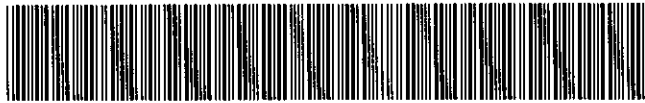




MISC 2003173288

RICHARD N. TANECHI
REGISTER OF DEEDS
DOUGLAS COUNTY, NE



SEP 17 2003 15:02 P 6

RECEIVED

Attn: Credit Administration Dept.
1235 "N" Street
Lincoln, NE 68508

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FEE 22.50 FB *not attached*
BKP _____ C/O _____ COMP *✓*
DEL _____ SCAN _____ FV _____

THIRD LOAN MODIFICATION AGREEMENT

Loan No. 01-10167089

This Third Loan Modification Agreement made as of August 15, 2003, is by and between **144-MAPLE, L.L.C., an Iowa limited liability company, f/k/a 144-Maple, LLC, a Nebraska limited liability company**, herein referred to as "Borrower", whose mailing address is c/o Jeffrey W. Johnson, 16820 Frances Street, Suite 102, Omaha, Nebraska 68130, 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

WHEREAS, Borrower obtained a loan from Noteholder/Lender which loan was evidenced by that certain Note Secured by Construction Security Agreement dated July 19, 2001, made by Borrower in the original amount of \$8,300,000.00, secured among other things, by a Deed of Trust with Assignment of Rents and Security Agreement (Construction Security Agreement) dated July 19, 2001 (the "Deed of Trust") which was recorded July 24, 2001, as Instrument Number 2001 21241, in Book 6588, at Page 623 of the Register of Deeds Office of Douglas County, Nebraska, encumbering the real property described as follows (the "Property"):

See Exhibit "A" attached hereto

WHEREAS, the Note Secured by Construction Security Agreement dated July 19, 2001, is also secured by an Assignment of Leases and Rents dated July 19, 2001, and recorded July 24, 2001, as Instrument Number 2001 11005, in Book 1391, at Page 218 of the Register of Deeds Office of Douglas County, Nebraska, UCC-1 Financing Statements and other security instruments.

WHEREAS, Borrower and Noteholder/Lender entered into a Loan Modification Agreement dated August 23, 2002 (the "First Modification Agreement") which was recorded August 28, 2002, as Instrument Number 2002 20392, in Book 1458, at Page 306 of the Register of Deeds Office of Douglas County, Nebraska, and a Second Loan Modification Agreement dated May 30, 2003, (the "Second Modification Agreement") which was recorded June 20, 2003, as Instrument Number 2003 119426 in the Register of Deeds Office of Douglas County, Nebraska.

WHEREAS, in connection with the Second Modification Agreement, the Note Secured by Construction Security Agreement date July 19, 2001, was replaced by that certain Replacement Note Secured by Construction Security Agreement dated May 30, 2003 (the "Note").

WHEREAS, the Note, Deed of Trust, Assignment of Leases and Rents, First Modification Agreement, Second Modification Agreement and all other documents executed in connection with the loan are collectively referred to herein as the "Existing Loan Documents".

WHEREAS, Noteholder/Lender and Borrower hereby agree to modify certain terms of the Note and Deed of Trust as amended as set forth below.

NOW, THEREFORE, in consideration of Ten Dollars and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower hereto agrees, represents and consents to and with Noteholder/Lender as follows:

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BY: 4 NLTA

- A. Prior to the date of this Third Loan Modification Agreement, the outstanding Principal balance of the Note was \$5,696,515.73. Upon execution of this Third Loan Modification Agreement, the Noteholder/Lender shall advance to Borrower the additional Principal sum of \$2,903,484.27, and the outstanding Principal balance of the Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003, identified in Paragraph C below shall be \$8,600,000.00 (the "Loan"), and all such Note indebtedness, including the additional Principal advance of \$2,903,484.27, shall be secured by the Deed of Trust and other security instruments as amended herein.
- B. Borrower 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 to Title Insurance, Policy No. MM 3952386, dated July 24, 2001, issued by Old Republic National Title Insurance Company to Noteholder/Lender, insuring that Noteholder/Lender's Deed of Trust remains, subsequent to the recording of this Third Loan Modification Agreement, a first lien on the Property.
- C. The Deed of Trust as previously amended, shall be further modified as follows:
1. The "Note" identified in the Deed of Trust shall be that certain Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003, in the principal sum of Eight Million Six Hundred Thousand and No/100 Dollars (\$8,600,000.00) with a Maturity Date of August 1, 2005, which Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003, is a refinancing of and substitution for the Replacement Note Secured by Construction Security Agreement dated May 30, 2003, and identified in the original Deed of Trust as modified by that First Modification Agreement and Second Modification Agreement. The Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003, evidences the balance due and owing on the Replacement Note Secured by Construction Security Agreement dated May 30, 2003, plus the additional advance of \$2,903,484.27.
 2. This Deed of Trust shall further secure all renewals, extensions, refinancings, and modifications of the "Note", and any future advances, with interest thereon, provided, the Principal amount of the indebtedness secured by this Deed of Trust, not including sums advanced to protect the security of this Deed of Trust, shall not exceed a maximum Principal amount of \$8,600,000.00.
- D. Jeffrey W. Johnson, Paul S. McCune and Herbert L. Freeman (herein "Guarantors") executed and delivered to Noteholder/Lender Continuing Guaranty agreements dated August 15, 2003, pursuant to which Guarantors guaranteed and promised to repay to Noteholder/Lender the indebtedness evidenced by that the Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003, together with interest, late charges as well as all other amounts allowed at law or pursuant to the terms and conditions of all the Existing Loan Documents including the Deed of Trust which evidence or secure the Loan indebtedness.
- Kevin D. Irish executed and delivered to Noteholder/Lender a Continuing Guaranty agreement dated July 19, 2001. Subject to execution of this Third Loan Modification Agreement by Borrower and Guarantors and satisfaction of Paragraph B on Page 2 of this Third Loan Modification Agreement, Noteholder/Lender shall release Kevin D. Irish from liability under his respective Continuing Guaranty, provided however, Jeffrey W. Johnson, Paul S. McCune and Herbert L. Freeman shall remain liable and obligated under their respective Continuing Guaranty agreements.
- E. 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 Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003, and modification of the Deed of Trust set forth in this Third Loan Modification Agreement.
- F. Except as expressly modified by the terms hereof, all of the terms and provisions of the Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003, and all other loan documents evidencing or securing said indebtedness, including the Deed of Trust, are hereby ratified and shall remain in full force and effect. By execution hereof, Borrower and Noteholder/Lender concur with all provisions contained in this Third Loan Modification Agreement.

