



BK 1458 PG 306-313



MISC 2002 20392

RICHARD N. TAKECHI  
REGISTER OF DEEDS  
DODGE COUNTY, NE

2002 AUG 28 PM 3:13

RECEIVED

*Misc* <sup>2</sup>  
 FEE 42<sup>50</sup> FB See Attached  
 $\frac{8}{5}$  BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP 20  
 DEL \_\_\_\_\_ SCAN ✓ FV \_\_\_\_\_

TierOne Bank  
Attn: Commercial Lending Admin  
1235 "N" Street  
Lincoln, Nebraska 68508

*Courtesy*  
**4 NLTA**  
*8-23-02*

## LOAN MODIFICATION AGREEMENT

Loan No. 01-10167089

This Loan Modification Agreement ("Agreement"), made as of August 23, 2002, is by and between **144-MAPLE, LLC**, a Nebraska limited liability company, herein referred to as "Borrower" whose mailing address is c/o Kevin Irish, 14769 California Street, Omaha, Nebraska 68154, **Kevin Irish and Jeffrey W. Johnson**, herein referred to as "Guarantors" and **TierOne Bank f/k/a First Federal Lincoln Bank**, a corporation organized and existing under the laws of the United States of America, herein referred to as "Noteholder/Lender", whose mailing address is P.O. Box 83009, Lincoln, Nebraska 68501-3009 (Collectively the "Parties").

### WITNESSETH

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

Noteholder/Lender is the owner of a Note Secured by Construction Security Agreement dated July 19, 2001, made by Borrower, payable to Noteholder/Lender in the original amount of \$8,300,000.00 (the "Note"). Said Note is secured by a Deed of Trust with Assignment of Rents and Security Agreement (Construction Security Agreement) of the same date ("Security Instrument") which was recorded July 24, 2001 in Book 6588 Page 623 in the Register of Deeds office of Douglas County, Nebraska, encumbering the real property described as follows (the "Property"):

See Exhibit "A" attached hereto and incorporated herein by this reference.

The Note is also secured by an Assignment of Leases and Rents dated July 19, 2001, recorded July 24, 2001 in Book 1391 Page 218 in the Register of Deeds office of Douglas County, Nebraska, UCC-1 Financing Statements and other security instruments. Guarantors also executed Continuing Guaranty agreements dated July 19, 2001 guaranteeing Borrower's full and punctual performance under the Note and Security Instrument.

The Note, Security Instrument, Assignment of Leases and Rents, Continuing Guaranty agreements, and all other documents executed in connection with the Loan are collectively referred to herein as the "Existing Loan Documents".

Borrower and Guarantors have requested a modification of said Note and Security Instrument, and Noteholder/Lender's consent to said modification.

### AGREEMENT

For good and valuable consideration, the Parties hereto do hereby agree as follows:

- A. Prior to the date of this Agreement, the outstanding Principal balance of the Note was \$2,340,515.73. Upon execution of this Agreement, the Noteholder/Lender shall advance to Borrower the additional Principal sum of \$1,510,000.00 and the outstanding Principal balance of the Note shall be \$3,850,515.73 (the "Loan"), and all such Note indebtedness, including the additional Principal advance of

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**4 NLTA**  
*8-23-02*

\$1,510,000.00, shall be secured by the Security Instrument and other Existing Loan Documents as amended herein.

- B. Borrower and Guarantors shall pay any closing and recording costs and shall provide and pay the cost of appropriate title endorsement(s) to the original ALTA Loan Policy of Title Insurance Policy No.12090, dated July 24, 2001, issued by Old Republic National Title Insurance Company to Noteholder/Lender, insuring that Noteholder/Lender's Security Instrument remains, subsequent to the recording of this Agreement, a first lien on the Property.
- C. Subject to receipt of this Agreement, fully executed, and items "A" and "B" stated above, the Parties agree to amend and modify the terms and conditions of the Security Instrument dated July 19, 2001:
1. Paragraph 16(c), Page 16 of the Security Instrument, is hereby deleted in its entirety and the following substituted therefore:
    - (c) With respect to each of the individual development lots requested to be reconveyed, Trustor shall pay to Beneficiary 75% of the net sales proceeds for each lot. Provided, however, if Beneficiary grants approval for a new loan to the Trustor, or a related entity, to partially fund the construction costs associated with a proposed retail center or other improvements within the Grayhawk Development (Subject Property), the Trustor shall pay to Beneficiary 100% of the net sales proceeds for each development lot; and
- D. The Assignment of Leases and Rents dated July 19, 2001 and all other security instruments executed in connection with the Loan are also hereby amended and modified to the extent of the foregoing modification of the Note and Security Instrument set forth in this Agreement.

