan from \$4,160,000.00 to \$4,320,000.00.

**Now, therefore, it is hereby agreed by and among the parties as follows:**

5. **Incorporation of Preliminary Matters.** All of the provisions and statements in the foregoing Preliminary Matters are affirmed by Lender and Borrower.

6. **Modified Promissory Note.** Concurrently with the execution hereof, Borrower has executed and delivered to Lender a Modified Promissory Note in the amount of \$4,320,000.00 (the "Modified Note"), which the parties agree shall be substituted for the Original Promissory Note, which shall be cancelled and returned to Borrower. Borrower hereby acknowledges and agrees that the Modified Note, and the repayment thereof, shall continue to be secured by the Loan Documents, as amended by this Agreement.

7. **Loan Document Modifications.** Effective upon the execution hereof:

a. All references in the Loan Documents to the Original Promissory Note shall be modified to mean the Modified Note;

b. All references in the Loan Documents to the Loan amount shall be modified from \$4,160,000.00 to \$4,320,000.00.

c. Except as modified herein, all of the terms, conditions and provisions of the Loan Documents are hereby ratified and confirmed and shall remain in full force and effect.

8. **Representations and Warranties.**

Borrower hereby represents and warrants to Lender that:

- a. to Borrower's knowledge, each of the representations and warranties set forth in this Agreement and in the Loan Documents amended hereby are true and correct as of the date hereof;
- b. this Agreement constitutes the legal, valid and binding obligation of Borrower and is enforceable in accordance with its terms; and
- c. as of the date hereof, Borrower is not aware of any default or event of default under the Modified Note or any of the other Loan Documents executed by Borrower in connection with the Loan, as amended by this Agreement.

9. **Conflict.** In the event of any conflict or inconsistency between the provisions of this Agreement or any of the other Loan Documents heretofore executed by Borrower in connection with the Loan, the provisions of this Agreement shall govern.

10. **Successors and Assigns.** This Agreement shall be binding upon, and inure to the benefit of Borrower, Lender and their respective successors and assigns.

11. **Nonwaiver.** Borrower hereby acknowledges and agrees that:

- a. except as specifically set forth herein, Lender's execution and performance of this Agreement is not, and shall not be construed to be, a waiver, release, amendment or modification of, or to any rights or remedies which Lender currently has, or may hereafter acquire, with respect to any of the obligations owed to Lender by Borrower by virtue of any documents or instruments evidencing, securing, guaranteeing or relating to such obligations; nor shall it be deemed to be an agreement to forebear from exercising any rights or remedies which Lender currently has or may hereafter acquire.
- b. Lender's agreement herein shall not be construed as, or be deemed to create, any course of dealing between Borrower and Lender, nor shall it be deemed to require or imply any future settlements; nor shall it be construed as a waiver of any defaults of Lender's rights or remedies with regard thereto, or as an amendment to any other agreements, except as expressly set forth herein.

12. **Additional Covenants and Provisions.**

- a. Borrower agrees to pay or reimburse Lender for any and all fees, costs and expenses incurred by Lender relating to the Agreement including, without limitation, title expenses, recording fees and reasonable attorney fees.
- b. Borrower agrees that Borrower has no defense to the payment of the Modified Note and Borrower has no defenses to the terms or provisions of the Deed of Trust or other Loan Documents, as amended herein, or right of offset to claim against Lender. Borrower specifically acknowledges and agrees that Lender has performed each and all of its obligations, commitments and agreements under the Loan Documents and all other agreements related to the indebtedness up to and including the date of this Agreement and further agrees that Lender is not in default in the observance or performance of any obligation, commitment, agreement or covenant, express or

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implied, including, but not limited to, covenants of good faith and fair dealing, to be observed or performed by Lender and that no fact exists and that no event has occurred which now or hereafter will authorize Borrower to fail or refuse to abide by the terms of the Loan Documents or form the basis, in whole or in part, for a claim of any kind against Lender.

