

UNOFFICIAL COPY

WHEREAS, the Notes are secured by, among other things, a Construction Mortgage, Assignment of Leases and Rents, and Security Agreement dated as of the 19th day of November,

WHEREAS, the Loan is evidenced in part by a Construction Loan Agreement dated as of November 19, 2003 (the "Loan Agreement") made by Mortgagee and Lender, an Acquisition and Construction Mortgage Note dated as of November 19, 2003 (the "Acquisition Note") made by Mortgagee where by Mortgagee promised to pay to the order of Lender the principal sum of Thirteen Million Three Hundred Thirty Four Thousand and 00/100 Dollars (\$13,344,000.00), all as more specifically set forth in said Acquisition Note; and by a Construction Mortgage Note dated as of November 19, 2003 (the "Construction Note") made by Mortgagee where by Mortgagee promised to pay to the order of Lender the principal sum of Nine Million Five Hundred Twenty One Thousand and 00/100 Dollars (\$9,521,000.00), all as more specifically set forth in said Construction Note (the Acquisition Note and Construction Note are hereinafter referred to as the "Notes"); and

WHEREAS, Lender has heretofore made a construction mortgage loan (the "Loan") to Mortgagee in the original principal amount of Twenty Two Million Eight Hundred Fifty Five Thousand and 00/100 Dollars (\$22,855,000.00); and

RECITALS:

THIS MODIFICATION OF MORTGAGE AND OTHER SECURITY DOCUMENTS ("Modification") is made and entered into as of the 18th day of November, 2004, by NORTH STAR TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 12, 2003, AND KNOWN AS TRUST NO 03-6200 ("Trustee"), with a mailing address at 529 West Golf Road, Arlington Heights, Illinois 60004, and GETTYSBURG DEVELOPMENT CORPORATION, an Illinois corporation ("Beneficiary") with a mailing address at 529 West Road, Arlington Heights, Illinois 60004 (Trustee and Beneficiary are hereinafter collectively referred to as "Mortgagee"), to the order of NEW FINANCIAL BANK, N.A. ("Lender"), having its principal office at 1200 North Ashland Avenue, Chicago, Illinois 60622 Attention: Vincent G. Laughlin.

MODIFICATION OF MORTGAGE AND OTHER SECURITY DOCUMENTS

THIS DOCUMENT PREPARED BY
AND AFTER RECORDING RETURN TO:

David J. O'Keefe
Schain, Burney, Ross & Citron, Ltd.
222 North LaSalle Street
Suite 1910
Chicago, Illinois 60601

Doc#: 0435603102
Eugene "Gene" Moore Fee: \$38.50
Cook County Recorder of Deeds
Date: 12/21/2004 02:52 PM Pg: 1 of 8



UNOFFICIAL COPY

"WHEREAS, Mortgage is indebted to Lender in the principal sum of Twenty Five Million Eight Hundred Fifty Thousand and 00/100 Dollars (\$25,850,000.00), which indebtedness is evidenced by Mortgage's Acquisition and Construction Mortgage Note of even date herewith, wherein Mortgage promises to pay to the order of Lender the maximum principal amount of Fourteen Million Three Hundred Fifty Thousand and 00/100 Dollars (\$14,350,000.00) or such lesser amount as may be disbursed thereunder, Mortgage's Construction Mortgage Note of even date herewith, wherein Mortgage promises to pay to the order of Lender the maximum principal amount of Eleven Million Three Hundred Thousand and 00/100 Dollars (\$11,300,000.00) or such lesser amount as may be disbursed thereunder and Mortgage's Letter of Credit Note wherein Mortgage

a. The Mortgage is modified by deleting the second paragraph starting with "WHEREAS" in its entirety and substituting therefor the following:

2. Modification of Mortgage and Other Security Documents.

1. Incorporation of Recitals. The aforesaid recitals are hereby incorporated into this Modification by reference as if fully set forth in this Paragraph 1. Wherever the terms and conditions of this Modification conflict with the terms and conditions of the Mortgage, the terms and conditions of this Modification shall control. In all other respects the parties do hereby ratify and declare to be in full force and effect the terms and conditions of the Mortgage and the Other Security Documents.

NOW, THEREFORE, for and in consideration of Ten and 00/100 Dollars (\$10.00) in hand paid, the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

WHEREAS, the parties desire to modify and amend the terms of the Loan as provided herein and as a condition to such modification, Lender is requiring: (i) this Modification; (ii) an Amendment to Acquisition Note dated of even date herewith executed by Mortgage; (iii) an Amendment to Construction Mortgage Note dated of even date herewith executed by Mortgage [(ii) and (iii) are collectively referred to herein as the "Note Amendment"]; and (iv) a Consent and Reaffirmation of Guarantor and Modification of Guaranty executed by Guarantor ("Guaranty Modification"), which hereby the Guaranty is modified to secure the Notes as modified by the Note Amendment.

