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MAR 29 2016 08:31 P 9

Fee amount: 58.00
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Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
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2016021837

**THIRD MORTGAGE LOAN EXTENSION AND MODIFICATION AGREEMENT
 (Zone 5 Entertainment)**

THIS THIRD MORTGAGE LOAN EXTENSION AND MODIFICATION AGREEMENT ("Agreement") is executed effective as of the 25 day of March, 2016, by and between ZONE 5 ENTERTAINMENT, LLC, a Nebraska limited liability company ("Borrower"), JOSEPH H. KUTILEK ("Kutilek"), JOHN HUGHES, JR., ("Hughes"), PATRICK G. MCNEIL ("McNeil"), MAGNUM DEVELOPMENT CORP., a Nebraska corporation ("Magnum", and collectively with Kutilek, Hughes and McNeil, the "Guarantors"), and FIRST NATIONAL BANK OF OMAHA, a national banking association ("Lender").

Preliminary Matters

Original Loan. On or about the 4th day of December, 2009, Borrower secured a loan from Lender in the original amount of Nine Million Five Hundred Thousand and 00/100 Dollars (\$9,500,000.00) (the "Loan"), as evidenced by Borrower's Promissory Note to Lender dated December 4, 2009, in the amount of \$9,500,000.00 (the "Original Promissory Note") and secured by a Deed of Trust, Security Agreement and Assignment of Rents, as hereinafter described, on the real estate in Douglas County, Nebraska, as legally described on Exhibit "A" attached hereto (the "Mortgaged Property"). The Loan was modified by a Mortgage Loan Extension and Modification Agreement dated December 21, 2011, and filed with the Douglas County Register of Deeds as Instrument No. 2012003899 (the "First Modification Agreement"), and the Original Promissory Note was modified and replaced with a Modified Promissory Note dated December 21, 2011 in the amount of \$10,300,000.00 (the "First Modified Note"); and was further modified by a Second Mortgage Loan Extension and Modification Agreement dated November 8, 2013, and filed with the Douglas County Register of Deeds as Instrument No. 2013112839 (the "Second Modification Agreement"), and the First Modified Note was modified and replaced in its entirety by the Second Modified Promissory Note dated November 8, 2013 (the "Second Modified Note"). Lender and Borrower have agreed to extend the term of the Loan and effect certain other modifications of the Loan. The parties agree that the unpaid principal balance presently advanced and outstanding on the Loan and Original Promissory Note is the sum of \$11,531,547.57 as of the date hereof.

WHEN RECORDED, PLEASE RETURN TO:

Mortgage Loan Department
 First National Bank of Omaha
 Third Floor, First National Plaza
 11404 West Dodge Road
 Omaha, Nebraska 68154

1. **Loan Documents.** The obligations of Borrower in connection with the Loan, as amended, are evidenced, secured and/or guaranteed by documents and agreements executed contemporaneously with the Original Promissory Note which, as amended and modified by the First Modification Agreement, the Second Modification Agreement and this Agreement, are hereinafter referred to as the "Loan Documents", that include the following:

- i. Building Loan Agreement by and between Borrower and Lender;
- ii. Deed of Trust, Security Agreement and Assignment of Rents from Borrower to Lender recorded with the Douglas County, Nebraska Register of Deeds, Mortgage Records, on December 4, 2009, as Instrument No. 2009130074 (the "Deed of Trust");
- iii. Assignment of Rents and Leases from Borrower to Lender recorded with the Douglas County, Nebraska Register of Deeds, Miscellaneous Records on December 4, 2009, as Instrument No. 2009130075;
- iv. Assignment of Plans, Specifications, Construction, Management and Service Contracts and Agreements from Borrower to Lender;
- v. Environmental Indemnity Agreement from Borrower to Lender; and
- vi. UCC-1 Financing Statement,

and include the Amended and Restated Guarantys of Payment executed by Kutilek, Hughes, Magnum and McNeil, each of which are dated November 8, 2013 (the "Guarantys").

2. **Present Ownership.** Borrower represents, covenants and warrants to Lender that it remains the owner of the 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 Old Republic National Title Insurance Company ALTA Loan Policy of Title Insurance (Policy Number M-LX-8041715) issued at the Loan closing and any subsequent endorsements thereto.

3. **Modification of Loan.** The parties hereto have agreed to modify the Loan terms as follows:

- a. The Loan amount shall be modified to be \$12,000,000.00.
- b. The maturity date of the Loan shall be extended to March 31, 2023.
- c. Fix the Note Rate at 4.50%.
- d. Limit each of the Guarantor's liability under the Guarantys to fifty percent (50%) of the "Secured Obligations", as such term is defined in the Deed of Trust.