c. This Agreement contains the entire agreement between the parties with respect to the modification of the Loan Documents modified herein and that no statement, promise or inducement made by any party, or the agent of any party, that is not contained in this Agreement shall be valid or binding upon Lender.

d. Borrower agrees that time is of the essence with respect to all dates for payment and performance, as set forth in the Loan Documents, as amended herein.

e. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase or word herein, or the application thereof to any given circumstance, shall not affect the validity of the remainder of this Agreement.

f. This Agreement shall be construed in accordance with the laws of the State of Nebraska. Borrower hereby irrevocably submits to the jurisdiction of the courts of the State of Nebraska in any suit, action or proceeding. Borrower agrees that any and all service of process and any such suit, action or proceeding mailed or delivered in the manner provided for the delivery of notices in the Deed of Trust, as amended herein, shall be deemed in every respect effective service of process upon Borrower.

13. **Loan Participation.** Lender hereby discloses to Borrower and Borrower hereby acknowledges and agrees that Lender may sell participation interests in the Loan, and in conjunction with such Loan participations may furnish any information concerning Borrower or guarantors in its possession from time to time to participants and prospective participants and may furnish information in response to credit inquiries consistent with general banking practices and applicable laws.

14. **Counterparts.** This Agreement and the Consent and Agreement of Guarantors affixed hereto and made a part hereof may be executed in any number of counterpart originals, each of which, when taken together, shall be deemed one and the same instrument.

15. **Credit Agreement.** A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT YOU (BORROWER) AND US (LENDER) FROM ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT, PROMISE, UNDERTAKING, OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, OR ANY AMENDMENT OF, CANCELLATION OF, WAIVER OF, OR SUBSTITUTION FOR ANY OR ALL OF THE TERMS OR PROVISIONS OF ANY INSTRUMENT OR DOCUMENT EXECUTED IN CONNECTION WITH THIS LOAN OF MONEY OR GRANT OR EXTENSION OF CREDIT, MUST BE IN WRITING TO BE EFFECTIVE.

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Signature Page to Follow]

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IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement to be effective as of the day and year first above written.

BORROWER:

**PAPILLION DEVELOPMENT SETTLER'S  
CREEK, LLC, a Nebraska limited liability company**

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

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

By: Michael L. Ebert  
Michael L. Ebert, Vice President

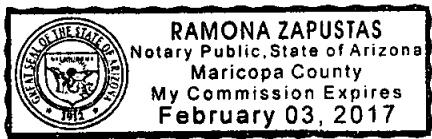
LENDER:

**FIRST NATIONAL BANK OF OMAHA, a national banking association**

By: Eric W. Mungro  
Title: vice president

STATE OF Arizona )  
  ) ss.  
COUNTY OF Maricopa )

The foregoing instrument was acknowledged before me this 30 day of May, 2013, by Michael L. Ebert, as Vice President of RED Consolidated Holdings, LLC, a Delaware limited liability company, Managing Member of RED Papillion Settler's Creek, LLC, a Missouri limited liability company, Manager of Papillion Development Settler's Creek, LLC, a Nebraska limited liability company, on behalf of the company.

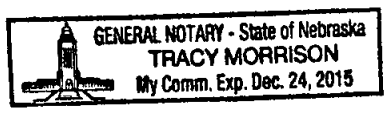


Ramona Zapustas  
Notary Public

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STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of ~~May~~ <sup>JUNE</sup>, 2013, by ERIC W. NUSSJERD, VICE PRESIDENT of FIRST NATIONAL BANK OF OMAHA, a national banking association, on behalf of the association.



Tracy Morrison  
Notary Public

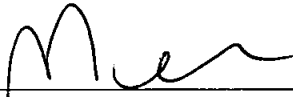
**CONSENT AND AGREEMENT OF GUARANTORS**

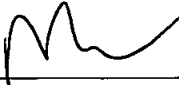
The undersigned, as Guarantors, hereby consent to the foregoing Mortgage Loan Extension and Modification Agreement, and hereby ratify and confirm their respective Guaranty and agree that their Guaranty remains in full force and effect.