Borrower and Guarantors hereby ratify, reaffirm and acknowledge that the Existing Loan Documents represent the valid, enforceable and collectible obligations of Borrower, and that there are no existing claims, defenses (personal or otherwise) or rights of setoff with respect thereto, and release Noteholder/Lender and its present and former officers, directors, shareholders, employees and agents, and their successors and assigns, from any and all claims, liabilities, actions and causes of action existing as of the date of execution and delivery of this Agreement, or that may hereafter arise with respect to acts or omissions occurring prior thereto, relating to the Loan, Noteholder/Lender's administration of the Loan or the modification described herein.

Notwithstanding anything to the contrary contained herein or any other document executed by Borrower and Guarantors, Noteholder/Lender, or any other action or conduct undertaken by such parties on or before the date hereof, the agreements, covenants and provisions contained in this Agreement shall constitute the only evidence of Noteholder/Lender's consent to modify the terms and provisions of the Existing Loan Documents. Accordingly, no express or implied consent to any further modifications involving any of the matters set forth in this Agreement or otherwise shall be inferred or implied by Noteholder/Lender's execution of this Agreement. Any further modification of the Existing Loan Documents or this Agreement shall require the express written approval of Noteholder/Lender; no such approval (either express or implied) has been given as of the date hereof.

Guarantors hereby: (a) consent and agree to the modification and all other matters contained in this Agreement and join in the representations, warranties, acknowledgments and agreements set forth in this Agreement; and (b) acknowledge and agree that the Continuing Guaranty agreements will continue in full force and effect with respect to the Loan as modified by this Agreement.

Borrower warrants that it lawfully holds and possesses the Property in fee simple, without limitation on the right to encumber to Noteholder/Lender.

Borrower and Guarantors shall execute such other documents as may be necessary, or as may be required, in the reasonable opinion of Noteholder/Lender, to effect the transaction contemplated hereby and to protect the liens and security interest of the Security Instrument and the liens and/or security interest of all other security instruments.

In the event the enforceability or validity of any portion of this Agreement, the Note, Security Instrument, and all other instruments or documents evidencing and/or securing the indebtedness represented by the Note is challenged or questioned, such provision shall be construed in accordance with and shall be governed by whichever applicable federal or Colorado 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.

If payment is not made as provided in this Agreement, Noteholder/Lender may elect to treat the entire balance of the Note as in default. The entire balance shall become immediately due and payable when Noteholder/Lender has given the notices to Borrower and Guarantors as required by law.

If the Note is not paid as provided by this Agreement, Borrower and Guarantors shall pay any attorney's fees, costs or other expenses incurred by Noteholder/Lender in collecting the indebtedness evidenced by the Note and related documents.

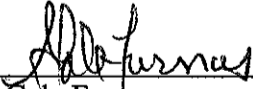
This Agreement and all documents executed in connection with this Agreement are the product of negotiations between the Parties. This Agreement shall not be construed against any of the Parties by reason of the doctrine that an agreement, or the language thereof, may be construed against the party drafting such agreement or language.

This Agreement, and the documents executed in connection herewith, shall supersede any document previously executed in connection with the Loan referenced herein to the extent inconsistent with such prior documents; otherwise, all such documents shall remain in full force and effect.

This Agreement shall inure to and bind the heirs, devisees, successors and assigns of the Parties.


**NOTEHOLDER/LENDER:**


TierOne Bank f/k/a First Federal Lincoln Bank

By:   
Gale Furnas  
Executive Vice President

**BORROWER:**

144-MAPLE, LLC,  
a Nebraska limited liability company

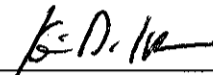
By:   
Kevin Irish, Member

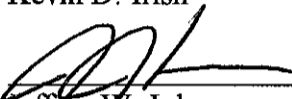
By:   
Jeffrey W. Johnson, Member

**ACKNOWLEDGMENT, CONSENT AND WAIVER OF GUARANTOR**

The undersigned hereby acknowledge receipt of a copy of the foregoing Loan Modification Agreement ("Agreement"), and consents to the modification of the Loan, and the other terms hereof. Further the undersigned reaffirm the terms and conditions of their Continuing Guaranty as executed in connection with that Note Secured by Construction Agreement dated July 19, 2001, ("Note") and that Deed of Trust with Assignment of Rents and Security Agreement (Construction Security Agreement) dated July 19, 2001 ("Security Instrument"), and agrees to be bound thereby as to the indebtedness thereunder or hereunder or under the Note and Security Instrument as amended and we hereby waive and release any and all claims and defenses we might otherwise have as to our liability thereunder arising by reason of this Agreement or any act or omission occurring prior to the date hereof.

