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Chicago, Illinois 60661

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2000-10-30 16:08:15
Cook County Recorder 71.00



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FOURTH MODIFICATION OF REVOLVING CREDIT CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, AND ASSIGNMENT OF LEASES, RENTS, AND PROFITS

THIS FOURTH MODIFICATION OF REVOLVING CREDIT CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, AND ASSIGNMENT OF LEASES, RENTS, AND PROFITS (this "Agreement") is entered into as of the 7th day of September, 2000, by and among INDEPENDENT TRUST CORPORATION, not personally, but as Trustee under that certain Trust Agreement dated September 21, 1998, and known as Trust No. 20492 ("Trustee") and FOREST KNOLL CONSTRUCTION, INC., an Illinois corporation ("Beneficiary"; Trustee and Beneficiary are hereinafter collectively referred to as "Mortgagor"), and CITIBANK, FEDERAL SAVINGS BANK ("Mortgagee").

RECITALS

WHEREAS, Mortgagor executed and delivered to Mortgagee that certain Revolving Credit Promissory Note in the original principal amount of Two Million and No/100 Dollars (\$2,000,000.00) (the "Note"). The Note is secured by, among other things, a Revolving Credit Construction Mortgage, Security Agreement, and Assignment of Leases, Rents, and Profits dated July 7, 1999 by Mortgagor in favor of Mortgagee on real estate commonly known as Meadowbrook of Roselle, and located in Roselle, Cook County, Illinois (the "Mortgage"), which Mortgage was recorded with the Recorder of Deeds of Cook County (the "Recorder") on July 16, 1999 as Document No. 99683332, and a Revolving Construction Line of Credit Loan Agreement dated July 7, 1999, between Mortgagor and Mortgagee (the "Loan Agreement") and certain other documents related thereto (the Note, the Mortgage, the Loan Agreement, and all other documents related thereto are sometimes hereinafter collectively referred to as the "Loan Instruments"); and

WHEREAS, the Mortgage was modified to add additional real property by that certain First Modification of Revolving Credit Construction Mortgage, Security Agreement, and Assignment of Leases, Rents, and Profits dated October 8, 1999 and recorded with the Recorder on October 25, 1999 as Document No. 99999490 and re-recorded on October 27, 1999 as Document No. 09011813 (the "First Modification"); and

WHEREAS, the Mortgage was modified to increase the principal amount of the Note to Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00) by that certain Second Modification of Revolving Credit Construction Mortgage, Security Agreement, and Assignment of Leases, Rents, and Profits dated December 13, 1999 and recorded with the Recorder on December 21, 1999 as Document No. 09182190 (the "Second Modification");

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WHEREAS, the Mortgage was modified to add additional real property by that certain Third Modification of Revolving Credit Construction Mortgage, Security Agreement, and Assignment of Leases, Rents, and Profits dated January 28, 2000 and recorded with the Recorder on February 15, 2000 as Document No. 00112882 (the "**Third Modification**"; the Mortgage as modified by the First Modification, Second Modification, and Third Modification are hereinafter collectively referred to as the "**Mortgage**");

WHEREAS, Mortgagor now desires to modify the Mortgage to add to and remove from the Land (as defined in the Mortgage as legally described in **Exhibit A** to the Mortgage) certain real property; and

WHEREAS, Mortgagee, the legal owner of the Note and of the liens securing the same, at the request of Mortgagor has agreed to modify the Mortgage 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, Mortgagor and Mortgagee hereby agree to modify the Mortgage as follows:

1. Incorporation. The preambles to this Agreement are fully incorporated herein by this reference with the same force and effect as though restated herein.
2. Defined Terms. All capitalized terms used in this Agreement and not defined shall have the same meanings as set forth in the Loan Agreement.
3. Acknowledgement of Balance of Notes. Mortgagor and Mortgagee hereby acknowledge and agree that as of the date hereof, the outstanding principal balance of the Note, together with accrued and unpaid interest, fees, and any late charges or other fees, is \$1,285,361.07.
4. Renewal of Liens. Mortgagor and Mortgagee hereby renew the lien of the Mortgage against all of the property encumbered thereby and described therein until all amounts evidenced by the Note and/or due under the Loan Instruments have been fully paid. Mortgagor and Guarantor each agree that such renewal shall in no manner affect or impair the Note or the liens securing the same and that said liens shall not in any manner be waived.
5. Representations and Warranties.
 - a. Financial Statements. Mortgagor represents and warrants that all financial statements of Mortgagor heretofore delivered to Mortgagee are true and correct representations of the financial condition of Mortgagor as of the date thereof, and there has been no material adverse change thereto except as indicated by financial statements subsequently delivered to Mortgagee.
 - b. Violation of Laws. To the best of Mortgagor's knowledge, Mortgagor 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. Mortgagor has paid any and all federal, state, local, and other taxes, assessments, fees, and other governmental charges imposed upon Mortgagor or Mortgagor's assets which are due and payable.
 - d. Disclosure of Adverse Facts. Mortgagor represents and warrants that there are no material adverse facts or conditions relating to the finances and business of Mortgagor which have not been related in writing to Mortgagee.
 - e. Lawful Authority. Mortgagor possesses all necessary and lawful authority and power to carry on his business and comply with the terms, covenants, and conditions of the Note, the other Loan Instruments, this Agreement, and any other instrument executed in connection herewith or therewith.
 - f. No Defaults, Offsets, etc. Mortgagor 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 to the Note, as modified hereby and the Loan Instruments, as modified thereby.
 - g. Notes Valid. Mortgagor represents that the Note, 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 valid first lien against the property securing the Note and is enforceable in accordance with its terms and provisions, subject to bankruptcy, insolvency, fraudulent conveyance, moratorium, reorganization, and other similar laws affecting creditor's rights generally and to the exercise of judicial discretion in accordance with equitable principles.
6. Default. Any default under or breach of the terms and provisions of this Agreement shall also constitute a default under the Note, as modified and extended hereby, and the other Loan Instruments, and any other security instrument executed in connection therewith or herewith.
7. Addition and Removal of Property. The Mortgage is modified to change the legal description of the Land as set forth on **Exhibit A** to the Mortgage to the legal description set forth in **Exhibit A** attached hereto. Any and all references to **Exhibit A** contained in the Mortgage shall hereinafter refer to **Exhibit A** attached hereto. Any and all references to the Land in the Mortgage shall hereinafter mean the Land as modified by this Agreement.

