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Cook County Recorder 33.00



Document prepared  
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## FIRST MODIFICATION OF CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

THIS FIRST MODIFICATION OF CONSTRUCTION MORTGAGE, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (the "Agreement") is entered into as of the 1<sup>st</sup> day of October, 2000, by and between CANAL ARCHER PARTNERS, L.L.C., an Illinois limited liability company ("Borrower") and NEW CENTURY BANK, an Illinois banking corporation ("Lender").

### RECITALS

WHEREAS, Borrower executed and delivered to Lender that certain Revolving Mortgage Note dated September 15, 1999, in the original principal amount of Six Million and No/100 Dollars (\$6,000,000.00) (the "Original Note"). The loan described in the Original Note (the "Loan") and Borrower's obligations thereunder are secured by, among other things, that certain Construction Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated April 28, 2000, from Borrower in favor of Lender, and recorded with the Recorder of Deeds of Cook County on September 20, 1999, as Document No. 99886593 (the "Mortgage"); and

WHEREAS, Borrower and Lender have agreed to replace the Original Note with that certain Amended and Restated Mortgage Note of even date herewith from Borrower in favor of Lender (the "Note"), whereby, among other things, (i) the Note is a non-revolving credit facility, (ii) the maturity date of the Note is extended to July 1, 2001, (iii) all extension options in the Note are eliminated, and (iv) the maximum principal amount of the Note is increased to Ten Million and No/100 Dollars (\$10,000,000.00); and

WHEREAS, Borrower now desires to modify the Mortgage to, among other things, reflect the increase in the amount of the Loan to Ten Million and No/100 Dollars (\$10,000,000.00); and

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WHEREAS, Lender, the legal owner of the Note and of the liens securing the same, at the request of Borrower has agreed to modify the Mortgage as hereinafter provided.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower and Lender hereby agree to modify and renew the Mortgage as follows:

1. Increase in Maximum Principal Amount of Note. The Mortgage is modified to reflect the increase in the maximum principal amount of the Note from Six Million and No/100 Dollars (\$6,000,000.00) to Ten Million and No/100 Dollars (\$10,000,000.00). Any and all references to "Six Million and No/100 Dollars (\$6,000,000.00)" contained in the Mortgage are hereby deleted and replaced with the amount "Ten Million and No/100 Dollars (\$10,000,000.00)."
2. Final Release Fee. Borrower agrees that it shall pay to Lender a final release fee in the amount of Thirty-Five Thousand and No/100 Dollars (\$35,000.00) concurrent with Lender's release of the last Unit (as defined in the Mortgage).
3. Representations and Warranties.
  - (a) Financial Statements. Borrower represents and warrants that all financial statements of Borrower heretofore delivered to Lender are true and correct representations of the financial condition of Borrower as of the date thereof, and there has been no material adverse change thereto except as indicated by financial statements subsequently delivered to Lender.
  - (b) Violation of Laws. Borrower is not in violation of any laws (including, without limitation, environmental laws and regulations) which could have any effect whatsoever upon the validity, performance or enforceability of any of the terms, covenants and conditions of the Note, the Mortgage, this Agreement, or any instrument executed in connection herewith or therewith. As used in this Agreement, the term "laws" shall include any and all laws, statutes, ordinances rules, regulations, orders, writs, injunctions and decrees.
  - (c) Taxes. Borrower has paid any and all federal, state, local and other taxes, assessments, fees and other governmental charges imposed upon Borrower or Borrower's assets which are due and payable.
  - (d) Disclosure of Adverse Facts. Borrower represents and warrants that there are no material adverse facts or conditions relating to the finances and business of Borrower which have not been related in writing to Lender.

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- (e) Lawful Authority. Borrower possesses all necessary and lawful authority and power to carry on its business and comply with the terms, covenants and conditions of the Note, the Mortgage, this Agreement, and any other instrument executed in connection herewith or therewith.
- (f) No Defaults, Offsets, etc. Borrower represents and warrants that: (i) there are no events or circumstances currently existing which constitute a default under any of the loan documents evidencing the Loan or which would, upon the giving of notice and expiration of any applicable cure period, constitute a default under any of the loan documents evidencing the Loan; and (ii) there are no offsets, counterclaims or defenses with respect to the Note, the Mortgage, as modified hereby or any of the other loan documents evidencing the Loan.
4. Default. Any default under or breach of the terms and provisions of this Agreement shall also constitute a default under the Mortgage, and any other security instrument executed in connection therewith or herewith.
5. Continuing Effect; Ratification. Except as expressly modified as contemplated herein, Borrower expressly ratifies the terms and provisions of the Mortgage and acknowledges and agrees that such terms and provisions shall continue in full force and effect and shall be binding on Borrower and Borrower's successors and assigns.
6. Costs and Expenses. Borrower shall pay any and all costs and expenses, including, without limitation, attorneys' fees and title charges, incurred by Lender in connection with or arising as a result of this Agreement, including, without limitation, the preparation and negotiation of this Agreement, and any other document required in connection herewith.
7. Final Agreement. THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.
8. Conflicts. In the event of any conflict between the terms of this Agreement and any other document evidencing, securing or relating to the loan evidenced by the Note, the terms of this Agreement shall control.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**BORROWER:**

**CANAL ARCHER PARTNERS, L.L.C.,**  
an Illinois limited liability company

By: [Signature]  
Robert Smith, a member

By: [Signature]  
Leon J. Teichner, a member

By: [Signature]  
Mitchell M. Isenberg, a member

By: [Signature]  
Brad Schreiber, a member

**LENDER:**

**NEW CENTURY BANK,** an Illinois  
banking corporation

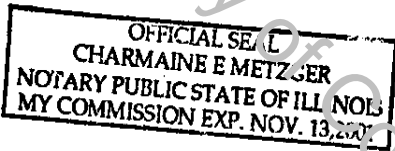
By: [Signature]  
Its: Vice President

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STATE OF ILLINOIS )  
  ) SS.  
COUNTY OF COOK    )

I, Charmaine E Metzger, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Robert Smith, Leon J. Teichner, Mitchell M. Iseberg and Brad Schreiber, personally known to me to be the members of CANAL ARCHER PARTNERS, L.L.C., as such members, are the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they have signed and delivered the said instrument as their free and voluntary act as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1<sup>st</sup> day of October, 2000.



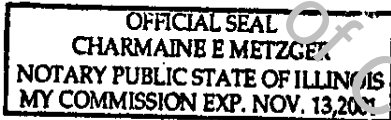
Charmaine E Metzger  
Notary Public  
My commission expires: November 13, 2001

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STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, Charmaine E. Metzger a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Johnson Wong personally known to me to be the Vice President of NEW CENTURY BANK, as such \_\_\_\_\_, is the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that She has signed and delivered the said instrument as her free and voluntary act as aforesaid on behalf of such Bank, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 1<sup>st</sup> day of October, 2000.



Charmaine E. Metzger  
Notary Public  
My commission expires: November 13, 2001

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## EXHIBIT A

### Legal Description

STREET ADDRESS: 2309 WEST ARCHER

CITY: CHICAGO

COUNTY: COOK

TAX NUMBER: 17-28-107-008-0000

99886593

#### LEGAL DESCRIPTION:

LOT 1 IN BLOCK 7 IN HANSELL-FLOOCK COMPANY'S RESUBDIVISION OF THE SOUTH BRANCH ADDITION TO CHICAGO IN SECTION 28, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED DECEMBER 31, 1913 IN BOOK 124 OF PLATS, PAGE 35 AS DOCUMENT 5331082, IN COOK COUNTY, ILLINOIS.

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