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MODIFICATION AGREEMENT

92953862

This Modification Agreement ("Agreement") is entered into effective as of December 1, 1991 by and between LaSalle National Trust, N.A., not personally but solely as Trustee under the Trust Agreement dated April 5, 1977 and known as Trust No. 10-32324-09, having a place of business at 135 South LaSalle Street, Chicago, Illinois 60690 ("Mortgagor"), and Nicholas J. Lepkaluk ("Beneficiary"), on the one hand, and Hyperion Credit Capital Partners L. P., a Delaware limited partnership having its place of business at 520 Madison Avenue, 10th Floor, New York, New York 10022 ("Mortgagee"), on the other hand.

WHEREAS, Security Capital Credit Corporation, a Delaware corporation ("Security Capital"), made a loan in the principal amount of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) (the "Loan") to Mortgagor;

WHEREAS, the Loan is evidenced by a Secured Promissory Note dated December 16, 1985 in the principal amount of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) payable by Mortgagor to the order of Security Capital, as modified by the Modification Agreement dated as of September 1, 1988 by and between Mortgagor and Benjamin Franklin Savings Association, a Texas savings and loan association ("Benjamin Franklin"), recorded August 15, 1989 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 89-378195 (the "First Modification Agreement"), and the Modification Agreement dated as of December 1, 1990 by and between Mortgagor, Beneficiary and Benjamin Franklin Federal Savings Association, a Texas federal mutual savings and loan association ("Benjamin Franklin Federal"), recorded August 29, 1991 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 91-448675 (the "Second Modification Agreement") (as modified, the "Note"), and is secured by the Mortgage and Security Agreement dated December 10, 1985 executed by Mortgagor in favor of Security Capital, recorded December 16, 1985 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 85-325428, as modified by the First Modification Agreement and the Second Modification Agreement (as modified, the "Mortgage"), and by the Assignment of Leases and Rents dated December 10, 1985 executed by Mortgagor and Beneficiary in favor of Security Capital, recorded December 16, 1985 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 85-325429, as modified by the First Modification Agreement and the Second Modification Agreement (as modified, the "Assignment") (the Note, Mortgage and Assignment being hereinafter referred to collectively as the "Loan Documents");

THIS INSTRUMENT WAS PREPARED BY AND UPON RECORDING SHOULD BE RETURNED TO:

Robert L. Cimala, Esq.
Tressler, Soderstrom, Maloney & Priess
200 West Adams Street
Suite 3000
Chicago, Illinois 60606

Bohls
Dkw
1/5/92

TT # 273070 Lkw New Dev Box 15

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WHEREAS, pursuant to the Assignment of Security Documents dated December 12, 1985 executed by Security Capital in favor of Benjamin Franklin, recorded February 13, 1986 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 86-062514, Security Capital transferred and assigned to Benjamin Franklin all of Security Capital's rights, title and interests in and to and obligations and liabilities under the Loan Documents;

WHEREAS, pursuant to that certain Acquisition Agreement dated June 29, 1989, the Federal Savings and Loan Insurance Corporation (as Receiver for Benjamin Franklin) transferred and assigned to Benjamin Franklin Federal certain assets and liabilities of Benjamin Franklin including, but not limited to, all of Benjamin Franklin's rights, title and interests in and to and obligations and liabilities under the Loan Documents, the Assignment and Security Agreement (as hereinafter defined) and the Trust Deed Assignment (as hereinafter defined);

WHEREAS, Security Capital then reacquired certain of Benjamin Franklin Federal's rights, title and interests in and to and obligations and liabilities under the Loan Documents, the Assignment and Security Agreement and the Trust Deed Assignment;

WHEREAS, pursuant to the Assignment of Non-Affiliated Mortgage Loan dated January 27, 1992 executed by Security Capital in favor of Mortgagee, Security Capital transferred and assigned to Mortgagee all of Security Capital's rights, title and interests in and to and obligations and liabilities under the Loan Documents, the Assignment and Security Agreement and the Trust Deed Assignment,

WHEREAS, pursuant to the Assignment of Non-Affiliated Mortgage Loan dated January 27, 1992 executed by the Resolution Trust Corporation in its capacity as Receiver for Benjamin Franklin Federal in favor of Mortgagee, recorded March 19, 1992 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 92-179947, the Resolution Trust Corporation transferred and assigned to Mortgagee all of Benjamin Franklin Federal's rights, title and interests in and to and obligations and liabilities under the Loan Documents, the Assignment and Security Agreement and the Trust Deed Assignment;