Dated effective May 31, 2013.

**RED PAPIILLION SETTLER'S CREEK, LLC**, a Missouri limited liability company, Guarantor

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

By:   
Michael L. Ebert, Vice President

  
Michael L. Ebert, Guarantor

  
Scott Rehorn, Guarantor

\_\_\_\_\_  
Daniel Lowe, Guarantor

**PAPILLION SETTLERS CREEK LLC**, a Nebraska limited liability company, Guarantor

By: \_\_\_\_\_  
Jay R. Lerner, Manager

\_\_\_\_\_  
Salvadore Carta, Guarantor

\_\_\_\_\_  
Jay R. Lerner, Guarantor

CONSENT AND AGREEMENT OF GUARANTORS


The undersigned, as Guarantors, hereby consent to the foregoing Mortgage Loan Extension and Modification Agreement, and hereby ratify and confirm their respective Guaranty and agree that their Guaranty remains in full force and effect.

Dated effective May 31, 2013.


RED PAPILLION SETTLER'S CREEK, LLC, a Missouri limited liability company, Guarantor

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

By:   
Michael L. Ebert, Vice President

  
Michael L. Ebert, Guarantor

  
Scott Rehorn, Guarantor

  
Daniel Lowe, Guarantor

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

By: \_\_\_\_\_  
Jay R. Lerner, Manager

\_\_\_\_\_  
Salvadore Carta, Guarantor

\_\_\_\_\_  
Jay R. Lerner, Guarantor



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**CONSENT AND AGREEMENT OF GUARANTORS**

The undersigned, as Guarantors, hereby consent to the foregoing Mortgage Loan Extension and Modification Agreement, and hereby ratify and confirm their respective Guaranty and agree that their Guaranty remains in full force and effect.

Dated effective May 31, 2013.

**RED PAPILLION SETTLER'S CREEK, LLC**, a Missouri limited liability company, Guarantor

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

By: \_\_\_\_\_  
Michael L. Ebert, Vice President

\_\_\_\_\_  
Michael L. Ebert, Guarantor

\_\_\_\_\_  
Scott Rehorn, Guarantor

\_\_\_\_\_  
Daniel Lowe, Guarantor

**PAPILLION SETTLERS CREEK LLC**, a Nebraska limited liability company, Guarantor

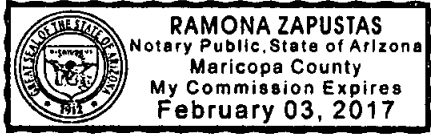
By: \_\_\_\_\_  
Jay R. Lerner, Manager

\_\_\_\_\_  
Salvadore Carta, Guarantor

\_\_\_\_\_  
Jay R. Lerner, Guarantor

STATE OF Arizona )  
COUNTY OF Maricopa ) ss.

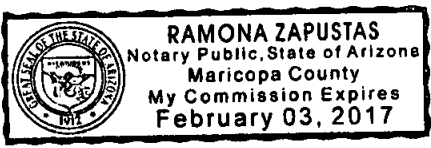
The foregoing instrument was acknowledged before me this 23 day of May, 2013, by Michael L. Ebert, as Vice President of RED Consolidated Holdings, LLC, a Delaware limited liability company, Managing Member of RED Papillion Settler's Creek, LLC, a Missouri limited liability company, on behalf of the company.



Ramona Zapustas  
Notary Public

STATE OF Arizona )  
COUNTY OF Maricopa ) ss.

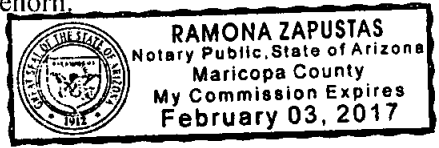
The foregoing instrument was acknowledged before me this 23 day of May, 2013, by Michael L. Ebert.



