

98043082

**RECORDATION REQUESTED BY:**

Bank One, Indiana, NA  
111 Monument Circle  
Indianapolis, IN 46277

**WHEN RECORDED MAIL TO:**

Banc One Loan Servicing  
IN Commercial Lien Documents KY1-4190  
P.O. Box 37263  
Louisville, KY 40232-7263

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Document is  
**NOT OFFICIAL!**  
MODIFICATION OF MORTGAGE

THIS MODIFICATION OF MORTGAGE ("Agreement") is executed effective as of JUNE 5, 1998, by HORIZON DEVELOPMENT OF INDIANA, INC., An Indiana Corporation, whose address is 8762 LOUISIANA ST., MERRILLVILLE, IN 46410 (referred to below as "Grantor") and Bank One, Indiana, NA (referred to below as "Lender"), whose address is 111 Monument Circle, Indianapolis, IN 46277.

**WITNESSETH:**

WHEREAS, a loan ("Loan") was made to Grantor in the amount of \$125,000.00, evidenced by a promissory note (as renewed, extended or modified, the "Note") dated April 29, 1998, executed and delivered by Grantor in the principal amount of the Loan (the Note being more fully described in the Mortgage); and

WHEREAS, Grantor executed and delivered a mortgage (as renewed, extended or modified, the "Mortgage") dated April 29, 1998, to and for the benefit of Lender, which is recorded in the Real Property Records of LAKE County, Indiana as document number RECORDED MAY 6, 1998 AS DOCUMENT NUMBER 98032721 covering the following real property:

The North 87.245 feet of the South 174.49 feet of the East 249.64 feet of the Southwest 1/4 of the Southeast 1/4 of Section 5, Township 35 North, Range 8 West of the 2nd Principal Meridian, in the Town of Merrillville, Lake County, Indiana.

, together with all improvements, appurtenances, other properties (whether real or personal), rights and interests described in and encumbered by the Mortgage (collectively, the "Property"), to secure the payment of the Note and performance of the other obligations set forth in the Note, Mortgage and all credit agreements, loan agreements, guaranties, security agreements, mortgages and all other instruments, agreements and documents, whether now or hereinafter existing, executed in connection with the Loan (the Note, Mortgage and such other instruments, agreements and documents collectively known herein as the "Related Documents"); and

WHEREAS, Lender is the owner and holder of the Note, Mortgage and the other Related Documents; and

WHEREAS, the parties hereto now propose to modify certain of the terms and provisions of the Note, the Mortgage and the other Related Documents as provided herein.

NOW THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**Maturity Date.** The maturity date of the Note shall be October 30, 1998 ("Maturity Date"), when the unpaid principal balance of the Note, together with all accrued but unpaid interest thereon, shall be due and payable. Grantor hereby renews and modifies, but does not extinguish, the Note and the liens, security interests and assignments created and evidenced by the Mortgage.

**Interest Rate.** As of the effective date hereof, interest on the principal balance of the Note from time to time remaining unpaid prior to maturity shall be payable at the following rate:

The interest rate on this Note is subject to fluctuation based upon the Prime Rate of interest in effect from time to time (the "Index") (which rate may not be the lowest, best or most favorable rate of interest which Lender may charge on loans to its customers). "Prime Rate" shall mean the rate announced from time to time by Lender as its prime rate. Each change in the rate to be charged on this Note will become effective without notice on the same day as the Index changes. Except as otherwise provided herein, the unpaid principal balance of this Note will accrue interest at a rate per annum which will from time to time be equal to the sum of the Index, plus 1.000%. NOTICE: Under no circumstances will the interest rate on the Note be more than the maximum rate allowed by applicable law.

**Payment Terms.** The Note, as modified hereby, shall be payable as follows: The outstanding principal

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balance of this Note, together with all accrued but unpaid interest, shall be due and payable on October 30, 1998.

Grantor hereby expressly promises to pay to the order of Lender the principal amount of the Note and all accrued but unpaid interest now or hereafter to become due and payable under the Note, as modified hereby.

**Current Note Balance.** As of the effective date hereof, the outstanding principal balance of the Note is \$176,000.00.

**Acknowledgment.** Except as otherwise specified herein, the terms and provisions hereof shall in no manner impair, limit, restrict or otherwise affect the obligations of any party to the Related Documents. Grantor hereby acknowledges, agrees and represents that (a) Grantor is indebted to Lender pursuant to the terms of the Note, as modified hereby; (b) the liens, security interests and assignments created and evidenced by the Related Documents are, respectively, valid and subsisting liens, security interests and assignments of the respective dignity and priority recited in the Related Documents; (c) the lien of the Mortgage is hereby renewed, modified and continued so as to secure the payment of the Note, as modified hereby; (d) there are no claims or offsets against, or defenses or counterclaims to, the terms or provisions of the Related Documents and the obligations created or evidenced by the Related Documents; (e) there are no claims, offsets, defenses or counterclaims arising from any of Lender's acts or omissions with respect to the Property, the Related Documents or Lender's performance under the Related Documents or with respect to the Property; (f) the representations and warranties contained in the Related Documents are true and correct representations and warranties of Grantor and third parties, as of the date hereof; and (g) Lender is not in default and no event has occurred which, with the passage of time, giving of notice, or both, would constitute a default by Lender of Lender's obligations under the terms and provisions of the Related Documents. For purposes of this Agreement, "Lender" shall include Lender's predecessors, successors, assigns, agents and present and former officers, directors, employees, and representatives and any persons or entities owned or controlled by, owning or controlling, or under common control or otherwise affiliated with, Lender.

**No Waiver of Remedies.** Except as may be expressly set forth herein, nothing contained in this Agreement shall prejudice, act as, or be deemed to be, a waiver of any right, remedy or recourse available to Lender by reason of the occurrence or existence of any fact, circumstance or event constituting a default under the Note or any of the other Related Documents.