WHEREAS, the Mortgage encumbers property therein described (referred to therein and herein as the "Mortgaged Property"), including the land described in Exhibit A attached hereto and made a part hereof;

WHEREAS, Mortgagor and Beneficiary, the holder and owner of one hundred percent (100%) of the beneficial interest in Mortgagor, have requested Mortgagee to extend the maturity date of the Note from December 1, 1991 to December 1, 1993;

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COOK COUNTY RECORDER

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#7043 # *-92-953862
COOK COUNTY RECORDER

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WHEREAS, Mortgagor and Beneficiary have also requested Mortgagee to set the interest rate payable under the Note (a) during the period of December 1, 1991 through and including November 30, 1992 at the fixed rate of seven and three-quarters percent (7.75%) per annum while interest accrues thereunder during such period at the fixed rate of ten and three-quarters percent (10.75%) per annum and (b) during the period of December 1, 1992 through and including December 1, 1993 at the fixed rate of ten and three-quarters percent (10.75%) per annum;

WHEREAS, Mortgagor, Beneficiary and Mortgagee have agreed to modify the Loan Documents as provided herein;

NOW THEREFORE, in consideration of the foregoing premises and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Mortgagor hereby reaffirms the grant to Security Capital of the rights, title and interests in the Mortgaged Property granted pursuant to the Mortgage including, without limitation, the security interest thereby granted in that portion of the Mortgaged Property consisting of personal property and fixtures, whether presently encumbered by such security interest or hereafter acquired by Mortgagor. Mortgagor hereby makes and confirms each and every representation, warranty, agreement, covenant and undertaking set forth in the Mortgage, all of which shall be deemed made by Mortgagor to Mortgagee as of the date hereof.

2. Mortgagor hereby makes and confirms each and every representation, warranty, agreement, covenant and undertaking set forth in the Note, all of which shall be deemed made by Mortgagor to Mortgagee as of the date hereof.

3. Mortgagor and Beneficiary hereby make and confirm each and every representation, warranty, agreement, covenant and undertaking set forth in the Assignment, all of which shall be deemed made by Mortgagor and Beneficiary, as the case may be, to Mortgagee as of the date hereof.

4. Beneficiary hereby makes and confirms each and every representation, warranty, agreement, covenant and undertaking set forth in the Assignment and Security Agreement dated December 16, 1985 by and between Beneficiary and Benjamin Franklin (the "Assignment and Security Agreement"), all of which shall be deemed made by Beneficiary to Mortgagee as of the date hereof.

5. Mortgagor and Beneficiary hereby reaffirm the assignment and transfer to Benjamin Franklin and its successors and assigns of all right, title and interest of Mortgagor and Beneficiary in, to and under the Leases and the Guaranties (as

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said terms are defined in the Assignment), which assignment and transfer was granted by Mortgagor and Beneficiary to Benjamin Franklin in Paragraph 11 of the First Modification Agreement and reaffirmed by Mortgagor and Beneficiary to Benjamin Franklin Federal in Paragraph 7 of the Second Modification Agreement. Further, Mortgagor and Beneficiary hereby make and confirm each and every representation, warranty, agreement, covenant and undertaking set forth in the Leases and Guaranties, all of which shall be deemed made by Mortgagor and Beneficiary, as the case may be, to Mortgagee as of the date hereof.

6. Beneficiary hereby reaffirms the assignment and transfer to Benjamin Franklin of all right, title and interest of Beneficiary in, to and under the Assigned Trust Deed and Assigned Note (as said terms are defined in the Assignment of Instalment Note and Trust Deed Junior Mortgage dated December 30, 1988 by Beneficiary in favor of Benjamin Franklin, recorded August 15, 1989 in the Office of the Recorder of Deeds, Cook County, Illinois as Document No. 89-378193 (the "Trust Deed Assignment")), which assignment and transfer was granted by Beneficiary to Benjamin Franklin in the Trust Deed Assignment. Further, Beneficiary hereby makes and confirms each and every representation, warranty, agreement, covenant and undertaking set forth in the Trust Deed Assignment, all of which shall be deemed made by Beneficiary to Mortgagee as of the date hereof.