**GUARANTORS:**

  
\_\_\_\_\_  
Kevin D. Irish

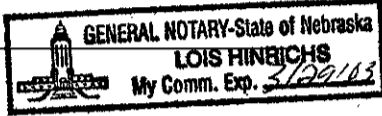
  
\_\_\_\_\_  
Jeffrey W. Johnson

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of August, 2002, by Gale Furnas, Executive Vice President of TierOne Bank f/k/a First Federal Lincoln Bank, a corporation organized and existing under the laws of the United States of America, on behalf of said corporation.

Lois Hinrichs  
Notary Public

My commission expires:



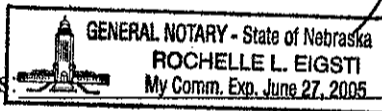
STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of August, 2002, by Kevin D. Irish, a Member of 144-MAPLE, LLC, a Nebraska limited liability company.

Witness my hand and official seal.

Rochelle L. Eigsti  
Notary Public

My commission expires:



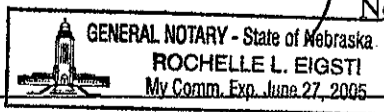
STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of August, 2002, by Jeffrey W. Johnson, a Member of 144-MAPLE, LLC, a Nebraska limited liability company.

Witness my hand and official seal.

Rochelle L. Eigsti  
Notary Public

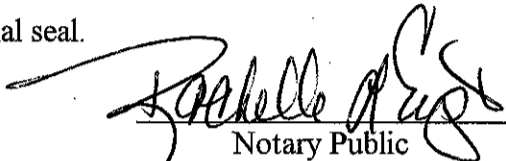
My commission expires:



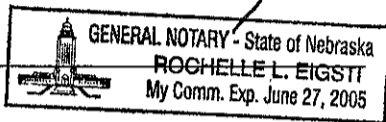
STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of August, 2002, by Kevin D. Irish.

Witness my hand and official seal.

  
Notary Public

My commission expires:



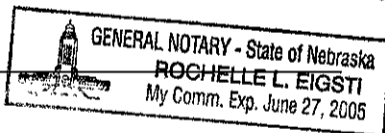
STATE OF NEBRASKA )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of August, 2002, by Jeffrey W. Johnson.

Witness my hand and official seal.

  
Notary Public

My commission expires:



**EXHIBIT "A"**

Lots 2 and 5, Grayhawk, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska. MC-14162

Lot 1, Grayhawk Replat 1, being a replat of Lot 6, Grayhawk, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska. MC-14164

Lots 1 and 2, Grayhawk Replat 2, being a replat of Lots 1 and 3, Grayhawk, a Subdivision as surveyed, platted and recorded in Douglas County, Nebraska and a portion of the NE  $\frac{1}{4}$  of Section 11, T15N, R11E, of the 6<sup>th</sup> P.M. Douglas County, Nebraska except that part described as follows: MC-14181

Referring to the SW corner of Lot 2, Grayhawk, a platted and recorded subdivision in Douglas County, Nebraska: thence S 00°23'29" E (platted bearing), 23.00 ft. on the West line of said Lot 2, Grayhawk Replat 2 to the point of beginning; thence N 89°36'31"E, 266.03 ft.; thence Easterly on a 150.00 ft. radius curve to the left, 112.94 ft. (long chord bears N 68°02'20" E, 110.29 ft.); thence Easterly on a 150.00 ft. radius curve to the right, 101.69 ft. (long chord bears N 65°53'26" E, 99.75 ft.); thence Easterly on a 150.00 ft. radius curve to the left, 84.26 ft. (long chord bears N 69°13'10" E, 83.16 ft.); thence S 36°52'22" E, 15.36 ft.; thence S 00°23'29" E, 277.41 ft.; thence S 45°15'29" E, 141.34 ft.; thence S 44°44'31" W, 38.56 ft.; thence Southerly on a 50.00 foot radius curve to the left, 39.27 ft. (long chord bears S 22°14'25" W, 38.27 ft.); thence S 00°15'41" E, 282.95 ft.; thence S 45°15'29" E, 45.27 ft.; thence S 44°44'31" W, 88.84 ft.; thence S 58°06'05" W, 59.32 ft.; thence S 89°44'31" W, 511.72 ft. on the South line of said Lot 2 and its Easterly extension thereof; thence Northerly on the West line of said Lot 2 for the next 4 courses: 1.) thence N 45°15'29" W, 102.28 ft., 2.) thence N 00°23'29" W, 375.95 ft., 3.) thence Northerly on a 550.00 ft. radius curve to the left, 262.52 ft. (long chord bears N 13°16'56" E, 260.03 ft.), 4.) thence N 00°23'29" W, 49.23 ft. to the point of beginning.