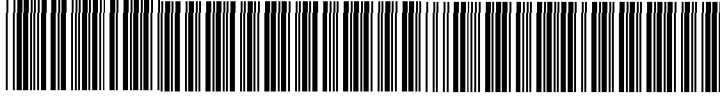




MISC 2016057155



JUL 19 2016 10:45 P 8

Fee amount: 52.00  
FB: M1-22282  
COMP: MB

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
07/19/2016 10:45:28.00



2016057155

When recorded return to:  
Great Western Bank  
Attn: Lincoln Business Banking  
1235 "N" Street  
Lincoln, NE 68508

### LOAN ASSUMPTION AND MODIFICATION AGREEMENT

This Loan Assumption and Modification Agreement ("Agreement"), made as of July 6, 2016, is entered into by and between **West Center Land, LLC**, a Nebraska limited liability company (referred to herein as "West Center Land") whose mailing address is 6007 Norman Road, Lincoln, NE 68512 and **West Center Lodging, LLC**, a Nebraska limited liability company (herein referred to as "West Center Lodging") whose mailing address is 2100 Wilderness Ridge Drive, Lincoln, NE 68512 and **Fox Properties, Inc.**, a Nebraska corporation, (herein referred to as "Fox Properties") whose mailing address is 2100 Wilderness Drive, Lincoln, NE 68512, and **Prairie Wind Air, LLC**, a South Dakota limited liability company, (herein referred to as "Prairie Wind") who mailing address is 1300 W. 57<sup>th</sup> Street, Sioux Falls, SD 57108 and **Clark W. Anderson** (herein referred to as "Anderson") whose mailing address is 2100 Wilderness Ridge Drive, Lincoln, NE 68512 and **Peter P. Hegg** (herein referred to as "Hegg") whose mailing address is 1300 W. 57<sup>th</sup> Street, Sioux Falls, SD 57108 and **Michael A. Works** (herein referred to as "Works") whose mailing address is 6007 Norman Road, Lincoln, NE 68512 and **John E. Klimpel** (herein referred to as "Klimpel") whose mailing address is 5930 S 114<sup>th</sup> Street, Lincoln, NE 68526 and **Great Western Bank**, a South Dakota banking corporation (referred to herein as "Lender"), whose mailing address is 1235 "N" Street, Lincoln, Nebraska 68508.

### RECITALS

This Agreement is entered into upon the basis of the following facts and circumstances:

- A. WHEREAS, Lender is the owner and holder of a promissory note identified as follows:
1. Promissory Note dated May 1, 2015, made by West Center Land and West Center Lodging, payable to Lender in the amount of \$7,192,081.00 (the "Note"),
- B. WHEREAS, the Note is secured or governed by various Related Documents, including but not limited to the following:
1. Construction Loan Agreement dated May 1, 2015 (the "Loan Agreement");
  2. Construction Deed of Trust dated May 1, 2015 and recorded on May 8, 2015 as Instrument No 2015034980 of the Official Records of Douglas County, Nebraska (the "Deed of Trust"), encumbering the property described on Exhibit "A" attached hereto and by this reference incorporated herein (the "Property");
  3. Assignments of Rents dated May 1, 2015 and recorded on May 8, 2015 as Instrument No 2015034981 of the Official Records of Douglas County, Nebraska (the "Assignment of Rents"), encumbering the Property;
  4. Commercial Security Agreement dated May 1, 2015 (the "Security Agreement");
  5. Hazardous Substances Certificate and Indemnity Agreement dated May 1, 2015 (the "Hazardous Indemnity Agreement");

6. Assignment of Construction Contracts dated May 1, 2015 (the "Assignment of Construction Contracts");
7. Assignment of Architects' Contract dated May 1, 2015 (the "Assignment of Architects' Contracts");
8. Disbursing Escrow Agreement dated May 1, 2015 (the "Disbursing Escrow Agreement");
9. UCC Financing Statement recorded on May 8, 2015 as Instrument No. 2015034982 of the Official Records of Douglas County, Nebraska, encumbering the Property and UCC Financing Statement recorded May 6, 2015 as Document No 9815847554-2 of the Nebraska Secretary of States Office (cumulatively referred to herein as the "Financing Statements");
10. Notice Of Commencement dated May 1, 2015 and recorded on May 8, 2015 as Instrument No 2015034983 of the Official Records of Douglas County, Nebraska (the "NOC"), encumbering the Property;

C. WHEREAS, Anderson, Works and Klimpel each entered into a Commercial Guaranty dated May 1, 2015 (the "Commercial Guaranties").

