



MISC 2006060878



JUN 02 2006 07:44 P 5

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

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
6/2/2006 07:44:33.92  
  
2006060878

**FIFTH LOAN MODIFICATION AGREEMENT**

**Loan No. 01-10167089**

This Fifth Loan Modification Agreement made as of May 4, 2006, 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 Third Replacement Note Secured by Construction Security Agreement dated November 15, 2005 (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; and

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; and

WHEREAS, the Deed of Trust was further 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; and

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 of the Register of Deeds Office of Douglas County, Nebraska; and

WHEREAS, the Deed of Trust was further modified by that Fourth Loan Modification Agreement dated November 15, 2005, (the "Fourth Modification Agreement") which was recorded November 28, 2005 as Instrument Number 2005148699 of the Register of Deeds Office of Douglas County, Nebraska; and

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

*misc*  
FEE 2700 FB see attached  
*5/4* BKP \_\_\_\_\_ C/O \_\_\_\_\_ COMP BW  
DEL \_\_\_\_\_ SCAN \_\_\_\_\_ FV \_\_\_\_\_

*12090*  
**4 NLTA**

*✓1679999*

WHEREAS, Lender and Borrower hereby agree to modify certain terms of the Note and Deed of Trust 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 Lender as follows:

A. 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 Fifth Loan Modification Agreement, a first lien on the Property.

B. Subject to receipt of this Fifth Loan Modification Agreement, fully executed, and item "A" above, the Parties agree to amend and modify the terms and conditions of the Note and Deed of Trust as follows:

1. The Note dated November 15, 2005, shall be amended as follows:

The "Maturity Date" referenced in the fourth paragraph on Page 1 of the Note is hereby changed to **June 1, 2007**.

2. The Deed of Trust dated July 19, 2001 as amended by that First Modification Agreement, Second Modification Agreement, Third Modification Agreement and Fourth Modification Agreement, shall be further amended as follows:

The "Maturity Date" referenced in Paragraph No. 1 on Page 2 of the Deed of Trust as amended by that Fourth Modification Agreement is hereby changed to **June 1, 2007**.

C. Jeffrey W. Johnson, (herein "Guarantor") executed and delivered to Lender a Continuing Guaranty agreement dated August 15, 2003, and Paul S. McCune and Herbert L. Freeman executed and delivered to Lender Continuing Guaranty agreements dated August 15, 2003, pursuant to which Guarantor and Paul S. McCune and Herbert L. Freeman guaranteed and promised to repay to Lender the indebtedness evidenced by that the Third Replacement Note Secured by Construction Security Agreement dated November 15, 2005, 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.

Subject to execution of this Fifth Loan Modification Agreement by Borrower and Guarantor and satisfaction of item "A" above, Lender shall release Paul S. McCune and Herbert L. Freeman from liability under their respective Continuing Guaranty agreements, provided however, Jeffrey W. Johnson shall remain liable and obligated under his Continuing Guaranty agreement.

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 Deed of Trust set forth in this Fifth Loan Modification Agreement.

E. Except as expressly modified by the terms hereof, all of the terms and provisions of the Note and Deed of Trust, and all other Existing 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 Fifth 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     )

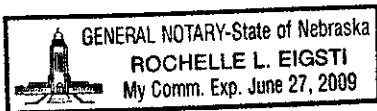
The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of May, 2006, by Rochelle Eigsti, First Vice President of TierOne Bank f/k/a First Federal Lincoln Bank, a federally chartered savings bank, on behalf of said bank.



*Carmen Jensen*  
Notary Public

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF DOUGLAS     )


The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of May, 2006, 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 Eigsti*  
Notary Public

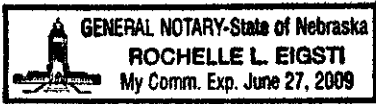
**ACKNOWLEDGMENT, CONSENT AND WAIVER OF GUARANTOR**


The undersigned hereby acknowledges receipt of a copy of the foregoing Fifth Loan Modification Agreement dated May 4, 2006, and consents to the modification of the Note and Deed of Trust, and the other terms hereof. Further the undersigned reaffirms the terms and conditions of the Continuing Guaranty agreement as executed in connection with 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 that Fourth Loan Modification Agreement dated November 15, 2005 and agrees to be bound thereby as to the indebtedness thereunder or hereunder and hereby waives and releases any and all claims and defenses he might otherwise have as to his liability thereunder arising by reason of this Fifth Loan Modification Agreement or any act or omission occurring prior to the date hereof.

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

STATE OF NEBRASKA            )  
  ) ss.  
COUNTY OF DOUGLAS        )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of May, 2006, by Jeffrey W. Johnson, an individual known unto me.



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

**EXHIBIT "A"**

**(LEGAL DESCRIPTION)**

Lot 5, Grayhawk, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska. 73-14162

and

Out Lot 1, West Grayhawk, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska. 73-42480

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. - 73-42481