

10454

Doc. No. 10454  
 WOODBURY COUNTY, IOWA  
 Filed for Record

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

OCT 31 2003

Time 1:45 AM Fee \$ 37.00  
 Pd  
 PATRICK F. G... Auditor & Recorder  
 By [Signature] Designee

**SECOND LOAN MODIFICATION AGREEMENT**

Loan No. 01-10177290

This Second Loan Modification Agreement ("Second Modification Agreement"), made as of October 28, 2003, is by and between **Castle on the Hill Limited Liability Company**, an Iowa limited liability company, (herein referred to as "Mortgagor"), whose mailing address is c/o NuStyle Investment Corporation, 1025 Leavenworth Street, Omaha, Nebraska 68102 and **TierOne Bank**, a corporation organized and existing under the laws of the United States of America, herein referred to as "Mortgagee", whose mailing address is c/o Credit Administration Dept., P.O. Box 83009, Lincoln, Nebraska 68501-3009 (Collectively the "Parties").

**WITNESSETH**

(A) WHEREAS, Mortgagor is indebted to Mortgagee under that certain Note Secured by Mortgage dated June 24, 2002, in the original principal amount of \$1,155,000.00 and secured by that certain Mortgage, Assignment of Rents and Security Agreement (Open-End) dated June 24, 2002 (the "Mortgage") which was recorded June 28, 2002 as Document No. 25037 in the Register of Deeds office of Woodbury County, Iowa. *Roll 544 Image 44*

(B) WHEREAS, the Note Secured by Mortgage dated June 24, 2002 in the original principal amount of \$1,155,000.00 is also secured by an Assignment of Leases and Rents dated June 24, 2002 (the "Assignment of Leases"), recorded June 28, 2002 as Document No. 25038, in the Register of Deeds office of Woodbury County, Iowa, and other security instruments. *Roll 544 Image 59*

(C) WHEREAS, a Loan Modification Agreement dated December 30, 2002 and recorded January 8, 2003 as Document No. 13763\* in the Register of Deeds office of Woodbury County, Iowa was entered into by the parties for the purpose of modifying the Mortgage, Assignment of Leases and other loan documents; the Mortgage, Assignment of Leases and other loan documents, as modified, presently encumber the real property described as follows (the "Real Estate"):  
*\* Roll 571 Image 831*

PARCEL A: All of Block Sixty-nine (69), and the vacated alleys therein, together with the North One (1) Foot of that part of the vacated Twelfth Street which abuts thereon, Sioux City East Addition, in the County of Woodbury and State of Iowa.

PARCEL B: Lot Four (4), and the North one-half (N 1/2) of Lot Five (5), Block Sixty-Eight (68) Sioux City East Addition to the City of Sioux City, Woodbury County, Iowa.

PARCEL C: The West Eighty-nine (89) feet of Lot Six (6) and the West Eighty-nine (89) feet of the South one-half (S 1/2) of Lot Five (5), Block Sixty-Eight (68) Sioux City East Addition to the City of Sioux City, Woodbury County, Iowa.

PARCEL D: East Sixty-one Feet of South one-half (E61' S 1/2) of Lot Five (5) in Block Sixty-eight (68) and East Sixty-one Feet (E 61') of Lot Six (6) of Block Sixty-eight (68) of Sioux City East Addition to the City of Sioux City, Woodbury County, Iowa.

(D) WHEREAS, Mortgagor desires to refinance the foregoing Note Secured by Mortgage dated June 24, 2002 for the purpose of obtaining permanent financing and Mortgagee is willing to provide said permanent financing, to be evidenced by a \$1,155,000.00 Replacement Note Secured by Mortgage and to be secured by the Mortgage, Assignment of Leases and other loan documents.

(E) WHEREAS, Mortgagor has entered into a Lease dated July 15, 2003 with The Sioux City Community School District, wherein Mortgagor, as tenant, has leased the following described premises:

Vacated 12<sup>th</sup> Street abutting Block 69 Sioux City East Addition in the County of Woodbury, State of Iowa,

which Lease is evidenced by that certain Memorandum of Lease dated October 15, 2003 and recorded October 17, 2003 in Roll 618, Image 1978 in the office of the Recorder of Woodbury County, Iowa.

(F) WHEREAS, in connection with said refinancing and for the purpose of including the foregoing leased premises as additional collateral, Mortgagor and Mortgagee agree to modify certain terms of the Mortgage, Assignment of Leases and other loan documents, 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 Mortgagor hereto agrees, represents and consents to and with Mortgagee as follows:

1. The Mortgage shall be and is hereby modified in the following respects:
  - (a) For the purpose of including the leased premises referenced in Paragraph (E) above, the "Real Estate" as identified in the Mortgage is hereby modified and shall be as follows:

PARCEL A: All of Block Sixty-nine (69), and the vacated alleys therein, together with the North One (1) Foot of that part of the vacated Twelfth Street which abuts thereon, Sioux City East Addition, in the County of Woodbury and State of Iowa.