D. WHEREAS, the Note, Loan Agreement, Deed of Trust, Assignment of Rents, Security Agreement, Hazardous Indemnity Agreement, Assignment of Construction Contracts, Assignment of Architects' Contracts, Disbursing Escrow Agreement, UCC Financing Statements, NOC and Commercial Guaranties are collectively referred to herein as the "Existing Loan Documents"

E. WHEREAS, the fee simple title of West Center Land in and to the Property has been conveyed through one or more transfers to Fox Properties as to a 90% interest and to Prairie Winds as to a 10% interest, as Tenants in Common, and to comply with the terms and conditions of the due-on-sale clause in the Note and Deed of Trust, West Center Land, West Center Lodging, Fox Properties and Prairie Winds have asked Lender to consent to the conveyance of the Property, and to assume the payment and performance of the Note and other Existing Loan Documents, as modified herein.

#### AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals and the covenants and conditions contained herein, the parties hereto agree as follows:

1. Fox Properties and Prairie Winds hereby assume and unconditionally agree to pay the unpaid balance of the Note together with interest accruing thereon and all other charges arising thereunder, and to faithfully perform all of the conditions, covenants and agreements contained in the Note, the Deed of Trust and other Existing Loan Documents, as modified herein, as if it were an original party thereto.
2. West Center Lodging agrees that its liability for payment of the Note and performance of the conditions, covenants and agreements contained in the Note, and other Existing Documents as modified herein, shall not be released, diminished or otherwise affected in any manner by this Agreement.
3. Upon execution of this Agreement by all parties, Works and Klimpel shall be released of any liability under the terms of their respective Commercial Guaranty Agreements.
4. Lender hereby consents to the conveyance of the Property to Fox Properties and Prairie Wind and agrees that it will not exercise its rights under the terms of the due-on-sale clause of the Deed of Trust because of such conveyance. Lender's consent to this conveyance does not constitute a waiver of its rights under the due-on-sale clause as to any future conveyance.
5. Upon any default under the Note, the Deed of Trust, all other Existing Loan Documents, or this Agreement, Lender may, at its option, and without waiving any rights against any other party or against the Property, proceed

directly and at once, without notice, against any one or more of the parties hereto to collect and recover the unpaid balance of the Note, or any portion thereof, without proceeding against any other party or parties hereto or foreclosing upon or selling the Property. Lender may also proceed under the power of sale provisions of the Deed of Trust or foreclose upon, and sell or otherwise dispose of, or collect and apply, any real or personal property securing the Note either before, after or concurrently with any proceeding against any of the parties hereto and without waiving any rights against any of the parties hereto.

