

49-79

MODIFICATION AGREEMENT

THIS AGREEMENT made and entered into this 23 day of February, 1976, by and between George Victor Corporation, a Nebraska corporation, hereinafter referred to as Victor; Hawaiian Village, Inc., a Nebraska corporation, hereinafter referred to as Hawaiian; and Commercial Federal Savings and Loan Association, a United States corporation, hereinafter referred to as Commercial Federal,

W I T N E S S E T H :

WHEREAS, Victor is the owner in fee simple of the following described real estate:

The North One Half (N 1/2) of the Northwest Quarter (NW 1/4) and Government Lot Three (3), and Tax Lot F Two (F 2) in Section Twenty Six (26), Township Thirteen (13), Range Twelve (12), East of the Sixth Principal Meridian in Sarpy County, Nebraska, and all accretions thereto; and Government Lot One (1), and Tax Lot Twenty Two (22) in Section Twenty Seven (27), Township Thirteen (13), Range Twelve (12), Sarpy County, Nebraska, as surveyed, platted and recorded.

WHEREAS, the above described real estate has been leased to Hawaiian, as evidenced by the Lease dated February 18, 1974, and recorded in the Office of the Register of Deeds of Sarpy County, Nebraska, on October 15, 1974, in Book 47 of Miscellaneous Records at Page 638; and

WHEREAS, a part of the above-described real estate has been subdivided and platted into a residential-recreational subdivision known as Hawaiian Village, Outlots "A" through "F", both inclusive, and Lots One (1), through One Hundred Ninety (190) as evidenced by Plat and Dedication, acknowledged on August 15 and 18, 1974, and recorded in the Office of the Register of Deeds of Sarpy County, Nebraska, on AUGUST 26, 1974, in Book 6 of PLAT ~~Records~~ Records at Page 18; and

WHEREAS, Hawaiian intends to sublease certain lots in said subdivision, according to the terms, conditions, and covenants as set out in the Hawaiian Village Lot Lease Agreement, attached hereto, marked Exhibit X, and incorporated herein by this reference; and

WHEREAS, one of the intended Sublessees of Hawaiian has made application to Commercial Federal for a loan to be secured by a mortgage on the leasehold interest of said sublessee in and to one of said lots in said subdivision, including the improvements placed, or to be placed, on said lot; and

WHEREAS, Commercial Federal, in order to assure itself that its proposed mortgage will be a first lien on any such leasehold interest, including improvements, desires relief from provisions in the various leases and subleases above mentioned, which relief the parties hereto are desirous of granting.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, and as an inducement to Commercial Federal to make such loan, and in the future to make similar loans, it is hereby understood and agreed by the parties hereto as follows:

1. Any such sublessee of Hawaiian may mortgage its leasehold interest in and to said lot, including the improvements placed, or to be placed, on said lot to Commercial Federal. Such mortgage shall constitute a first lien on said leasehold and improvements

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superior to any and all liens, claims, or demands of any of the other parties hereto by virtue of the leases and subleases hereinabove described. Without limiting the provisions of the immediately preceding sentence, the mortgage in favor of Commercial Federal shall be first and superior to whatever lien or claim which may arise by reason of paragraph 11 of the Hawaiian Village Lot Lease Agreement marked Exhibit X and attached hereto.

2. Upon any default by Sublessee in the performance of the terms and conditions of its leasehold mortgage and note to Commercial Federal, Commercial Federal may exercise any right it may have as a result of such default to foreclose its leasehold mortgage or to accept an assignment or some similar conveyance of the leasehold interest, including improvements, in lieu of foreclosure and to acquire the entire interest of Sublessee in the leasehold and the improvements.

3. Any default by Sublessee under its Sublease with Hawaiian shall be null and void, as to Commercial Federal, unless notice thereof, in writing, is directed to Commercial Federal as well as to Sublessee. Commercial Federal may, within sixty (60) days after receipt of such notice, cure any default which is curable by the payment of money; and, in such event, any amounts expended by Commercial Federal shall be added to the debt secured by such leasehold mortgage and recovered as a part thereof, and such amounts shall bear interest at the highest lawful rate from date of payment, and such leasehold mortgage shall stand as security for the amounts so paid by Commercial Federal. Commercial Federal shall also have the right, within said sixty (60) day period, to commence an action at law or equity to foreclose its mortgage. The commencement of such foreclosure action shall constitute a curing of any default which is incurable by payment of money, so that the sublease between Hawaiian and Sublessee shall not be terminated after the commencement of such foreclosure action; and the purchaser at the sheriff's sale in such foreclosure action shall be recognized by the parties hereto as the valid sublessee of Hawaiian for the unexpired term of the sublease between Hawaiian and Sublessee. Any purchaser at the sheriff's sale in such foreclosure action, including Commercial Federal, shall purchase the leasehold interest and improvements subject to any obligations under the sublease accruing prior to the date of said sale including obligations to pay real estate taxes and assessments lawfully levied. Such taxes and delinquent installments of assessments, if not sooner paid, shall be paid at the time of such sale. Any purchaser at the sheriff's sale, other than Commercial Federal, shall execute a new sublease for the unexpired term of the original sublease between Hawaiian and Sublessee, and said new sublease shall have the same terms and conditions as those set out in the Hawaiian Village Lot Lease Agreement marked Exhibit X and attached hereto. Commercial Federal shall also have the right, within said sixty (60) day period or at any time after the commencement of said foreclosure action, to accept an assignment or conveyance of said leasehold interest, including improvements, from Sublessee. In the event Commercial Federal acquires title to said leasehold interest, including improvements, by foreclosure, assignment or otherwise, it shall have the right to assign or convey said leasehold interest, including improvements; and in such an instance, Commercial Federal's transferee shall be recognized by the parties hereto as the valid Sublessee of Hawaiian for the unexpired term of the original sublease between Hawaiian and Sublessee, and said new sublease shall have the same terms and conditions as those set out in the Hawaiian Village Lot Lease Agreement marked Exhibit X and attached hereto. Any such transferee shall purchase the leasehold interest and improvements subject to any obligations under the sublease accruing prior to the date of said transfer, including obligations to pay real estate taxes and assessments lawfully levied. Such taxes and delinquent installments of assessments, if not sooner paid, shall be paid at the time of said transfer.