8. Additional Property. A new Section 14 is added to the Mortgage as follows:


Additional Property. All additional lands, estates, and development rights, and all right, title, and interest of Borrower in and to all extensions, improvements, betterments, substitutes, and replacements of, and all additions and appurtenances to, the Land hereafter acquired by the Borrower or constructed, assembled, or placed by the Borrower on the Land or any additions thereto, immediately upon acquisition, construction, assembling, or placement, as the case may be, and in each such case, without any further mortgage, conveyance, assignment, or other act by Borrower, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Borrower and specifically described in the granting clause of the Mortgage, but at any and all times the Borrower will execute and deliver to Lender any and all such further assurances, mortgages, conveyances, assignments, or modifications thereof as Lender may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

9. Continuing Effect; Ratification. Except as expressly modified herein, Mortgagor expressly ratifies the terms and provisions of the Note 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 Mortgagor and Mortgagor's successors and assigns.
10. Costs and Expenses. Mortgagor shall pay any and all costs and expenses, including, without limitation, attorneys' fees and title charges, incurred by Mortgagee in connection with or arising as a result of this Agreement.
11. 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.
12. 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 Note, the terms of this Agreement shall control.
13. Trustee's Exculpatory Clause. This Agreement is executed by INDEPENDENT TRUST CORPORATION, not personally, but as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee, and it is expressly understood and agreed that nothing herein contained shall be construed as creating any liability on said Trustee personally to pay the Note or any interest that may accrue thereon, or any indebtedness accruing thereunder, or to perform any covenant, representation, agreement, or condition, either express or implied herein contained, or with regard to any warranty contained in this Agreement, all such liability, if any, being expressly waived by Lender and by every person now or hereafter claiming any right or security hereunder.

IN WITNESS WHEREOF, Mortgagor has caused this Agreement to be duly signed, sealed, and delivered the day and year first above written.

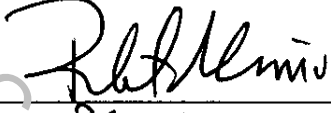
MORTGAGOR:

Trustee: 9/13/00
PRICEWATERHOUSECOOPERS, LLP, RECEIVER FOR
INDEPENDENT TRUST CORPORATION,
as Trustee aforesaid U/T #20492 and not individually

By: 
Its: Cheryl Jaworsky, Vice President


Beneficiary:

FOREST KNOLL CONSTRUCTION, INC.,
an Illinois corporation

By: 
Its: PRESIDENT

LENDER:

CITIBANK, FEDERAL SAVINGS BANK

By: 
Joseph K. Kreisel, Vice President

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EXHIBIT A

Lots 2, 20, 23, and 32 in Meadowbrook Subdivision of part of the Southeast Quarter of Section 34 and part of the Southwest Quarter of Section 35, both in Township 41 North, Range 10, East of the Third Principal Meridian, in Cook County, Illinois.

PINS: 07-34-410-002
07-35-320-006
07-35-320-009
07-35-319-003

Common Address: Meadowbrook of Roselle, Roselle, Illinois.

TRUSTEE ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

As of the 13th day of September, 2000, before me personally appeared the above-named**
INDEPENDENT TRUST CORPORATION, as Trustee of Trust No. 20492, as aforesaid, by
Cheryl Jaworsky, Vice President thereof, who swore and
acknowledged that being authorized and directed to do so she did sign the foregoing
instrument, and that the same is the free act and deed of said ~~trust~~ ^{Corporation} and free act and deed
~~personally~~ as such trustee



Christina M. Simkoski

Notary Public

My commission expires: _____

**PRICEWATERHOUSECOOPERS, LLP, RECEIVER FOR

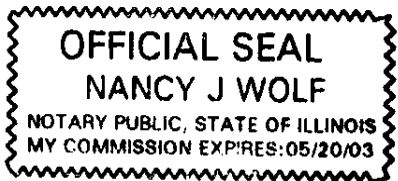
BENEFICIARY ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

As of the 7th day of September, 2000, before me personally appeared ROBERT G. CIMO, known to me or proved to me on the basis of satisfactory evidence to be the President of FOREST KNOLL CONSTRUCTION, INC., 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.

Nancy J. Wolf
Notary Public

My commission expires: 5/20/03



Notary Public of Cook County Clerk's Office

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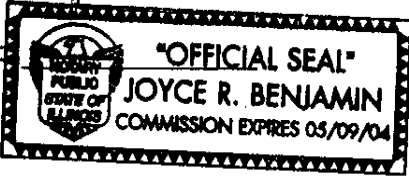
MORTGAGEE ACKNOWLEDGEMENT

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

As of the 7th day of September, 2000, 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.

Joseph R. Benjamin
Notary Public

My commission expires:



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