6. The Note, Deed of Trust, Assignment of Rents, Loan Agreements and all other Existing Loan Documents are hereby modified in the following respects:
  - (a) Fox Properties, Prairie Wind, West Center Lodging shall execute that certain Promissory Note dated July 6, 2016 in the principal amount of \$7,989,744.00 (herein together referred to as "Replacement Note"), which Replacement Note is a refinancing of and substitution for the Promissory Note referenced in Paragraph A 1. above.
  - (b) Fox Properties, Prairie Wind, West Center Lodging shall execute that certain Construction Loan Agreement dated July 6, 2016, which shall amend and replace the Construction Loan Agreement dated May 1, 2015 referenced in Paragraph C above.
  - (c) Fox Properties, Prairie Wind, West Center Lodging shall execute that certain Commercial Security Agreement dated July 6, 2016, which shall amend and replace the Commercial Security Agreement May 1, 2015 referenced in Paragraph B 5. above.
  - (d) Fox Properties and Prairie Wind shall execute that certain Modification of Deed of Trust and Assignment of Rents dated July 6, 2016.
  - (e) Fox Properties and Prairie Wind shall execute that certain Notice of Commencement dated July 6, 2016. The Notice of Commencement dated May 1, 2015 and referenced in Paragraph B 4. referenced above shall be terminated after the Notice of Commencement dated July 6, 2016 is recorded with the Douglas County Register of Deeds Office of Douglas County, Nebraska.
  - (f) Anderson shall execute that certain Commercial Guaranty dated July 6, 2016.
  - (g) Hegg shall execute that certain Commercial Guaranty dated July 6, 2016.
  - (h) Fox Properties, Prairie Wind, West Center Lodging, Anderson, and Hegg shall execute any other loan documents as may be required by Lender in connection with the transaction set forth herein, all of which loan documents shall constitute and be deemed part of the Existing Loan Documents.
7. In the event the enforceability or validity of any portion of this Agreement is challenged or questioned, such provision shall be construed in accordance with and shall be governed by whichever applicable federal or Nebraska law would uphold or would enforce such challenged or questioned provisions. Notwithstanding the above, if any provision thereof is prohibited or unenforceable, such provision shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof.
8. This Agreement and all documents executed in connection with this Agreement are the product of negotiations between the parties. This Agreement shall not be construed against any of the parties by reason of the doctrine that an agreement, or the language thereof, may be construed against the party drafting such agreement or language. This Agreement shall control

in the event of any conflict between the terms and provisions of this Agreement and the Existing Loan Documents.

9. This Agreement shall inure to the benefit of and bind the parties hereto and their respective successors, assigns, heirs, representatives and estates.
10. Fox Properties and Prairie Wind requests that any notice of default and notice of trustee's sale which may be executed or made under or pursuant to the Deed of Trust be given to Fox Properties and Prairie Wind at the following address:

Fox Properties, Inc.  
c/o Clark W. Anderson  
2100 Wilderness Drive  
Lincoln, NE 68512

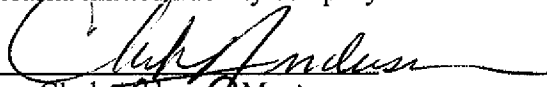
Prairie Wind Air, LLC  
c/o Peter P. Hegg  
1300 W. 57<sup>th</sup> Street  
Sioux Falls, SD 57108

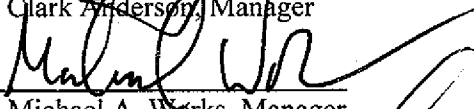
11. A credit agreement must be in writing to be enforceable under Nebraska law. To protect you and us from any misunderstandings or disappointments, any contract, promise, undertaking, or offer to forebear repayment of money or to make any other financial accommodation in connection with this loan of 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.

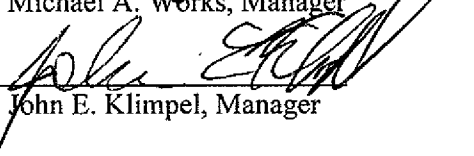
IN WITNESS WHEREOF, the parties have executed this Agreement.

**West Center Land:**

West Center Land, LLC  
a Nebraska limited liability company

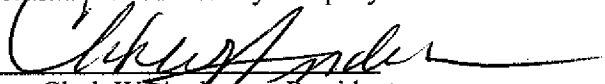
By:   
Clark W. Anderson, Manager

By:   
Michael A. Works, Manager

By:   
John E. Klimpel, Manager

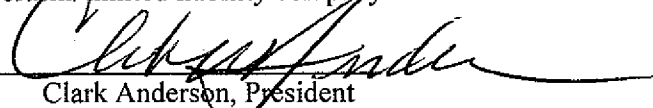
**West Center Lodging:**

West Center Lodging, LLC  
a Nebraska limited liability company

By:   
Clark W. Anderson, President

**Fox Properties:**

Fox Properties Inc.  
a Nebraska limited liability company

By:   
Clark Anderson, President

**Prairie Wind:**

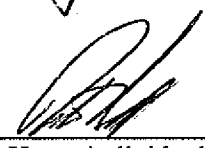
Prairie Wind Air, LLC  
a South Dakota limited liability company

