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SUBMITTED TITLECORE NATIONAL, LLC

FILED SARPY CO. NE.
INSTRUMENT NUMBER

2019-25139

2019 Oct 15 01:54:52 PM



County Clerk/Register of Deeds
Deb Houghtaling



**LOAN EXTENSION AND MODIFICATION AGREEMENT
(Lots 4 and 5 Settler's Creek)**

THIS LOAN EXTENSION AND MODIFICATION AGREEMENT (this "Agreement") is executed effective as of the 1st day of September, 2019, 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 Lot 5 Loan.** On or about August 7, 2014, Borrower secured a loan from Lender in the original principal amount of Three Million Two Hundred Eighty Thousand and 00/100 Dollars (\$3,280,000.00) (the "Lot 5 Loan"), as evidenced by Borrower's Promissory Note to Lender dated August 7, 2014, in the amount of \$3,280,000.00 (the "Lot 5 Note"). The Lot 5 Note is secured by a Deed of Trust, as hereinafter described, on the real estate in Sarpy County, Nebraska, as legally described and identified as the Lot 5 Property on Exhibit "A" attached hereto (the "Lot 5 Property").

2. **Original Lot 4 Loan.** On or about January 29, 2016, Borrower secured a loan from Lender in the original principal amount of Three Million Two Hundred Eighty Thousand and 00/100 Dollars (\$3,280,000.00) (the "Lot 4 Loan"), as evidenced by a Building Loan Agreement dated January 29, 2016, executed by Borrower and Lender (the "Lot 4 Loan Agreement"), and Borrower's Promissory Note to Lender dated January 29, 2016, in the amount of \$3,280,000.00 (the "Lot 4 Note"). The Lot 4 Note is secured by a Deed of Trust, as hereinafter described, on the real estate in Sarpy County, Nebraska, as legally described and identified as the Lot 4 Property on Exhibit "A" attached hereto (the "Lot 4 Property"), and referred to herein collectively with the Lot 5 Property as the "Mortgaged Property").

3. **Modified Loan.** Borrower desires to combine the Lot 5 Loan with the Lot 4 Loan and extend the maturity date and modify some additional terms of the Lot 4 Loan. Lender has agreed to combine the Lot 5 Loan with the Lot 4 Loan and to accommodate the extension and certain modifications to the Lot 4 Loan, such extension and modification terms to be evidenced by this Agreement.

4. **Lot 5 Loan Documents.** The obligations of Borrower in connection with the Lot 5 Loan are evidenced, secured and/or guaranteed by documents and agreements executed contemporaneously with the closing of the Lot 5 Loan and execution of the Lot 5 Note which, as heretofore amended and modified, are hereinafter referred to as the "Lot 5 Loan Documents", that include the following:

- i. Deed of Trust, Security Agreement and Assignment of Rents from Borrower to Lender dated August 7, 2014, and recorded with the Sarpy County, Nebraska Register of Deeds on August 8, 2014, as Instrument No. 2014-17342 (the "Lot 5 Deed of Trust");
- ii. Assignment of Rents and Leases from Borrower to Lender dated August 7, 2014, and recorded with the Sarpy County, Nebraska Register of Deeds on August 8, 2014, as Instrument No. 2014-17343 (the "Lot 5 Assignment of Rents");

- iii. Notice of Commencement from Borrower to Lender dated August 7, 2014, and recorded with Sarpy County, Nebraska Register of Deeds on August 8, 2014, as Instrument No. 2014-17344;
- iv. UCC-1 Financing Statement filed with the Nebraska Secretary of State (the "Lot 5 UCC");
- v. Environmental Indemnity Agreement from Borrower to Lender (the "Lot 5 Indemnity");
- vi. Guaranty of Payment of 50% of the Secured Obligations of RED Papillion Settler's Creek, LLC, dated August 7, 2014, as amended from time to time thereafter, and Red Consolidated Holdings, LLC, dated November 1, 2017 (the "Lot 5 RED Guaranty"); and
- vii. Guaranty of Payment of 50% of the Secured Obligations of Papillion Settler's Creek, LLC, Salvadore Carta and Jay R. Lerner dated August 7, 2014 (the "Lot 5 PSC Guaranty").

5. **Lot 4 Loan Documents.** The obligations of Borrower in connection with the Lot 4 Loan are evidenced, secured and/or guaranteed by documents and agreements executed contemporaneously with the closing of the Lot 4 Loan and execution of the Lot 4 Note which, as heretofore amended and modified, are hereinafter referred to as the "Lot 4 Loan Documents", that include the following:

- i. Deed of Trust, Security Agreement and Assignment of Rents from Borrower to Lender dated January 29, 2016, and recorded with the Sarpy County, Nebraska Register of Deeds on February 1, 2016, as Instrument No. 2016-02143 (the "Lot 4 Deed of Trust");
- ii. Assignment of Rents and Leases from Borrower to Lender dated January 29, 2016, and recorded with the Sarpy County, Nebraska Register of Deeds on February 1, 2016, as Instrument No. 2016-02144 (the "Lot 4 Assignment of Rents");
- iii. Notice of Commencement from Borrower to Lender dated January 29, 2016, and recorded with Sarpy County, Nebraska Register of Deeds on February 1, 2016, as Instrument No. 2016-02145;
- iv. UCC-1 Financing Statement filed with the Nebraska Secretary of State (the "Lot 4 UCC");
- v. Environmental Indemnity Agreement from Borrower to Lender (the "Lot 4 Indemnity");
- vi. Guaranty of Payment of 50% of the Secured Obligations of RED Papillion Settler's Creek, LLC, dated August 7, 2014, as amended from time to time thereafter, and Red Consolidated Holdings, LLC, dated November 1, 2017 (the "Lot 4 RED Guaranty"); and
- vii. Guaranty of Payment of 50% of the Secured Obligations of Papillion Settler's Creek, LLC, Salvadore Carta and Jay R. Lerner dated January 29, 2016 (the "Lot 4 PSC Guaranty").

6. **Lot 5 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 Lot 5 Loan Documents and the exceptions to title set forth in Stewart Title Guaranty Company ALTA Loan Policy of Title Insurance (Policy Number M-9302-002855704) issued at the Lot 5 Loan closing and any subsequent endorsements thereto.

7. **Lot 4 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 Lot 4 Loan Documents and the exceptions to title set forth in Old Republic National Title Insurance Company ALTA

Loan Policy of Title Insurance (Policy Number LX-11093088) issued at the Lot 4 Loan closing and any subsequent endorsements thereto.

8. **Modification of Loan.** The parties hereto have agreed to modify the Loan terms as follows:
 - a. The Lot 4 Loan and Lot 5 Loan will be consolidated into a single loan which shall be referred to herein as the “Modified Loan”.
 - b. The principal amount of the Modified Loan shall be \$6,109,240.71.
 - c. The Modified Loan shall be evidenced by the “Modified Loan Documents”, as hereinafter defined in this Agreement.
 - d. The Maturity Date of the Modified Loan shall be modified and extended to November 1, 2022.
 - e. The terms of repayment of the Modified Loan shall be memorialized in the “Modified Note”, as hereinafter defined.
 - f. The Borrower shall be authorized to utilize \$925,732.62 of the Loan proceeds for Tenant Improvements and Leasing Commissions for the Property described in the Lot 4 Loan Agreement.

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

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

10. **Modified Promissory Note.** Concurrently with the execution hereof, Borrower has executed and delivered to Lender a Modified Promissory Note in the amount of \$6,109,240.71 (the “Modified Note”), which the parties agree represents the aggregate unpaid principal balances of the Lot 5 Loan and Lot 4 Loan plus \$925,732.62 of available funds under the Lot 4 Loan (the “Available Funds”), and which the parties agree shall be substituted for the existing Lot 5 Note and Lot 4 Note, which notes 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 Lot 5 Loan Documents and Lot 4 Loan Documents, as amended by this Agreement.

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

- a. The terms “Modified Loan Documents”, being the documents that evidence the Modified Loan shall include this Agreement, the Modified Note, and the following Lot 5 Loan Documents and Lot 4 Loan Documents, as amended and modified by this Agreement:
 - i. Lot 4 Loan Agreement;
 - ii. Lot 5 Loan Agreement;
 - iii. Lot 5 Deed of Trust;
 - iv. Lot 4 Deed of Trust;
 - v. Lot 5 Assignment of Rents;
 - vi. Lot 4 Assignment of Rents;
 - vii. Lot 5 UCC;

- viii. Lot 4 UCC;
- ix. Lot 5 Indemnity;
- x. Lot 4 Indemnity;
- xi. Lot 4 RED Guaranty;
- xii. Lot 4 PSC Guaranty.
- xiii. Lot 5 RED Guaranty; and
- xiv. Lot 5 PSC Guaranty.

b. The principal amount of the Loan shall be adjusted to \$6,109,240.71 in each and all of the Modified Loan Documents.

c. The Maturity Date of the Modified Loan shall be November 1, 2022, such date to be reflected in both the Lot 4 Deed of Trust and Lot 5 Deed of Trust as the Maturity Date of the Modified Loan.

d. Borrower shall be permitted to draw on the Available Funds from time to time in compliance with the Lot 4 Loan Agreement.

e. 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 Modified 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 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 Modified Loan Documents heretofore executed by Borrower in connection with the Modified 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. **Notices.** All notices, demands, requests, consents, approvals or communications required under the Modified Loan Documents shall be in writing and shall be deemed to have been properly given if sent by hand delivery, overnight courier or certified mail, postage prepaid, addressed to the parties at the following addresses:

If to Borrower: Papillion Settlers Creek LLC

Attn: Salvatore Carta
c/o The Lerner Company
10855 West Dodge Road, Suite 270
Omaha, Nebraska 68154

RED Papillion Settler's Creek, LLC
Attn: Michael L. Ebert
One E Washington #300
Phoenix, AZ 85004

If to Lender: First National Bank of Omaha
1620 Dodge Street
Omaha, Nebraska 68102
ATTN: Senior Officer, Mortgage Loan Department

With a copy to: James D. Buser, Esquire
PANSING HOGAN ERNST & BACHMAN LLP
10250 Regency Circle, Suite 300
Omaha, Nebraska 68114

or to such other addresses as are designated by notice pursuant to this Section. Notices shall be deemed to have been received upon delivery if hand delivered or if sent by overnight courier, or if sent by certified mail, three (3) days following the day of deposit in the U.S. Mail.