Ramona Zapustas  
Notary Public

STATE OF Arizona )  
COUNTY OF Maricopa ) ss.

The foregoing instrument was acknowledged before me this 23 day of May, 2013, by Scott Rehorn.



Ramona Zapustas  
Notary Public

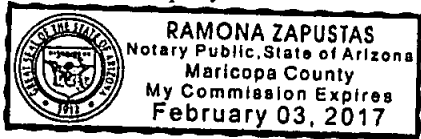
STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_ day of May, 2013, by Daniel Lowe.

\_\_\_\_\_  
Notary Public

STATE OF Arizona )  
COUNTY OF Maricopa ) ss.

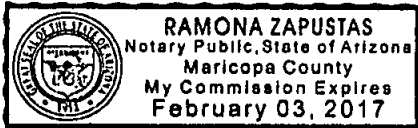
The foregoing instrument was acknowledged before me this 23 day of May, 2013, by Michael L. Ebert, as Vice President of RED Consolidated Holdings, LLC, a Delaware limited liability company, Managing Member of RED Papillion Settler's Creek, LLC, a Missouri limited liability company, on behalf of the company.



Ramona Zapustas  
Notary Public

STATE OF Arizona )  
COUNTY OF Maricopa ) ss.

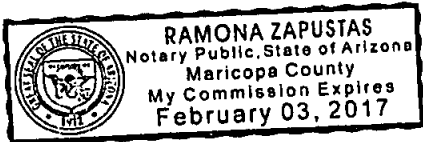
The foregoing instrument was acknowledged before me this 23 day of May, 2013, by Michael L. Ebert.



Ramona Zapustas  
Notary Public

STATE OF Arizona )  
COUNTY OF Maricopa ) ss.

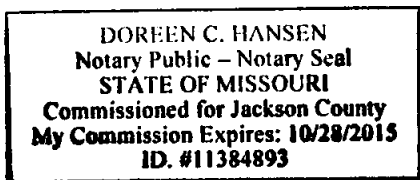
The foregoing instrument was acknowledged before me this 23 day of May, 2013, by Scott Rehorn



Ramona Zapustas  
Notary Public

STATE OF Missouri )  
COUNTY OF Jackson ) ss.

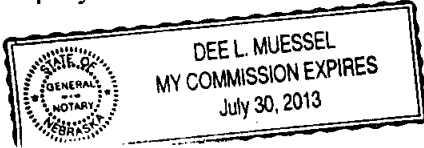
The foregoing instrument was acknowledged before me this 20 day of June, 2013, by Daniel Lowe.



Doreen C. Hansen  
Notary Public

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

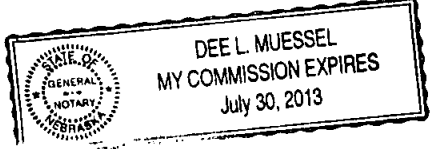
The foregoing instrument was acknowledged before me this 17 day of May, 2013, by Jay R. Lerner, as Manager of Papillion Settlers Creek LLC, a Nebraska limited liability company, on behalf of the company.



Dee Muesel  
Notary Public

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

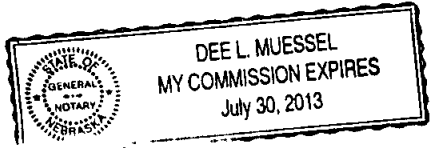
The foregoing instrument was acknowledged before me this 17 day of May, 2013, by Salvadore Carta.



Dee Muesel  
Notary Public

STATE OF Nebraska )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 17 day of May, 2013, by Jay R. Lerner.



Dee Muesel  
Notary Public

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Lot 1, Settler's Creek Replat 3, a subdivision in Sarpy County, Nebraska, along with Access and Parking Easements as set forth in the Declaration of Reciprocal Easements, Covenants and Restrictions filed August 14, 2008 at Instrument No. 2008-23219, records of Sarpy County, Nebraska.