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

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

6. **Third Modified Promissory Note.**

Concurrently with the execution hereof, Borrower has executed and delivered to Lender a Third Modified Promissory Note in the amount of \$12,000,000.00 (the "Third Modified Note"), which the parties agree shall be substituted for the Second Modified Note, which shall be cancelled and returned to Borrower. Borrower hereby acknowledges and agrees that the Third Modified Note, and the repayment thereof, shall continue to be secured by the Loan Documents, as amended by this Agreement.

7. **Loan Document Modifications.** Borrower, Lender and Guarantors agree that effective upon the execution hereof:

a. All references on the Loan Documents to the Loan amount shall be modified to be \$12,000,000.00.

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

c. The reference to the scheduled Maturity Date of the Promissory Note as set forth in the Deed of Trust is hereby modified to March 31, 2023;

d. Each of the Guarantys is modified to include a new Section 3.4, as follows:

3.4 Notwithstanding anything to the contrary in this Guaranty, Guarantor's liability to Lender under this Guaranty shall be limited to an amount not to exceed fifty percent (50%) of the "Secured Obligations", as such term is defined in the Deed of Trust; and

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 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 Promissory 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 for endorsement of the Title Policy, recording fees and reasonable attorney fees.

b. Borrower agrees that Borrower has no defense to the payment of the Third 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 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. Borrower agrees that proceeds from the increased principal amount of the Loan shall be used by Borrower to discharge a "mezzanine" credit facility between Borrower and Thundertop, LLC, which shall be satisfied and released concurrently herewith.

d. This Agreement contains the entire agreement between the parties with respect to the modification of the Second Modified Note and the other 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.

e. 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.

f. 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.

g. 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.

h. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise a single instrument.

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.

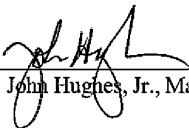
14. **Credit Agreement.** A CREDIT AGREEMENT MUST BE IN WRITING TO BE ENFORCEABLE UNDER NEBRASKA LAW. TO PROTECT YOU (BORROWER) AND US (LENDER) FROM ANY MISUNDERSTANDINGS OR DISAPPOINTMENTS, ANY CONTRACT, PROMISE, UNDERTAKING, OR OFFER TO FOREBEAR REPAYMENT OF MONEY OR TO MAKE ANY OTHER FINANCIAL ACCOMMODATION 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]

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

BORROWER:


ZONE 5 ENTERTAINMENT, LLC, a Nebraska limited liability company

By: 
John Hughes, Jr., Manager

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this **25** day of March, 2016, by John Hughes, Jr., as Manager of Zone 5 Entertainment, LLC, a Nebraska limited liability company, for and on behalf of the company.

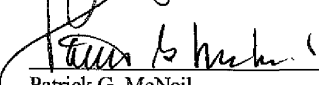



Notary Public

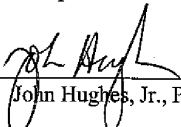
GUARANTORS:


Joseph H. Kutilek


John Hughes, Jr.


Patrick G. McNeil

MAGNUM DEVELOPMENT CORP., a Nebraska corporation

By: 
John Hughes, Jr., President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 25 day of March, 2016, by Joseph H. Kutilek.



Michelle Zimmerman
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

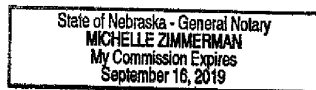
The foregoing instrument was acknowledged before me this 25 day of March, 2016, by John Hughes, Jr.



Michelle Zimmerman
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 25 day of March, 2016, by Patrick G. McNeil.



Michelle Zimmerman
Notary Public
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

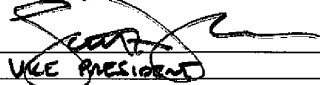
The foregoing instrument was acknowledged before me this 25 day of March, 2016, by John Hughes, Jr., President of Magnum Development Corp., a Nebraska corporation, for and on behalf of the company.



Michelle Zimmerman
Notary Public

LENDER:

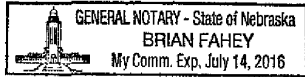
FIRST NATIONAL BANK OF OMAHA, a national banking association


By: 
Title: VICE PRESIDENT

Scott W. Damrow, Vice President
Commercial Real Estate, First National
Bank of Omaha

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 28th day of March, 2016, by
* _____, _____ of FIRST NATIONAL BANK OF
OMAHA, a national banking association, on behalf of the association.




Notary Public

*Scott W. Damrow, Vice President, Commercial Real Estate,

EXHIBIT "A"
Legal Description

Lot 3, Aksarben Village Replat 11, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.