12. **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.

13. **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 this 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 Modified 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 Modified 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 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 Modified 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 Modified 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 Modified 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.

14. **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.

15. **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.

16. **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.

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: *[Signature]*
Michael L. Ebert, President

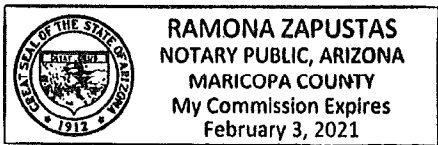
LENDER:

FIRST NATIONAL BANK OF OMAHA, a national banking association

By: _____
Title: _____

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 7 day of October, 2019, by Michael L. Ebert, as 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.



[Signature]
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 7 day of October, 2019, by Holly K. Clark, Vice President of FIRST NATIONAL BANK OF OMAHA, a national banking association, on behalf of the association.



Pamela M. Waite
Notary Public

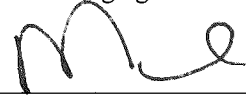
CONSENT AND AGREEMENT OF GUARANTORS

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

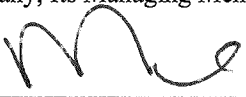
Dated effective September 1, 2019.

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

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

By: 
Michael L. Ebert, President

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

By: 
Michael L. Ebert, President

PAPILLION SETTLERS CREEK LLC, a Nebraska limited liability company

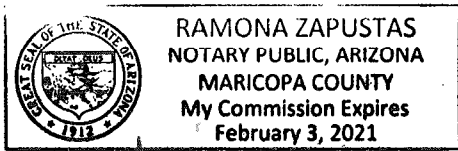
By: _____
Jay R. Lerner, Manager

Salvadore Carta, Guarantor

Jay R. Lerner, Guarantor

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

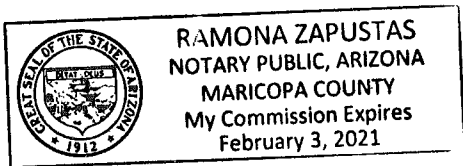
The foregoing instrument was acknowledged before me this 7 day of October, 2019, by Michael L. Ebert, as President of RED Consolidated Holdings, LLC, a Delaware limited liability company, Managing Member of RED Papillion Settler's Creek, LLC, a Missouri limited liability company, on behalf of the company.



Ramona Zapustas
Notary Public

STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 7 day of October, 2019, by Michael L. Ebert, as President of RED Consolidated Holdings, LLC, a Delaware limited liability company, on behalf of the company.



Ramona Zapustas
Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of October, 2019, by Jay R. Lerner, as Manager of Papillion Settlers Creek LLC, a Nebraska limited liability company, on behalf of the company.

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of October, 2019, by Salvadore Carta.

Notary Public

CONSENT AND AGREEMENT OF GUARANTORS

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

Dated effective September 1, 2019.

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

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

By: _____
Michael L. Ebert, President

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

By: _____
Michael L. Ebert, President

PAPILLION SETTLERS CREEK LLC, a Nebraska limited liability company

By: _____
Jay R. Lerner, Manager

Salvadore Carta, Guarantor

Jay R. Lerner, Guarantor

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of October, 2019, by Michael L. Ebert, as 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.

Notary Public

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of October, 2019, by Michael L. Ebert, as President of RED Consolidated Holdings, LLC, a Delaware limited liability company, on behalf of the company.

Notary Public

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 5th day of October, 2019, by Jay R. Lerner, as ~~Manager of Papillion Settlers Creek LLC~~, a Nebraska limited liability company, on behalf of the company.

State of Nebraska - General Notary
DEE L. MUESSEL
My Commission Expires
July 30, 2021

Dee Muesel

Notary Public

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 5th day of October, 2019, by Salvadore Carta.

State of Nebraska - General Notary
DEE L. MUESSEL
My Commission Expires
July 30, 2021

Dee Muesel

Notary Public

STATE OF Nebraska)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 5th day of October, 2019, by Jay R. Lerner.

State of Nebraska - General Notary
DEE L. MUESSEL
My Commission Expires
July 30, 2021

Dee Muesel
Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION

Lot 4, Settlers Creek Replat 6, a subdivision in Sarpy County, Nebraska.

And

Lot 5, Settlers Creek Replat 6, a subdivision in Sarpy County, Nebraska.