In the event Commercial Federal acquires title to said leasehold interest, including improvements, it shall only be liable for that proportionate share of the obligations of Sublessee as the total time of its holding title bears to the total time for which the obligation was incurred.

4. In the event of any breach of any other agreements between any other parties hereto, written notice of such breach shall be sent to Commercial Federal. No such notice shall be effective until received by Commercial Federal. No such breach, other than a breach by Sublessee, shall affect the leasehold interest of Sublessee.

5. Notwithstanding any provisions contained in the various leases and subleases hereinabove described, in the event of any default by Sublessee under its sublease with Hawaiian resulting in termination thereof, the parties hereto will recognize as a valid first lien on the improvements situated on said lot the unpaid balance due Commercial Federal under its mortgage.

6. Victor and Hawaiian assume no liability for the payment of the mortgage or mortgages entered into by Sublessee to Commercial Federal, or any part thereof.

7. In the event Victor or Hawaiian recover or become entitled to recover possession of the leased premises for any reason, they shall diligently attempt to secure a new sublessee to assume the sublease of Sublessee. Any new sublessee shall recognize the mortgage of Commercial Federal, shall assume and agree to pay the unpaid balance thereof, and shall acknowledge that said new sublease is subject to and inferior to the lien of Commercial Federal. Commercial Federal may also attempt to secure a new Sublessee in such event. Any such new Sublessee obtained by the parties hereto shall execute a new sublease for the unexpired term of the original sublease between Hawaiian and Sublessee, and said new sublease shall have the same terms and conditions as those set out in the Hawaiian Village Lot Lease Agreement marked Exhibit X and attached hereto.

8. Commercial Federal shall have the right to protect the improvements situated on said leased premises and shall have access thereto at all reasonable times.

9. During such time as Victor and Hawaiian may have possession of said lot as a result of repossession of said premises, no rental shall accrue on the sublease between Hawaiian and Sublessee, nor shall any rental in arrears take priority over the interest of Commercial Federal; provided, however, nothing herein contained shall be construed to affect the obligation of Hawaiian on its lease from Victor.

10. In the event Victor or Hawaiian recovers possession of said lot, for whatever reason, the entire balance of the unpaid debt, together with accrued interest, secured by the mortgage to Commercial Federal shall, at the option of Commercial Federal, immediately become due and owing, and Commercial Federal may thereupon exercise any right which it may have at law or hereunder, including the right to foreclose its mortgage.

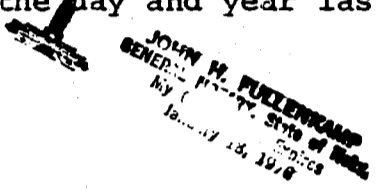
11. The sublease between Hawaiian and Sublessee shall not be in any way altered or assigned without the express written consent of Commercial Federal.

12. Upon condemnation, Sublessee shall be entitled to receive such portion of any award that will adequately compensate Sublessee for the impairment or destruction of the leasehold interest and improvements. Any amounts so payable shall be paid first to Commercial Federal for application to the mortgage indebtedness; the balance, if any, shall be paid to Sublessee. Sublessee shall remain liable for any deficiency remaining on the mortgage indebtedness.

STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

On this 10 day of September, 1975, before me, the under-
signed, a Notary Public in and for said County, personally came
William Carlsted and Robert Beckhold, President
and Secretary, respectively, of Hawaiian Village, Inc., a Nebraska
corporation, to me personally known to be the President and Secretary
and the identical persons whose names are affixed to the above
Modification Agreement, and acknowledged the execution thereof to
be their voluntary act and deed and the voluntary act and deed of
said corporation, and that the corporate seal of the said corporation
was thereto affixed by its authority.

Witness my hand and notarial seal at Omaha in said county
the day and year last above written.



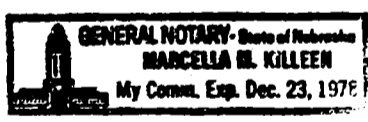
John H. Fullenkamp
Notary Public

My commission expires: _____.

STATE OF NEBRASKA)
) SS
COUNTY OF DOUGLAS)

On this 23rd day of February, 1976, before me, the under-
signed, a Notary Public in and for said County, personally came
William A. Fitzgerald and Donald L. Schinzel, President
and Secretary, respectively, of Commercial Federal Savings and Loan
Association, a United States corporation, to me personally known to
be the President and Secretary and the identical persons whose names
are affixed to the above Modification Agreement, and acknowledged
the execution thereof to be their voluntary act and deed and the
voluntary act and deed of said corporation, and that the corporate
seal of the said corporation was thereto affixed by its authority.

Witness my hand and notarial seal at Omaha in said county
the day and year last above written.



Marcella M. Killeen
Notary Public

My commission expires: December 23, 1978.