By:   
Peter P. Hegg, Vice President

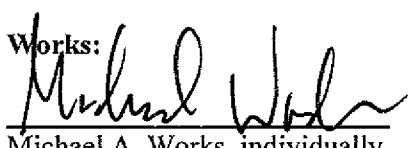
**Anderson:**

  
Clark W. Anderson, individually

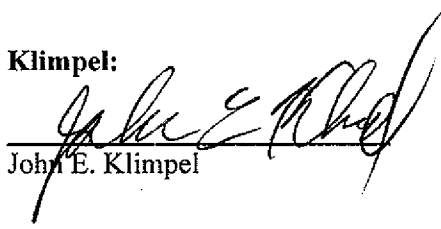
**Hegg:**

  
Peter P. Hegg, individually

**Works:**

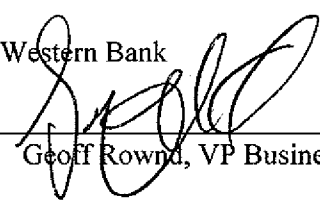
  
Michael A. Works, individually

**Klimpel:**

  
John E. Klimpel

**Lender:**

Great Western Bank

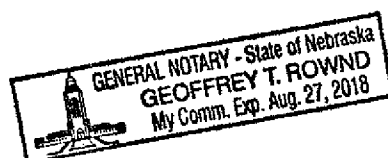
By:   
Geoff Rownd, VP Business Banker

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF LANCASTER        )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of July, 2016, by Clark W. Anderson, a Manager of West Center Land, LLC, a Nebraska limited liability company, on behalf of said Company.

My Commission Expires: Aug, 27, 2018

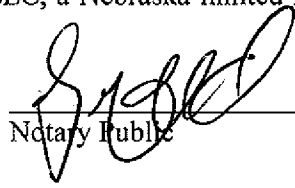
  
Notary Public

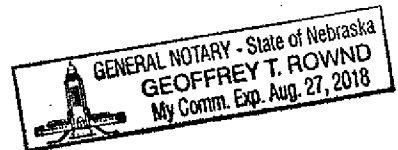


STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2016, by Michael A. Works, a Manager of West Center Land, LLC, a Nebraska limited liability company, on behalf of said Company.

My Commission Expires: Aug. 27, 2018

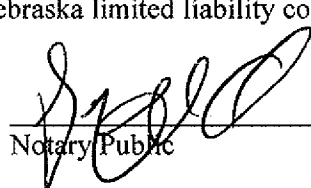
  
Notary Public

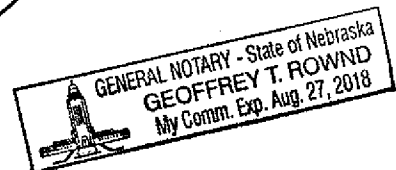


STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2016, by John E. Klimpel, a Manager of West Center Land, LLC, a Nebraska limited liability company, on behalf of said Company.

My Commission Expires: Aug. 27, 2018

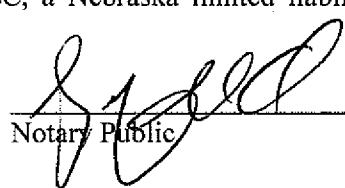
  
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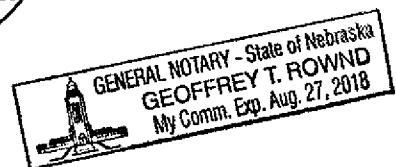


STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of July, 2016, by Clark W. Anderson, President of West Center Lodging, LLC, a Nebraska limited liability company, on behalf of said Company.

My Commission Expires: Aug. 27, 2018

  
Notary Public

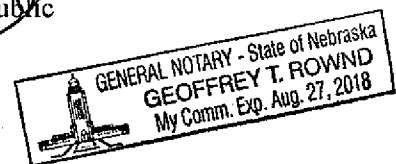


STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of July, 2016, by Clark W. Anderson, the President of Fox Properties, Inc., a Nebraska corporation, on behalf of said Corporation.