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.

NOTEHOLDER/LENDER:

TierOne Bank f/k/a First Federal Lincoln Bank

By: *Rochelle Eigsti*
 Rochelle Eigsti
 Vice President

BORROWER:

144-MAPLE, L.L.C.
 an Iowa limited liability company,
 f/k/a 144-Maple, LLC,
 a Nebraska limited liability company

By: *Jeffrey W. Johnson*
 Jeffrey W. Johnson
 Manager

STATE OF NEBRASKA)
) ss.
 COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 14th day of August, 2003, by Rochelle Eigsti, 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.



Teri L. Rounds
 Notary Public

My Commission Expires: 2-11-07

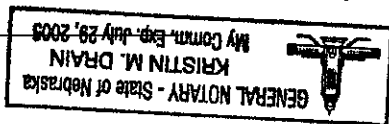
STATE OF NEBRASKA)
) ss.
 COUNTY OF DOUGLAS)

On this 16 day of August, 2003, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Jeffrey W. Johnson, Manager of 144-Maple, L.L.C., an Iowa limited liability company, f/k/a 144-Maple, LLC, a Nebraska limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed as such Manager.

WITNESS my hand and notarial seal in said county and state, the day and year last above written.

Kristin M. Drain
 Notary Public

My Commission Expires: _____



ACKNOWLEDGMENT, CONSENT AND WAIVER OF GUARANTOR

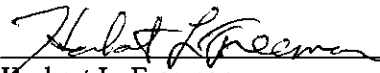
The undersigned hereby acknowledge receipt of a copy of the foregoing Third Loan Modification Agreement dated August 15, 2003, and consent to the modification of the Loan, and the other terms hereof. Further the undersigned reaffirm the terms and conditions of their Guaranty agreements as executed in connection with that Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003 and that Deed of Trust with Assignment of Rents and Security Agreement (Construction Security Agreement) dated July 19, 2001 ("Deed of Trust") as modified by that Loan Modification Agreement dated August 23, 2003 and that Second Loan Modification Agreement dated May 30, 2003 and agree to be bound thereby as to the indebtedness thereunder or hereunder 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 Third Loan Modification Agreement or any act or omission occurring prior to the date hereof.



Jeffrey W. Johnson



Paul S. McCune



Herbert L. Freeman

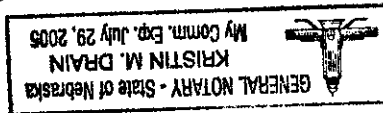
STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 16 day of August, 2003, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Jeffrey W. Johnson, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

WITNESS my hand and notarial seal in said county and state, the day and year last above written.

Kristin M. Drain
Notary Public

My Commission Expires: _____



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 15 day of August, 2003, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Paul S. McCune, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

WITNESS my hand and notarial seal in said county and state, the day and year last above written.

Kristin M. Drain
Notary Public

My Commission Expires: _____



STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

On this 15 day of August, 2003, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Herbert L. Freeman, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed.

WITNESS my hand and notarial seal in said county and state, the day and year last above written.

Kristin M. Drain
Notary Public

My Commission Expires: _____

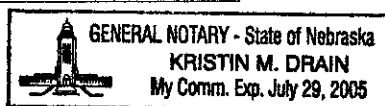


EXHIBIT "A"

(LEGAL DESCRIPTION)

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

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

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 ¼ of Section 11, T15N, R11E, of the 6th P.M. Douglas County, Nebraska except that part described as follows:

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.

mc-14163
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- 73-14181