WHEREAS, Mortgage desires that the Mortgage and Loan Agreement be modified as provided herein; and

Loan, which are hereinafter collectively referred to as the "Other Security Documents"; and 2003, by Mortgage in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on December 10, 2003, as Document No. 0334444121 (the "Mortgage") and a Guaranty of Payment dated as of the 19th day of November, 2003 (the "Guaranty") by Larry M. McKone, individually ("Guarantor"), in favor of Lender; and any and all other instruments and documents executed by or on behalf of Mortgage and delivered to Lender in connection with the

UNOFFICIAL COPY

7. Laws of Illinois. This Modification shall be covered and construed under the laws of the State of Illinois.

6. Reaffirmation of Covenants. Mortgagor does hereby reaffirm and agree to perform all of the terms, covenants, conditions and obligations applicable to such parties as set forth in the Mortgage and the Other Security Documents as herein modified.

5. Reaffirmation of Representations and Warranties. Mortgagor hereby reaffirms as true and correct in all respects, as of the date hereof, any and all representations and warranties contained in the Mortgage and the Other Security Documents.

4. References to Loan Documents and Guaranty. Any and all references in the Notes, the Mortgage and the Other Security Documents to the "Loan Documents" shall from and after the date hereof be deemed to refer to the Documents to the "Guaranty" shall from and after the date hereof be deemed to refer to the Guaranty as modified by the Guaranty Modification.

3. References to Notes. From and after the date hereof (i) the Mortgage, the Assignment and the Other Security Documents shall be deemed to secure the Acquisition Note as modified by the Note Amendment; and (ii) any and all references in the Mortgage or the Other Security Documents to the "Notes" shall be deemed to refer to the Acquisition Note as modified by the Note Amendment.

"(1) Mortgagor's failure to close forty (40) Units on or prior to July 31, 2005. Lender shall not be required to notify Mortgagor, in writing or otherwise, of a Default under this subparagraph."

iii. by adding the following subparagraph to Section 15.1:

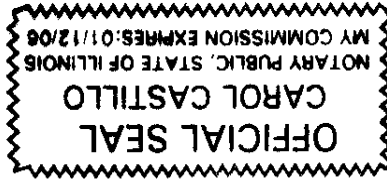
ii. deleting the amount "Four Hundred Fifty Thousand and 00/100 Dollars (\$450,000.00)" where it appears in Section 7.2 and substituting therefor "Six Hundred Eighty Thousand and 00/100 Dollars (\$680,000.00)"

a. deleting "forty-four (44)" where it appears in Section 5.1 (t) and substituting therefor "forty-one (41)"

b. The Loan Agreement is modified by:

promises to pay to the order of Lender the maximum principal amount of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) or such lesser amount as may be disbursed thereunder (collectively the "Notes"), providing for repayment of principal and interest (with interest being paid at a variable rate) and providing for a final payment of all sums due thereunder as set forth therein."

UNOFFICIAL COPY



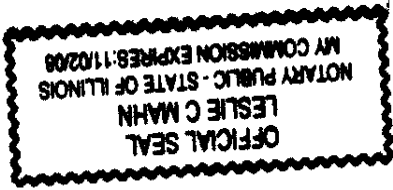
Notary Public

Carol Castillo

GIVEN under my hand and seal, this 18th day of November, 2004.

the undersigned, a notary public in and for said County, in the State of Illinois, DO HEREBY CERTIFY that TRUST OFFICER of NORTH STAR TRUST COMPANY, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 12, 2003, AND KNOWN AS TRUST NO. 03-6200, personally known to me to be the same person whose name is subscribed to the foregoing MODIFICATION OF MORTGAGE AND OTHER SECURITY DOCUMENTS as such TRUST OFFICER, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument, on behalf of said Trust and as her free and voluntary act, for the uses and purposes therein set forth.

STATE OF ILLINOIS)
) SS.)
COUNTY OF COOK)



Notary Public

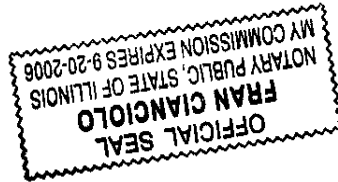
Leslie C. Mahn

GIVEN under my hand and seal, this 18th day of November, 2004.

LESLIE MAHN, a notary public in and for said County, in the State of Illinois, DO HEREBY CERTIFY that Larry M. McKone, President of Gettysburg Development Corporation, an Illinois corporation, personally known to me to be the same person whose name is subscribed to the foregoing MODIFICATION OF MORTGAGE AND OTHER SECURITY DOCUMENTS as such President, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, on behalf of said Corporation and Partnership and as his free and voluntary act, for the uses and purposes therein set forth.