7. Beneficiary hereby (a) reaffirms all of his obligations under the Guaranty dated as of December 1, 1990 executed by Beneficiary in favor of Benjamin Franklin Federal (the "Guaranty") and (b) agrees that he has no defenses to, or claims, charges or set-offs against his obligations under the Guaranty. Further, Beneficiary hereby makes and confirms each and every representation, warranty, agreement, covenant and undertaking set forth in the Guaranty, all of which shall be deemed made by Beneficiary to Mortgagee as of the date hereof.

8. Paragraph 1 of the Note is deleted in its entirety and the following is substituted in its place:

1. Through and including November 30, 1991, the "Interest Rate" shall be a fixed rate of twelve percent (12%) per annum. During the period of December 1, 1991 through and including the Maturity Date (as hereinafter defined), the "Interest Rate" shall be a fixed rate of ten and three-quarters percent (10.75%) per annum. Notwithstanding the provisions of paragraph 3(a) below, if interest accrued on the principal balance of this Note for any month during the period of December 1, 1991 through and including November 30, 1992 at the

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Interest Rate shall exceed interest accrued on the principal balance of this Note for such month at the Cash Payment Rate (as hereinafter defined), then, regardless of the amount of interest accrued on the principal balance of this Note for such month at the Interest Rate, Borrower may, at its option, actually pay to Holder with respect to such month only such amount of interest as would have been payable had interest been calculated on the principal balance of this Note for such month at the Cash Payment Rate, and, in such event, the difference between (a) interest which has actually accrued on the principal balance of this Note for such month at the Interest Rate, and (b) interest which has actually been paid by Borrower for such month pursuant to this paragraph, shall be added to the principal amount of this Note as of the date such amount would have been payable in the absence of this paragraph and shall accrue interest from such date at the Interest Rate or, upon the occurrence of an Event of Default, at the Default Rate; provided, however, that Borrower shall not have the option to defer payment of any accrued interest for any month as provided above if any Event of Default shall then exist. The aggregate amount of all interest from time to time added to principal pursuant to this paragraph (the "Deferred Amount"), unless sooner paid, shall be paid as hereinafter provided. Any portion of the Deferred Amount which shall not have been paid through a voluntary prepayment of such Deferred Amount shall be payable on the first to occur of (i) prepayment of this Note, (ii) acceleration of maturity of this Note, or (iii) the Maturity Date. All references in this Note to the principal balance of this Note shall include, without limitation, any Deferred Amount which shall have been added to the principal balance of this Note as provided herein. As used herein, the term "Cash Payment Rate" shall mean seven and three-quarters percent (7.75%) per annum.

9. Paragraph 5 of the Note is deleted in its entirety and the following is substituted in its place:

5. The outstanding principal balance of this Note and all accrued and unpaid interest and

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other charges hereunder shall be payable in full on December 1, 1993 (the "Maturity Date").

10. The parties hereto acknowledge and agree that, except as provided in (a) this Agreement, (b) the First Modification Agreement and (c) the Second Modification Agreement, the Loan Documents, the Assignment and Security Agreement, the Trust Deed Assignment and the Guaranty have not been modified, amended, canceled, terminated, released, superseded or otherwise rendered of no force and effect.

11. Each of the Loan Documents, the Assignment and Security Agreement, the Trust Deed Assignment and the Guaranty, as modified hereby, are hereby ratified and confirmed by the parties hereto, and every provision, covenant, condition, obligation, right and power contained in and under each of the Loan Documents, the Assignment and Security Agreement, the Trust Deed Assignment and the Guaranty, as so modified, shall continue in full force and effect. Mortgagor and Beneficiary, as the case may be, hereby agree to perform, observe and comply with all the terms, provisions, covenants, agreements and conditions of the Loan Documents, the Assignment and Security Agreement, the Trust Deed Assignment and the Guaranty. Each reference in any of the Loan Documents, the Assignment and Security Agreement, the Trust Deed Assignment and the Guaranty to any of the other Loan Documents is hereby modified to refer to said Loan Document as modified hereby.

