



NTSC 2005148699



NOV 28 2005 07:33 P 5

When recorded return to:  
TierOne Bank  
Attn: Credit Administration Dept.  
1235 "N" Street  
Lincoln, NE 68508

*Handwritten:* 11/28/05  
FEE: 27.00    IS: 2005148699  
BAP: \_\_\_\_\_    C/O: \_\_\_\_\_    CC: MB  
DEL: \_\_\_\_\_    S: \_\_\_\_\_    FE: \_\_\_\_\_

Received - DIANE I. BATTIATO  
11/28/2005 07:33:34 82  
 2005148699

**FOURTH LOAN MODIFICATION AGREEMENT**

**Loan No. 01-10167089**

This Fourth Loan Modification Agreement made as of November 15, 2005, 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 federally chartered savings bank, herein referred to as ("Lender"), whose mailing address is 1235 "N" Street, Lincoln, Nebraska 68508 (Collectively the "Parties").

**WITNESSETH**

WHEREAS, Borrower is indebted to Lender upon that certain Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003 (the "Note") 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 Pages 623-641 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 is also secured by an Assignment of Leases and Rents (Construction Loan) dated July 19, 2001, and recorded July 24, 2001, as Instrument Number 2001 11005, in Book 1391, at Pages 218-228 of the Register of Deeds Office of Douglas County, Nebraska, UCC-1 Financing Statements and other security instruments.

WHEREAS, the Deed of Trust was modified by that 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 Pages 306-313 of the Register of Deeds Office of Douglas County, Nebraska.

WHEREAS, the Deed of Trust was modified by that Second Loan Modification Agreement dated May 30, 2003, (the "Second Modification Agreement") which was recorded June 20, 2003, as Instrument Number 2003119426 of the Register of Deeds Office of Douglas County, Nebraska.

WHEREAS, the Deed of Trust was further modified by that Third Loan Modification Agreement dated August 15, 2003, (the "Third Modification Agreement") which was recorded September 17, 2003 as Instrument Number 2003179288, all in the Register of Deeds Office of Douglas County, Nebraska.

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

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

*Handwritten:* 12090  
④

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 Lender as follows:

- A. Borrower shall execute that certain Third Replacement Note Secured by Construction Security Agreement of even date herewith and identified in Paragraph C.1 of this Fourth Loan Modification Agreement.
- 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 Co. to Lender, insuring that Lender's Deed of Trust remains, subsequent to the recording of this Fourth Loan Modification Agreement, a first lien on the Property.
- C. Subject to receipt of this Fourth Loan Modification Agreement, fully executed, and items "A" and "B" above, the Parties agree to amend and modify the terms and conditions of the Deed of Trust as follows:
  - 1. The "Note" identified in the Deed of Trust shall be that certain Third Replacement Note Secured by Construction Security Agreement dated November 15, 2005, in the principal sum of Seven Million Four Hundred Ninety Five Thousand and No/100 Dollars (\$7,495,000.00) with a Maturity Date of August 1, 2006, which Third Replacement Note Secured by Construction Security Agreement dated November 15, 2005, is a modification of and substitution for the Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003. The Third Replacement Note Secured by Construction Security Agreement dated November 15, 2005, evidences the balance due and owing on the Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003.
  - 2. The "Maturity Date" referenced in Paragraph No. 1 on Page 2 of the Deed of Trust as modified by the Second Modification Agreement is hereby changed to **August 1, 2006**.
- 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 Deed of Trust set forth in this Fourth Loan Modification Agreement.
- E. Except as expressly modified by the terms hereof, all of the terms and provisions of the Deed of Trust, and all other loan documents evidencing or securing said indebtedness, are hereby ratified and shall remain in full force and effect. By execution hereof, Borrower and Lender concur with all provisions contained in this Fourth 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.**

[see next page for signatures]

**LENDER:**

TierOne Bank f/k/a First Federal Lincoln Bank

By: Rochelle Eigsti  
Rochelle Eigsti  
First Vice President

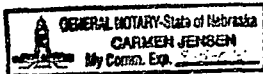
**BORROWER:**

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    )

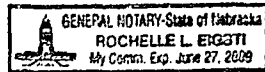
The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of November, 2005, by Rochelle Eigsti, First Vice President of TierOne Bank f/k/a First Federal Lincoln Bank, a federally chartered savings bank, on behalf of said bank.



Carmen Jensen  
Notary Public

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS    )


The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2005, by 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, on behalf of the company.




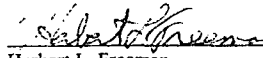
Rochelle L. Eigsti  
Notary Public

**ACKNOWLEDGMENT, CONSENT AND WAIVER OF GUARANTORS**

The undersigned hereby acknowledge receipt of a copy of the foregoing Fourth Loan Modification Agreement dated November 15, 2005, and consent to the modification of the Deed of Trust, and the other terms hereof. Further the undersigned reaffirm the terms and conditions of their Continuing Guaranty agreements as executed in connection with that Second Replacement Note Secured by Construction Security Agreement dated August 15, 2003 as replaced by that Third Replacement Note Secured by Construction Security Agreement dated November 15, 2005 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, 2002 and that Second Loan Modification Agreement dated May 30, 2003 and that Third Loan Modification Agreement dated August 15, 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 Fourth Loan Modification Agreement or any act or omission occurring prior to the date hereof.

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

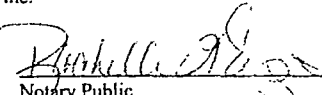
  
\_\_\_\_\_  
Paul S. McCune

  
\_\_\_\_\_  
Herbert L. Freeman

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF DOUGLAS        )

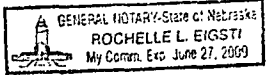
The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2005, by Jeffrey W. Johnson, an individual known unto me.

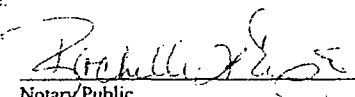


  
\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF DOUGLAS        )

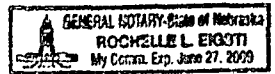
The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2005, by Paul S. McCune, an individual known unto me.



  
\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF DOUGLAS        )

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of November, 2005, by Herbert L. Freeman, an individual known unto me.



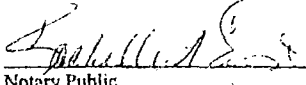
  
\_\_\_\_\_  
Notary Public

EXHIBIT "A"  
(LEGAL DESCRIPTION)

73 -  
42468

Lot 5, Grayhawk, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

73 -  
42450

and  
Out Lot 1, West Grayhawk, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

73 -  
42481

and  
Lots 1 and 2, West Grayhawk Replat 1, being a replatting of Lot 1, West Grayhawk, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.