My Commission Expires: Aug. 27, 2018

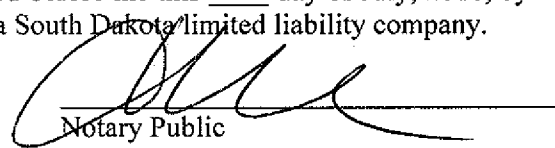
  
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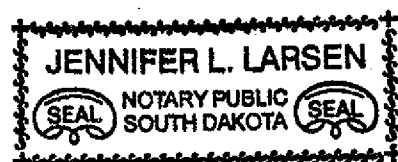


STATE OF South Dakota )  
 ) ss.  
COUNTY OF Minnehaha )

The foregoing instrument was acknowledged before me this 11 day of July, 2016, by Peter P. Hegg, Vice President of Prairie Wind Air, LLC, a South Dakota limited liability company.

My Commission Expires: 8/20/16

  
Notary Public

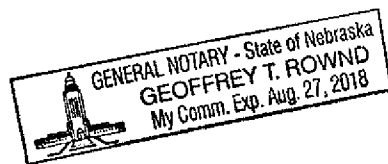


STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 7<sup>th</sup> day of July, 2016, by Clark W. Anderson, an individual known unto me.

My Commission Expires: Aug. 27, 2018

  
Notary Public

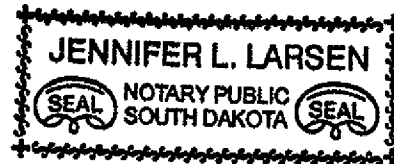


STATE OF South Dakota )  
 ) ss.  
COUNTY OF Minnehaha )

The foregoing instrument was acknowledged before me this 11 day of July, 2016, by Peter P. Hegg, an individual known unto me.

My Commission Expires: 8/20/16

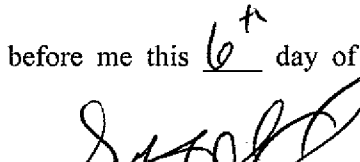
  
Notary Public

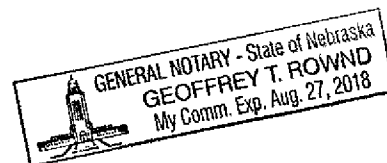


STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2016, by Michael A. Works, an individual known unto me.

My Commission Expires: Aug. 27, 2018

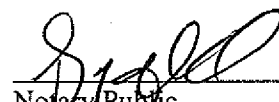
  
Notary Public

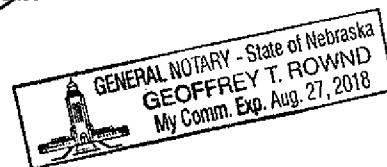


STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of July, 2016, by John E. Klimpel, an individual known unto me.

My Commission Expires: Aug. 27, 2018

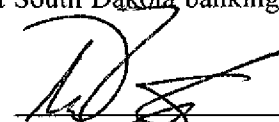
  
Notary Public

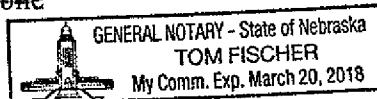


STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 8<sup>th</sup> day of July, 2016, by Geoff Rownd, VP Business Banker of Great Western Bank, a South Dakota banking corporation, on behalf of said corporation.

My Commission Expires: 3/20/18

  
Notary Public



**EXHIBIT "A"**

**(Legal Description)**

LOTS 2 AND 3, IN LEGACY REPLAT ELEVEN, AN ADDITION TO THE CITY OF OMAHA,  
AS SURVEYED, PLATTED AND RECORDED, IN DOUGLAS COUNTY, NEBRASKA;

TOGETHER WITH NON-EXCLUSIVE EASEMENT RIGHTS FOR INGRESS AND EGRESS AS  
ESTABLISHED BY ACCESS EASEMENT DATED NOVEMBER 15, 2004 AND RECORDED  
JANUARY 18, 2005, AS INSTRUMENT NO. 2005006176, AND ACCESS EASEMENTS  
DATED APRIL 12, 2005 AND RECORDED APRIL 14, 2005, AS INSTRUMENTS NO.  
2005041980 AND 2005041982, ALL OF THE RECORDS OF DOUGLAS COUNTY,  
NEBRASKA. (VESTING DEED)