12. Mortgagor and Beneficiary, jointly and severally, hereby agree to defend and hold Mortgagor, its partners, directors, officers, employees, agents, representatives, successors and assigns (collectively referred to herein as the "Indemnified Parties") forever harmless from and against any and all claims, losses, damages, liabilities and expenses (including, without limitation, legal fees) incurred by any of the Indemnified Parties in connection with, arising from or as a result of the following: (a) any violation of any Environmental Law (as hereinafter defined) by Mortgagor, Beneficiary or any tenant or occupant of the Mortgaged Property; or (b) the existence of Hazardous Materials (as hereinafter defined) on or in any portion of the Mortgaged Property or the generation or handling of Hazardous Materials on or in any portion of the Mortgaged Property by Mortgagor, Beneficiary or any tenant or occupant of the Mortgaged Property. Mortgagor and Beneficiary, at their sole cost and expense, will assume complete responsibility for and contest, defend or litigate any audit, claim, proceeding or litigation that could give rise to a claim for indemnification under this Paragraph 12, and the Indemnified Parties shall have the right, but not the obligation, to participate in any such audit, claim, proceeding or litigation at their own expense (including, without limitation, the payment of legal fees and costs) if they feel materially at risk notwith-

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standing the preceding indemnification. Mortgagor and Beneficiary shall employ a reputable law firm to handle any audit, claim, proceeding or litigation that could give rise to a claim for indemnification under this Paragraph 12, and the Indemnified Parties shall exert their best efforts to cooperate with Mortgagor and Beneficiary and their legal counsel in conjunction with such audit, claim, proceeding or litigation. If any of the Indemnified Parties believes that it has suffered or incurred any claim, loss, damage, liability or expense (including, without limitation, reasonable legal fees) as to which a claim for indemnification pursuant to this Paragraph 12 is warranted ("Loss") or if any litigation or proceeding is instituted with respect to which any of the Indemnified Parties intends to make a claim for indemnification pursuant to this Paragraph 12 ("Litigation"), the Indemnified Parties shall promptly notify Mortgagor and Beneficiary in writing of the Loss or Litigation (any such notice being called the "Indemnified Parties' Notice") so that Mortgagor and Beneficiary shall have the timely opportunity to take appropriate action. If Mortgagor, Beneficiary and the Indemnified Parties cannot resolve the handling and/or payment of the Loss or Litigation between themselves within thirty (30) days after Mortgagor's and Beneficiary's receipt of the Indemnified Parties' Notice, the Indemnified Parties shall be entitled to pursue all remedies available to them. The Indemnified Parties shall not settle or otherwise compromise any Loss or Litigation without the prior written consent of Mortgagor and Beneficiary, which consent shall not be unreasonably withheld. "Environmental Laws" means and includes: (i) the Comprehensive Environmental Response, Compensation and Liability Act, as amended; (ii) the Illinois Environmental Protection Act, as amended; (iii) the Resource Conservation and Recovery Act, as amended; (iv) the Atomic Energy Act of 1954, as amended; and (v) any other so-called Superfund or Superlien law or any other federal, state, county, city or other governmental statute, law or ordinance concerning any hazardous, toxic or dangerous waste, substance or material. "Hazardous Materials" means and includes: (1) any hazardous, toxic or dangerous waste, substance or material defined as such in (or for purposes of) the Environmental Laws; (2) asbestos and asbestos-containing materials (whether or not friable); (3) underground storage tanks; (4) more than 100 gallons of crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (5) any radioactive material, including any source, special nuclear or by-product material as defined in the Atomic Energy Act of 1954, as amended; and (6) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state, county, city or other governmental authority pursuant to any Environmental Law (all as amended or hereafter amended) which poses a hazard to the health and safety of occupants or users of any portion of the Mortgaged Property or any adjoining property or cause damage to the environment.

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13. Notwithstanding anything in this Agreement to the contrary, the rights, obligations and liabilities of Mortgagor, Beneficiary and Mortgagee hereunder are subject to the condition subsequent that Bank of America National Trust & Savings Association, successor by merger to Security Pacific National Bank, not individually but as Trustee under the Indenture dated as of January 29, 1992 which evidences a collateral assignment of the Loan Documents, gives its consent to the terms and conditions of this Agreement by executing the consent paragraph provided below.

14. This Agreement shall be binding upon and inure to the benefit of the respective heirs, administrators, legal representatives, successors and assigns of the parties hereto.