**Costs and Expenses.** Contemporaneously with the execution and delivery hereof, Grantor shall pay, or cause to be paid, all costs and expenses incident to the recordation hereof and the consummation of the transaction contemplated hereby, including, but not limited to, recording fees, title insurance policy or endorsement premiums or other charges of any applicable title company, and reasonable fees and expenses, if applicable, of legal counsel to Lender.

**Effectiveness of the Related Documents.** Except as expressly modified by the terms and provisions hereof or provided herein to the contrary, each and every term and provision of the Related Documents are hereby ratified and shall remain in full force and effect and the parties hereto covenant to observe, comply with and perform each of the terms and provisions of the Note, Mortgage and the other Related Documents, as modified hereby; provided, however, that any reference in any of the Related Documents to the Loan, the amount constituting the Loan, any defined terms, or to any of the other Related Documents shall be deemed, from and after the date hereof, to refer to the Loan, the amount constituting the Loan, the defined terms and to such other Related Documents, as modified hereby. The parties hereto agree that the modification as provided herein shall in no manner vitiate, impair or affect the liens and security interests created and evidenced by the Mortgage and the other Related Documents (except as expressly modified, amended, renewed and extended herein) and that such liens and security interests shall not be and are not in any manner released or waived; the purpose of this instrument being simply to modify the Note, Mortgage and the other Related Documents as expressly set forth herein.

**Execution and Delivery of Agreement by Lender.** Lender shall not be bound by this Agreement until (i) Lender has executed and delivered this Agreement, (ii) the other party(ies) to this Agreement have performed all of their obligations under this Agreement to be performed contemporaneously with the execution and delivery of this Agreement, (iii) if required by Lender, each guarantor of the Loan, if any, has executed and delivered to Lender a consent agreement, in form and substance satisfactory to Lender, and (iv) if required by Lender, the other party(ies) to this Agreement and each guarantor of the Loan, if any, have executed and delivered to Lender an arbitration resolution, an environmental questionnaire, and an environmental certification and indemnity agreement, all in form and substance satisfactory to Lender.

**Binding Agreement.** This Agreement shall be binding upon, and inure to the benefit of, the heirs, executors, administrators, personal representatives, successors and assigns of the parties hereto.

**Additional Documentation.** From time to time, the other party(ies) to this Agreement shall execute or procure and deliver to Lender such other and further documents securing or pertaining to the Loan or the Related Documents as shall be reasonably requested by Lender and to take and cause to be taken all such actions as Lender shall deem necessary or appropriate in connection with, or related to, this Agreement and the transactions contemplated hereby, including, but not limited to, such actions as shall be necessary (a) to record this Agreement and any related instrument, document or agreement, (b) to cause an insurer satisfactory to Lender to issue a mortgagee policy of title insurance with respect to the lien of the Mortgage or, at Lender's sole option, an endorsement to any existing mortgagee policy of title insurance, such policy or endorsement to be in form and substance satisfactory to Lender, and (c) to satisfy appraisal and any other legal requirements under applicable law and/or in accordance with Lender's policies and procedures.

**Governing Law.** THE TERMS AND CONDITIONS HEREOF SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF INDIANA.

**Counterpart Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

**REPLACEMENT OF "CURRENT NOTE BALANCE SECTION.** The Section of this Agreement captioned "Current Note Balance" is hereby deemed to be deleted in its entirety and replaced by the following language: Modification of Face Amount of Note. As of the effective date hereof, the principal amount of the Note is hereby changed to \$176,000.00.

EACH GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MODIFICATION OF MORTGAGE, AND EACH GRANTOR AGREES TO ITS TERMS.

GRANTOR:  
HORIZON DEVELOPMENT OF INDIANA, INC., An Indiana Corporation

By: *Gregory S. Burke*  
GREGORY/S. BURKE, PRESIDENT

LENDER:  
Bank One, Indiana, NA

By: *A. James Babusiak*  
Authorized Officer A. James Babusiak, Vice President

CORPORATE ACKNOWLEDGMENT

STATE OF INDIANA )  
 ) ss  
COUNTY OF LAKE )

On this 5th day of June, 1998, before me, the undersigned Notary Public, personally appeared GREGORY S. BURKE, PRESIDENT of HORIZON DEVELOPMENT OF INDIANA, INC., An Indiana Corporation, and known to me to be an authorized agent of HORIZON DEVELOPMENT OF INDIANA, INC., An Indiana Corporation that executed the Modification of Mortgage and acknowledged the Modification to be the free and voluntary act and deed of the corporation, by authority of its Bylaws or by resolution of its board of directors, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this Modification and in fact executed the Modification on behalf of the corporation.

By \_\_\_\_\_ Residing at Lake County  
Printed Name of Notary Public: *Paula Barrick*  
Paula Barrick  
Notary Public in and for the State of Indiana  
My commission expires 10-2-01

LENDER ACKNOWLEDGMENT

STATE OF INDIANA )  
 ) ss  
COUNTY OF LAKE )

On this 5th day of June, 1998, before me, the undersigned Notary Public, personally appeared A. James Babusiak and known to me to be the Vice President, authorized agent for the Lender that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of the said Lender, duly authorized by the Lender through its board of directors or otherwise, for the uses and purposes therein mentioned, and on oath stated that he or she is authorized to execute this said instrument and that the seal affixed is the corporate seal of said Lender.

By *Gloria Mastalski* Residing at Lake County, Indiana  
Printed Name of Notary Public: Gloria Mastalski  
Notary Public in and for the State of Indiana  
My commission expires 12/10/2001

This Modification of Mortgage was prepared by: BETTYE CASWELL