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97176016

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Chicago, IL 60603

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. COOK COUNTY RECORDER

## FIFTH MODIFICATION AGREEMENT

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THIS FIFTH MODIFICATION AGREEMENT (the "Agreement") is entered into as of the 3rd day of March, 1997, by and among **THE CHICAGO TRUST COMPANY**, f/k/a Chicago Title and Trust Company, not personally, but as Trustee under that certain Trust Agreement dated March 2, 1994, and known as Trust No. 1098802 ("Trustee"), with a mailing address of 171 North Clark Street, Chicago, Illinois 60601, **MARYCREST CONSTRUCTION CO.**, an Illinois corporation ("Beneficiary"; Trustee and Beneficiary are hereinafter collectively referred to as "**Borrower**"), with a mailing address of P.O. Box 435, Palos Park, Illinois 60464 and **CITIBANK, FEDERAL SAVINGS BANK** ("Lender"), with a mailing address of Citicorp Center, 500 West Madison Street, Chicago, Illinois 60661-2891.

## RECITALS

WHEREAS, Borrower executed and delivered to Lender (i) that certain Promissory Note in the original principal amount of One Million Nine Hundred Seventy Thousand and No/100 Dollars (\$1,970,000.00) (the "**Acquisition Note**") and (ii) that certain Revolving Credit Promissory Note in the original principal amount of Two Million and No/100 Dollars (\$2,000,000.00) (the "**Revolving Credit Note**"; the Acquisition Note and the Revolving Credit Note are sometimes hereinafter collectively referred to as the "**Notes**"). The Notes are secured by, among other things, an Acquisition and Revolving Credit Construction Mortgage, Security Agreement and Assignment of Leases, Rents and Profits dated March 21, 1994 by Borrower in favor of Lender on real estate located at 85th Place and Kedzie Avenue in Chicago, Illinois (the "**Mortgage**"), which Mortgage was recorded with the Recorder of Deeds of Cook County on April 7, 1994 as Document No. 94314483; an Acquisition and Revolving Construction Line of Credit Loan Agreement dated March 21, 1994, between Borrower and Lender (the "**Loan Agreement**") and certain other documents related thereto (the Notes, the Mortgage, the Loan

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**BOX 333-CTI**

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Agreement and all other documents related thereto are sometimes hereinafter collectively referred to as the "Original Loan Instruments"); and

WHEREAS, the Original Loan Instruments were modified by (i) that certain Revolving Credit Note Modification Agreement dated as of June 14, 1995, (ii) that certain First Modification Agreement dated as of June 14, 1995 and (iii) that certain Reaffirmation of Guaranty dated as of June 14, 1995 (collectively, the "First Modification Instruments"); and

WHEREAS, the Original Loan Instruments, as amended by the First Modification Instruments, were modified by (i) that certain Second Revolving Credit Note Modification Agreement dated October 16, 1995, (ii) that certain Second Modification Agreement dated October 16, 1995, and (iii) that certain Second Reaffirmation of Guaranty dated October 16, 1995 (the "Second Modification Instruments"); and

WHEREAS, the Original Loan Instruments, as amended by the First Modification Instruments and the Second Modification Instruments, were modified by (i) that certain Third Revolving Credit Note Modification Agreement dated as of March 18, 1996, (ii) that certain Third Modification Agreement dated March 18, 1996, and (iii) that certain Third Reaffirmation of Guaranty dated March 18, 1996 (the "Third Modification Instruments"); and

WHEREAS, the Original Loan Instruments, as amended by the First Modification Instruments, the Second Modification Instruments and the Third Modification Instruments, were modified by (i) that certain Fourth Revolving Credit Note Modification Agreement dated as of June 30, 1996, (ii) that certain Fourth Modification Agreement dated June 30, 1996, and (iii) that certain Fourth Reaffirmation of Guaranty dated June 30, 1996 (the "Fourth Modification Instruments"; the Original Loan Instruments, the First Modification Instruments, the Second Modification Instruments, the Third Modification Instruments and the Fourth Modification Instruments are sometimes hereinafter collectively referred to as the "Loan Instruments"); and

WHEREAS, Borrower now desires to further modify the Loan Instruments; and

WHEREAS, Lender, the legal owner of the Notes and of the liens securing the same, at the request of Borrower has agreed to modify the Loan Instruments 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 Revolving Credit Note and all of the other Loan Instruments as follows:

1. Acknowledgment of Balance of Notes. Borrower and Lender hereby acknowledge and agree that as of the date hereof, the outstanding principal balance of the Acquisition Note has been paid in full. Borrower and Lender hereby acknowledge and agree that as of the date hereof, the outstanding principal balance of the Revolving Credit Note, together with accrued and unpaid interest, fees, and any late charges or other fees, is \$ 624,719.29.

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2. Renewal of Liens. Borrower and Lender hereby renew the lien of the Mortgage against all of the property encumbered thereby and described therein until all amounts evidenced by the Notes and/or due under the Loan Instruments have been fully paid. Borrower agrees that such renewal shall in no manner affect or impair the Notes or the liens securing the same and that said liens shall not in any manner be waived.
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. To the best of Borrower's knowledge, 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 Notes, the other Loan Instruments, 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.
- e. Lawful Authority. Borrower possesses all necessary and lawful authority and power to carry on his business and comply with the terms, covenants and conditions of the Notes, the other Loan Instruments, 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 Instruments or which would, upon the giving of notice and expiration of any applicable cure period, constitute a default under any of the Loan Instruments; and (ii) there are no offsets, counterclaims or defenses with respect

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to the Notes, as modified and extended hereby and the Loan Instruments, as modified hereby.

- g. Note Valid. Borrower represents that the Notes, as modified hereby, is a valid and binding promise to pay in accordance with the terms contained therein, and as modified herein, and that the Mortgage represents a first, valid and existing lien against the property securing the Notes and enforceable in accordance with its terms and provisions, subject to bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization and other similar laws affecting creditor's right generally and to the exercise of judicial discretion in accordance with equitable principles.
4. Default. Any default under or breach of the terms and provisions of this Agreement shall also constitute a default under the Notes, as modified and extended hereby, and the other Loan Instruments, and any other security instrument executed in connection therewith or herewith.
5. Increase of Maximum Principal Amount of Revolving Credit Note. The Loan Instruments are modified to increase the Maximum Principal Amount (as defined in the Revolving Credit Note) of the Revolving Credit Note from Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00) to Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00). Any and all references to "Six Hundred Fifty Thousand and No/100 Dollars (\$650,000.00)" contained in the Loan Instruments are hereby deleted and replaced with the amount "Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000.00)".
6. Extension of Maturity Date of Revolving Credit Note. The Loan Instruments are modified to extend the maturity date of the Revolving Credit Note from April 30, 1997 to June 30, 1997. Any and all references to "April 30, 1997" contained in the Loan Instruments related to the maturity date of the Revolving Credit Note are hereby deleted and replaced with the date "June 30, 1997".
7. Continuing Effect; Ratification. Except as expressly modified herein, Borrower expressly ratifies the terms and provisions of the Notes and the other Loan Instruments 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.

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8. 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.
  
9. 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.
  
10. 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 Notes, the terms of this Agreement shall control.
  
11. Trustee Exculpation. This Agreement is executed and delivered by The Chicago Trust Company, not personally, but as Trustee under Trust No. 1098802 in the exercise of the power and authority conferred upon and vested in it as such trustee. No personal liability shall be asserted or be enforceable against The Chicago Trust Company, f/k/a Chicago Title and Trust Company because or in respect of this Agreement or the Loan Instruments, as modified hereby.

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

**BORROWER:**

THE CHICAGO TRUST COMPANY,  
formerly known as CHICAGO TITLE AND  
TRUST COMPANY, as Trustee aforesaid



By: [Signature]  
Its: **Pres. Vice President**

Attest: [Signature]  
Its: **Secy. Secretary**

MARYCREST CONSTRUCTION CO., an  
Illinois corporation

By: [Signature]  
Its: \_\_\_\_\_

**LENDER:**

CITIBANK, FEDERAL SAVINGS BANK

By: [Signature]  
Its: **Vice President**

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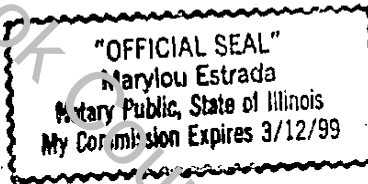
STATE OF IL )  
 ) SS.  
COUNTY OF COOK )

**MAR 11 1997**

As of ~~March 3, 1997~~, before me personally appeared the above-named THE CHICAGO TRUST COMPANY, formerly known as CHICAGO TITLE AND TRUST COMPANY, as Trustee aforesaid, by ~~JOHN MICHEL~~ & MARTHA LOPEZ Trustee thereof, who swore and acknowledged that being authorized and directed to do so he did sign the foregoing instrument, and that the same is the free act and deed of said trust and free act and deed personally as such trustee.

Marilyn Estrada  
Notary Public

My commission expires: \_\_\_\_\_



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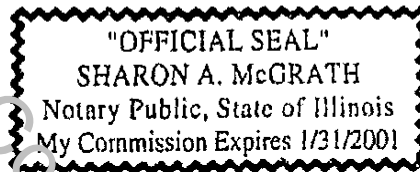
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STATE OF Illinois )  
 ) SS.  
COUNTY OF COOK )

As of the 3rd day of March, 1997, before me personally appeared PETER T. KITCHIN, known to me or proved to me on the basis of satisfactory evidence to be the President of MARYCREST CONSTRUCTION CO., an Illinois corporation, the corporation that executed the foregoing instrument, who, being duly sworn, acknowledged that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

  
\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



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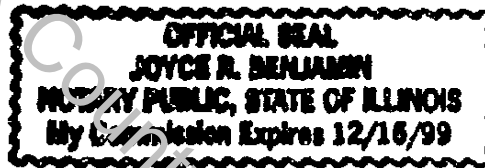
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

As of the 3rd day of March, 1997, before me personally appeared JOSEPH K. KREISEL, known to me or proved to me on the basis of satisfactory evidence to be the Vice President of CITIBANK FEDERAL SAVINGS BANK and who acknowledged the foregoing instrument and swore and acknowledged that he executed the same as the free and voluntary act of the Bank for the purposes therein set forth.

*Joyce R. Benjamin*  
Notary Public

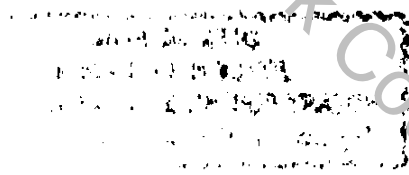
My commission expires: 12/16/99



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## EXHIBIT A

Lots 2, 3, 4, 12 and 33 and Outlot 'A' in Ironwood Subdivision, being a subdivision of part of the South 1/2 of the Southeast 1/4 of Section 35, Township 38 North, Range 13, East of the Third Principal Meridian, in Cook County, Illinois.

Lot #2	P.I.N. No.	19-35-421-051
Lot #3	P.I.N. No.	19-35-421-052
Lot #4	P.I.N. No.	19-35-421-053
Lot #12	P.I.N. No.	19-35-421-061
Lot #33	P.I.N. No.	19-35-421-082
Outlot A	P.I.N. No.	19-35-421-092

Common Address: 85th Place and Kedzie Avenue, Chicago, Illinois

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