15. The terms and conditions of this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to choice of law principles.

16. This Agreement is executed by Mortgagor, not personally but solely as Trustee under the Trust Agreement dated April 5, 1977 and known as Trust No. 10-32324-09. It is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the covenants, undertakings, representations and agreements herein made are made and intended, not as personal covenants, undertakings, representations and agreements of Mortgagor individually, or for the purpose of binding it personally, but this Agreement is executed and delivered by Mortgagor solely in the exercise of the powers conferred upon it as Trustee under the aforesaid Trust Agreement and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against, LaSalle National Trust, N.A. on account hereof, or on account of any covenant, undertaking, representation, warranty or agreement herein contained, either expressed or implied, all such personal liability, if any, being hereby expressly waived and released by the parties hereto or holder hereof, and by all persons claiming by or through or under said parties or holder thereof.

IN WITNESS WHEREOF, Mortgagor, Beneficiary and Mortgagee have executed this Agreement effective as of the day and year first above written.

LaSalle National Trust, N.A.,
not personally but solely as
Trustee as aforesaid

By: 

Name: _____

JOSEPH W. FANG

Title: _____

SR. VICE PRESIDENT

(signatures continue overleaf)

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Nicholas J. Lepkaluk
Nicholas J. Lepkaluk

Hyperion Credit Capital
Partners L.P., by its General
Partner, HCC Capital, Inc.

By: Salvatore A. Ranieri
Name: Salvatore A. Ranieri
Title: Vice President

CONSENT

The undersigned hereby consents to the terms and conditions
of the aforesaid Modification Agreement.

Bank of America National
Trust & Savings Association

By: Mireya Gonzalez
Name: Mireya Gonzalez
Title: Senior Authorized Officer

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STATE OF NEW YORK)
) SS.
COUNTY OF NEW YORK)

I, Andrea Johnston, a Notary Public in and for and residing in said County and State, DO HEREBY CERTIFY THAT Salvatore A. Lancia [name], Vice President [title] of HCC Capital, Inc., the General Partner of Hyperion Credit Capital Partners L.P., a Delaware limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President [title], appeared before me this day in person and acknowledged that (s)he signed and delivered said instrument as his/her own free and voluntary act and as the free and voluntary act of said limited partnership for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 30th day of October, 1992.

Andrea Johnston
Notary Public

My Commission Expires:

March 30, 1993
(Seal)

ANDREA JOHNSTON
Notary Public, State of New York
No. 4780228
Qualified in New York City
Commission Expires March 30, 1993

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JAN 10 2011
CHICAGO, IL

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STATE OF CALIFORNIA)
COUNTY OF Los Angeles) SS.

I, John McIntire, a Notary Public in and for
and residing in said County and State, DO HEREBY CERTIFY THAT
Mireya Gonzalez [name], Senior Authorized Officer [title]
of Bank of America National Trust & Savings Association, a
National Banking Association

personally known to me to be the same person whose name is
subscribed to the foregoing instrument as such
Senior Authorized Officer [title], appeared before me this day in
person and acknowledged that (s)he signed and delivered said
instrument as his/her own free and voluntary act and as the free
and voluntary act of Bank of America National Trust & Savings
Association for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 3rd day of
November, 1992.

John McIntire
Notary Public

My Commission Expires:

(Seal)



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EXHIBIT A

That part of the West 298.1 feet of the East 1/2 of the North East 1/4 of Section 13, Township 39 North, Range 12 East of the Third Principal Meridian, lying South of the right of way conveyed to the Chicago and Wisconsin Railroad Company, by Warranty Deed dated October 31, 1885 and recorded October 31, 1885, in Book 1708, Page 137 as Document 665804, except the West 33 feet thereof dedicated for street by Plat filed February 16, 1891 in Book 46 of Plats, Page 26 as Document 1419420 and except the South 23 feet thereof taken for Harrison Street and except that part of the East 2.97 feet of the West 298.1 feet of the East 1/2 of the North East 1/4 of Section 13, Township 39 North, Range 12 East of the Third Principal Meridian, lying Southerly of the following described line:

Beginning in the East line of the West 298.1 feet aforesaid 406.97 feet North of the South line of said North East 1/4 (as measured on the East line of the said West 298.1 feet) and extending Northwesterly to a point in the West line of the East 2.97 feet aforesaid 407.30 feet North of the South line of said North East 1/4 (as measured on the West line of said East 2.97 feet) except that part condemned for highways in Case No. 53 C 14880, all in Cook County, Illinois.

Permanent Tax Numbers: 15-13-226-001
15-13-226-008

Volume 163

7329 W. Harrison
Forest Park, Ill.

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