PARCEL B: Lot Four (4), and the North one-half (N 1/2) of Lot Five (5), Block Sixty-Eight (68) Sioux City East Addition to the City of Sioux City, Woodbury County, Iowa.

PARCEL C: The West Eighty-nine (89) feet of Lot Six (6) and the West Eighty-nine (89) feet of the South one-half (S 1/2) of Lot Five (5), Block Sixty-Eight (68) Sioux City East Addition to the City of Sioux City, Woodbury County, Iowa.

PARCEL D: East Sixty-one Feet of South one-half (E61' S 1/2) of Lot Five (5) in Block Sixty-eight (68) and East Sixty-one Feet (E 61') of Lot Six (6) of Block Sixty-eight (68) of Sioux City East Addition to the City of Sioux City, Woodbury County, Iowa.

PARCEL E: Vacated 12<sup>th</sup> Street abutting Block 69 Sioux City East Addition in the County of Woodbury, State of Iowa.

All references to the "Mortgaged Property" set forth in the Loan Modification Agreement dated December 30, 2002 are hereby amended to refer to the "Real Estate" and any reference to the "Mortgaged Property" shall have the definition as set forth in the original Mortgage, subject to the modification of the description of the "Real Estate" as set forth herein.

(b) The \$1,155,000.00 Note Secured by Mortgage identified in Section A on page 2 of the Mortgage has been replaced and refinanced by that certain \$1,155,000.00 Replacement Note Secured by Mortgage dated October 28, 2003 with a due date of November 1, 2018, and shall be secured by this Mortgage.

2. The Assignment of Leases and all other loan documents evidencing or securing the indebtedness evidenced by the Note Secured by Mortgage dated June 24, 2002 in the original principal sum of \$1,155,000.00 are further amended and modified to the extent of the foregoing modification of the Mortgage set forth in paragraph 1 herein above and shall secure the \$1,155,000.00 Replacement Note Secured by Mortgage dated October 28, 2003.
3. Except as expressly modified by the terms hereof, all of the terms and provisions of the Mortgage, the Assignment of Leases, and all other loan documents evidencing or securing the indebtedness evidenced by the \$1,155,000.00 Replacement Note dated October 28, 2003, as modified by the Loan Modification Agreement dated December 30, 2002, are hereby ratified and shall remain in full force and effect. By execution hereof, Mortgagor and Mortgagee concur with all provisions contained in this Second Modification Agreement.


**IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE**

ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT.

Mortgagor hereby acknowledges the receipt of a copy of this Second Modification Agreement.

**MORTGAGEE:**

TierOne Bank

By:   
Delmar E. Williams  
Senior Vice President

**MORTGAGOR:**

Castle on the Hill Limited Liability Company,  
an Iowa limited liability company

By: Castle on the Hill Managing Member Limited  
Liability Company, an Iowa limited liability  
company, Managing Member

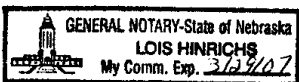
By: Tammy I. Barrett  
Tammy I. Barrett, Manager

By:   
Todd R. Heistand, Manager

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF LANCASTER )

On this 27<sup>th</sup> day of October, 2003, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Delmar E. Williams, a Senior Vice President of TierOne Bank, a United States corporation, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be his voluntary act and deed on behalf of the corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

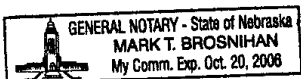


Lois Hinrichs  
Notary Public in the State of Nebraska

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

On this 30<sup>th</sup> day of October, 2003, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Tammy I. Barrett, Manager of Castle on the Hill Managing Member Limited Liability Company, an Iowa limited liability company, the Managing Member of Castle on the Hill Limited Liability Company, an Iowa limited liability company, the identical person whose name is subscribed to the foregoing instrument and acknowledged the execution thereof to be her voluntary act and deed on behalf of the company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Mark T. Brosnihan  
Notary Public in the State of Nebraska

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

On this 30<sup>th</sup> day of October, 2003, before me, the undersigned, a Notary Public in and for the State of Nebraska, personally appeared Todd R. Heistand, Manager of Castle on the Hill Managing Member Limited Liability Company, an Iowa limited liability company, the Managing Member of Castle on the Hill Limited Liability Company, an Iowa 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 on behalf of the company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

*Mark T. Brosnihan*

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Notary Public in the State of Nebraska

