

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:



003011258

Holland & Knight, LLC
500 W. Madison Street
40th Floor
Chicago, Illinois 60661
Attn: Francis L. Keldermans, Esq.

This space reserved for Recorder's use only

FIRST MODIFICATION OF LOAN DOCUMENTS

THIS FIRST MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made as of the 27th day of December, 2002, by and among **PRAIRIE AVENUE, LLC**, an Illinois limited liability company, ("Borrower"), **THOMAS GOURGUECHON** and **DIANA GOURGUECHON** (together, "Guarantor"), ("Guarantor") and **COMMERCIAL LOAN CORPORATION**, an Illinois corporation, its successors and assigns ("Lender").

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Three Million and no/100 Dollars (\$3,000,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of March 28, 2002 by and between Borrower and Lender, (the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Promissory Note dated March 28, 2002, in the principal amount of the Loan made payable by Borrower to the order of Lender, as amended by the First Amended and Restated Promissory Note of even date herewith made payable by Borrower to the order of Lender in the increased principal amount of Three Million Five Hundred Thousand and no/100 Dollars (\$3,500,000.00) ("Note").

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated March 28, 2002 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on April 9, 2002, as Document No. 0020402850 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases made by Borrower in favor of Lender dated March 28, 2002 and recorded in the Recorder's Office on April 9, 2002 as Document No. 002042851 ("Assignment of Rents") (iii) that certain Environmental Indemnity Agreement dated March 28, 2002 from Borrower and Guarantor to Lender, (the "Indemnity Agreement"); (iv) that Security Agreement given by Borrower in favor of Lender; and (iv) certain other loan documents (the Note, the Mortgage, the Assignment of Rents, the

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Indemnity Agreement, the Security Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty of Payment and Completion dated March 28, 2002 from Guarantor to Lender (the "Guaranty").

D. Borrower desires to amend the Loan Documents in order to increase the principal amount of the Note to Three Million Five Hundred Thousand and no/100 Dollars (\$3,500,000.00).

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Increase in Principal Amount of Loan.** Lender agrees to increase the principal amount of the Loan to Three Million Five Hundred Thousand and no/100 Dollars (\$3,500,000.00).

2. **Principal and Interest.** Principal and interest shall be due and payable as provided in the Note.

3. **Loan Increase Fee.** In consideration of Lender's agreement to increase the principal amount of the Loan, Borrower shall pay to Lender as a condition precedent to disbursement of proceeds of the Loan a non-refundable fee in the amount of Ten Thousand and no/100 Dollars (\$10,000.00).

4. **Modification Documents.** In conjunction with this Agreement, Borrower shall execute, cause to be executed or obtain (as applicable) and deliver to Lender the following documents (all of such documents are collectively referred to as the "Modification Documents"):

- (a) This Agreement
- (b) The First Amended and Restated Promissory Note;
- (c) Resolutions, Certificates, Opinions, Statements:
 - i. Such resolutions and certificates as Lender shall reasonably require;
 - ii. An opinion of Borrower's counsel in form and substance as Lender reasonably requests;
 - iii. Certificate of Good Standing for Borrower; and
 - iv. such other documents as Lender reasonably requires.

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5. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Loan Agreement) under the Loan Agreement, the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

6. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy No. 1409 007989967 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

7. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

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8. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

9. **Miscellaneous.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Loan Agreement," the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Loan Agreement, the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are

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expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

[Signature Page Follows]

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IN WITNESS WHEREOF, the parties hereto have executed this First Modification of Loan Documents dated as of the day and year first above written.

LENDER:

Commercial Loan Corporation, an Illinois corporation

By: *Peter Hueser*
Name: PETER HUESER
Title: PRESIDENT

BORROWER:

Prairie Avenue, LLC, an Illinois limited liability company

By: *Thomas Gourguechon*
Name: THOMAS GOURGUECHON
Title: MANAGING MEMBER

GUARANTOR:

Thomas Gourguechon
Thomas Gourguechon
Diana Gourguechon
Diana Gourguechon

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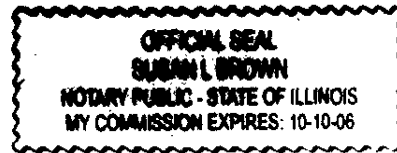
STATE OF ILLINOIS)
) .ss
COUNTY OF COOK)

I Susan L Brown, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Peter M Hveser, President of **Commercial Loan Corporation**, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27th day of December, 2002.

Susan L Brown
Notary Public

My Commission Expires: 10/10/06



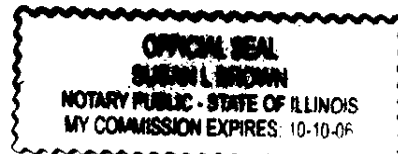
STATE OF ILLINOIS)
) .ss
COUNTY OF _____)

I Susan L Brown, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Thomas Gourveillon, managing member of **Prairie Avenue, LLC**, an Illinois limited liability company, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27th day of December, 2002.

Susan L Brown
Notary Public

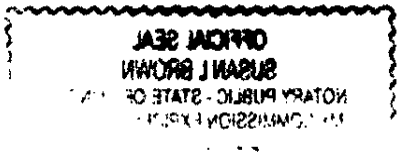
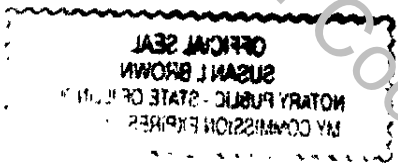
My Commission Expires: 10/10/06



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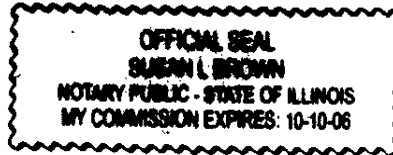
STATE OF ILLINOIS)
) .ss
COUNTY OF _____)

I Susan L Brown, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Thomas Gourguechon** is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27th day of December, 2002.

Susan L Brown
Notary Public

My Commission Expires: 10/10/06



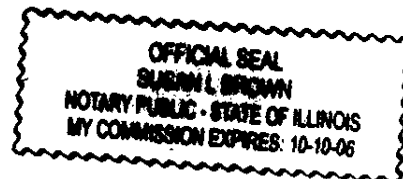
STATE OF ILLINOIS)
) .ss
COUNTY OF _____)

I Susan L Brown, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **Diana Gourguechon** is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 27th day of December, 2002

Susan L Brown
Notary Public

My Commission Expires: 10/10/06



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OFFICIAL SEAL
SUSAN J BROWN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES 10/10/2014

OFFICIAL SEAL
SUSAN J BROWN
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES 10/10/2014

2014/10/10

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EXHIBIT A

THE PROPERTY

UNITS 1 AND 2, AS DELINEATED ON THE PLAT OF SURVEY OF THE FOLLOWING DESCRIBED PARCEL OF REAL ESTATE:

LOT 17 IN BLOCK 16 IN NORTH EVANSTON, BEING A SUBDIVISION OF PART OF SMITH'S SUBDIVISION OF THE SOUTH PART OF OUILMETTE RESERVE IN SECTION 12, TOWNSHIP 41 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN;

WHICH SURVEY IS ATTACHED TO DECLARATION OF CONDOMINIUM RECORDED MAY 13, 1992 AS DOCUMENT 92328052 AND RERECORDED ON MAY 13, 1992 AS DOCUMENT 92404409, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS.

PIN: 10-12-200-030-1001, 10-12-200-020-1002

Commonly known as: 2511-2515 Prairie Avenue, Evanston, Illinois

CHO1 #1258171 v1

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