STATE OF ILLINOIS)
) SS.)
COUNTY OF COOK)

UNOFFICIAL COPY



[Signature]
Notary Public

GIVEN under my hand and seal, this 19th day of November, 2004.

I, Fran Cianciolo, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gay A. Rickhard of MB FINANCIAL BANK, N.A., personally known to me to be the same person whose name is subscribed to the foregoing CONSENT OF LENDER, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument, on behalf of said Bank and as his/her free and voluntary act, for the uses and purposes therein set forth.

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

By: [Signature]
Name: Gay A. Rickhard
Title: VICE PRESIDENT

MB FINANCIAL BANK, N.A.

Dated as of November 18, 2004

The undersigned Lender hereby consents to and hereby approves the foregoing Modification of Mortgage and Other Security Documents.

CONSENT OF LENDER

UNOFFICIAL COPY

THAT PART OF THE NORTHEASTERLY 300.0 FEET AS MEASURED AT RIGHT ANGLES TO THE NORTHEASTERLY LINE THEREOF OF THAT PART OF THE EAST 673.83 FEET AS MEASURED ON THE SOUTH LINE THEREOF OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 18, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF RAND ROAD BOUNDED BY A LINE DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE EAST LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 18 WITH THE SOUTHWESTERLY LINE OF RAND ROAD, 200.0 FEET; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF RAND ROAD, 200.0 FEET; THENCE SOUTHWESTERLY 303.29 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID NORTHEASTERLY 300.0 FEET WHICH IS 425.0 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE WITH THE EAST LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 18; THENCE SOUTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID NORTHEASTERLY 300.0 FEET, 425.0 FEET TO THE INTERSECTION WITH THE EAST LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 18; THENCE NORTH ALONG SAID EAST WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 18, 403.28 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

COUNTY, ILLINOIS.

THAT PART OF THE NORTHEASTERLY 300.0 FEET AS MEASURED AT RIGHT ANGLES TO THE NORTHEASTERLY LINE THEREOF OF THAT PART OF THE EAST 673.83 FEET AS MEASURED ON THE SOUTH LINE THEREOF OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SECTION 18, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF RAND ROAD BOUNDED BY A LINE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTHWESTERLY LINE OF RAND ROAD WHICH IS 200.0 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE OF RAND ROAD WITH THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 18; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID NORTHEASTERLY 300.0 FEET, 280.89 FEET TO A POINT ON SAID LINE WHICH IS 200.0 FEET SOUTHWESTERLY, AS MEASURED ALONG SAID SOUTHWESTERLY LINE OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE WITH THE WEST LINE OF THE EAST 673.83 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 18; THENCE NORTHEASTERLY 307.95 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF RAND ROAD WHICH IS 400.0 FEET SOUTHWESTERLY AS MEASURED ALONG SAID SOUTHWESTERLY LINE OF THE INTERSECTION OF THE SOUTHWESTERLY LINE OF RAND ROAD WITH THE WEST LINE OF THE EAST 673.83 FEET OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 18; THENCE SOUTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 18, 305.80 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 1:

LEGAL DESCRIPTION

EXHIBIT "A"

UNOFFICIAL COPY

Property of Cook County

PIN: 03-18-203-005
03-18-203-006
03-18-203-007

THAT PART OF THE NORTHEASTERLY 300.0 FEET AS MEASURED AT RIGHT ANGLES TO THE NORTHEASTERLY LINE THEREOF OF THAT PART OF THE EAST 673.83 FEET AS MEASURED ON THE SOUTH LINE THEREOF OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 18, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTHWESTERLY OF THE SOUTHWESTERLY LINE OF RAND ROAD BOUNDED BY A LINE DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE EAST LINE OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 18 WITH THE SOUTHWESTERLY LINE OF RAND ROAD; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF RAND ROAD, 200.0 FEET; THENCE SOUTHWESTERLY 303.29 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID NORTHEASTERLY 300.0 FEET WHICH IS 425.0 FEET NORTHWESTERLY OF THE INTERSECTION OF SAID SOUTHWESTERLY LINE WITH THE EAST LINE OF THE WEST 1/2 OF NORTHEAST 1/4 OF SAID SECTION 18; THENCE SOUTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID NORTHEASTERLY 300.0 FEET, 425.0 FEET TO THE INTERSECTION WITH THE EAST LINE OF THE WEST 1/2 OF THE NORTHEAST 1/4 OF SAID SECTION 18; THENCE NORTH ALONG SAID EAST LINE, 403.28 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 3: