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**FIRST MODIFICATION
AGREEMENT TO
PROMISSORY NOTE
AND CONSTRUCTION
MORTGAGE, ASSIGNMENT
OF LEASES AND RENTS**

DEPT-01 RECORDING \$33.50
T#6666 TRAN 6436 05/30/97 15:14:00
#2637 IR *-97-385533
COOK COUNTY RECORDER

Address: See Exhibit A

Tax I.D. No.: See Exhibit A

This First Modification Agreement ("Agreement") is made and entered into as of March 15, 1996 by and between Herbert Luster and Sylvia Luster, 1254 Brentwood, Flossmoor, Illinois 60422 ("Borrowers/Mortgagors") and Highland Community Bank, 1701 West 87th Street, Chicago, Illinois 60620 ("Lender/Mortgagee").

Recitals

WHEREAS, Borrowers/Mortgagors executed and delivered that certain Promissory Note ("Note") dated June 2, 1995 and that certain Construction Mortgage Assignment of Leases and Rents ("Mortgage") dated June 2, 1995 and recorded June 7, 1995 as document number #95-370151, ("Property") to secure Borrowers/Mortgagors' obligations under the Note;

WHEREAS, Borrowers/Mortgagors have requested that the Note and Mortgage be modified in certain respects to (i) extend the term of the Note and (ii) increase the amount of the credit facility under the Note, and Lender/Mortgagee has agreed to modify the Note and Mortgage upon the terms and conditions hereafter set forth;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrowers/Mortgagors and Lender/Mortgagee agree as follows:

1. WARRANTIES AND REPRESENTATIONS: Borrowers/Mortgagors warrant and represent as follows:

- a. The execution and delivery of the Note and Mortgage was their own free and voluntary act;



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1701 W. 87 St.
Chicago, IL 60620

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- b. The Note and Mortgage and each of the covenants, conditions and agreements contained therein are in full force and effect, are the valid and legally binding obligations of Borrowers/Mortgagors, as the case may be, and are free from all legal and equitable defenses, offsets and counterclaims;
- c. Other than Borrowers/Mortgagors, no person(s), firm(s) or corporation(s) has or claims any interest in the Property, nor is there any unrecorded deed, deed of trust, mortgage or other conveyance or any undelivered bill of sale, assignment or instrument of transfer relating thereto;
- d. No part of the Property is in receivership nor is any application for receivership pending and no petition in bankruptcy has been filed by or against Borrowers/Mortgagors;
- e. The only parties entitled to possession of the Property, or any part thereof, are Borrowers/Mortgagors;
- f. Real estate taxes assessed against the Property have been paid in full through the first installment of 1995 taxes; and
- g. There are no agreements, state of facts or circumstances presently existing which, with or without the service of notice, passage of time, or both, would grant to Borrowers/Mortgagors the right to refuse to make or delay the payments or otherwise perform the terms, covenants, conditions and agreements required pursuant to the Note and Mortgage.

2. ACKNOWLEDGEMENT OF AMOUNTS DUE AS OF MARCH 1, 1996:

Borrowers/Mortgagors acknowledge that as of March 15, 1996, the amount of the Principal balance plus accrued interest remaining owed to Lender/Mortgagee under the Note is \$265,268.65.

3. EXTENSION OF NOTE TERM: The parties acknowledge that, prior to the date of this Agreement, the maturity date for payment of principal and accrued interest under the Note was January 15, 1996. Upon the execution of this Agreement, the Note and Mortgage are hereby modified such that the maturity date for payment of principal balance plus accrued interest shall be July 15, 1996.

4. PAYMENT OF PRINCIPAL AND INTEREST

Upon execution of this Agreement, Borrowers/Mortgagors shall pay to Lender/Mortgagee all interest accrued to date on the Note as of March 15, 1996. Beginning on April 15, 1996, and continuing until July 15, 1996,

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Borrowers/Mortgagors shall make monthly payments of interest only on the outstanding principal amount owed to Lender/Mortgagee at the interest rate provided in the Note. Beginning on August 15, 1996, the Note shall convert to a 30 year fixed rate Note bearing interest at 8.75% per annum, with monthly principal and interest payments to be made as follows:

- a) beginning on August 15, 1996, and continuing on the fifteenth day of each month thereafter, through and including June 15, 2026, Borrowers/Mortgagors shall make monthly payments of \$4,723.13 which amount includes principal and interest, and shall additionally pay to Lender/Mortgagee a sum equal to one-twelfth (1/12) of the amount of the yearly real estate taxes and insurance premiums on the Property; and
- b) The entire principal balance of the Note, plus any accrued interest shall be paid on July 15, 2026, or such earlier date on which said amount shall become due and payable on account of an acceleration by Lender/Mortgagee.

5. **INCREASE IN NOTE AMOUNT OVERALL LOAN LIMIT:** The parties hereby agree the Note and Mortgage are modified to increase the maximum amount available to \$600,000.

The Note and Mortgage are otherwise further revised to conform with the foregoing additions and modifications to the Note, and the substitution of the sum of \$600,000.00 for the sum \$570,000.00 in each place it appears in the Note and Mortgage, whether in words or in numerals.

6. **ADDITIONAL PROVISIONS:** Concurrently with the execution hereof:

- a. Borrowers/Mortgagors shall deliver to Lender/Mortgagee a title insurance policy ("Loan Policy") insuring the continued validity and priority of the lien of the Mortgage, following the recording of this Agreement (subject only to the matters set forth on Schedule B of such Loan Policy which are acceptable to Lender/Mortgagee), confirming all endorsements thereto;
- b. Borrowers/Mortgagors waive, to the extent permitted by law, any and all rights which they, or either of them, now or may hereafter have with respect to application for or the seeking of relief specified in any Federal, State or Municipal bankruptcy law, statute or ordinance ("Debtor Relief") and, to the extent that Borrowers/Mortgagors cannot waive such rights, Borrowers/Mortgagors hereby indemnifies and holds Lender/Mortgagee harmless of, from and against any and all claims,

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losses or damages (including attorneys' fees) which Lender/Mortgagee may incur by reason of the filing of a petition, for or on behalf of Borrowers/Mortgagors or any partner of Borrowers/Mortgagors, seeking Debtor Relief; and

- c. Borrowers/Mortgagors shall pay all title and recording charges and other costs and expenses (including attorneys' fees and appraiser's fees) incurred by Lender/Mortgagee by reason of matters specified herein and the preparation of this Agreement and all other documents necessary and required to effectuate the provisions hereof.

7. **FAILURE OR DELAY:** No failure by Lender/Mortgagee to exercise, or delay by Lender/Mortgagee in exercising, any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. The rights and remedies provided in this Agreement, and the Note and Mortgage are cumulative and not exclusive of each other or of any right or remedy provided by law or in equity. No notice to or demand upon Borrowers/Mortgagors, in any instance, shall, in itself, entitle Borrowers/Mortgagors to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of Lender/Mortgagee to any other or further action in any circumstance without notice or demand.

8. **EFFECTIVENESS:** This Agreement shall become effective upon execution, subject to Borrowers/Mortgagors payment to Lender/Mortgagee of any fees and the concurrent payment of all accrued interest to date required by the terms hereof.

9. **CONSTRUCTION:** This Agreement shall not be construed more strictly against Lender/Mortgagee than against Borrowers/Mortgagors merely by virtue of the fact that the same has been prepared by counsel for Lender/Mortgagee, it being recognized that both Borrowers/Mortgagors and Lender/Mortgagee have had opportunity to contribute substantially and materially to the preparation of this Agreement, and Borrowers/Mortgagors and Lender/Mortgagee each acknowledges and waives any claims contesting the existence and the adequacy of the consideration given by the others in entering into this Agreement.

This Agreement shall be construed in conjunction with the Note and Mortgage. All terms used herein shall have the meanings ascribed in the Note and Mortgage.

10. **ENTIRE AGREEMENT:** Borrowers/Mortgagors and Lender/Mortgagee each acknowledge that there are no other agreements or representations, either oral or written, express or implied, not embodied in this Agreement, or the Note and Mortgage, which, together, represent a complete integration of all prior and

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contemporaneous agreements and understandings of Borrowers/Mortgagors and Lender/Mortgagee and, except to the extent modified herein, the provisions of the Note and Mortgage are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first written above.

LENDER/MORTGAGEE

BORROWERS/MORTGAGORS

HIGHLAND COMMUNITY BANK

By: *G.R. [Signature]*

Herbert Luster
Herbert Luster

Its: *PRESIDENT*

Sylvia Luster
Sylvia Luster

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State of Illinois)
)ss:
County of Cook)

I Eloise Cox a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 20 day of March, 1996, personally appeared before me Herbert Luster and Sylvia Luster, his wife, and signed the foregoing instrument as their free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

Eloise Cox
Notary Public

My commission expires:



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EXHIBIT A

LEGAL DESCRIPTION:

LOT 46 IN GRAYMOOR, A SUBDIVISION OF THE NORTH 50 ACRES OF THE WEST ½ OF THE NORTHWEST ¼ AND EAST ½ OF THE NORTHWEST ¼ OF SECTION 18. TOWNSHIP 35 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED MARCH 25, 1953 AS DOCUMENT 15576614, IN COOK COUNTY, ILLINOIS.

P.I.N. # 32-18-103-003

P.A.

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