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2002-07-31 17:15:51
Cook County Recorder 61.50

GoodSmith, Gregg & Unruh
105 W. Adams, 26th Floor
Chicago, IL 60603
Attention: David D. Gregg



0020839517

FIRST AMENDMENT TO CONSTRUCTION LOAN AGREEMENT AND CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS FIRST AMENDMENT TO CONSTRUCTION LOAN AGREEMENT AND CONSTRUCTION MORTGAGE WITH ABSOLUTE ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Amendment") is made and entered into as of July 7, 2002 by and among ROSEMONT BRYN MAWR LAND, L.L.C., a Delaware limited liability company ("Borrower"), whose address is c/o Higgins Development Partners, L.L.C., 101 East Erie, Suite 800, Chicago, Illinois 60611, U.S. BANK NATIONAL ASSOCIATION, a national banking association ("Agent"), as agent, whose address is U.S. Bank Place, 601 Second Avenue South, Minneapolis, Minnesota 55402-4302, and the Lenders shown on the signature pages hereof (collectively, "Lenders" and individually, "Lender").

Recitals

A. Pursuant to a Construction Loan Agreement (as amended as described below, the "Loan Agreement"), dated as of July 7, 2000, among Borrower, Agent and Lenders, Lenders agreed to loan to Borrower an original aggregate maximum principal amount of Forty-Nine Million and NO/100ths Dollars (\$49,000,000.00) (the "Loan"), evidenced by certain Notes, dated July 7, 2000, executed by Borrower in favor of Lenders (collectively, the "Note"), and secured by, inter alia, a Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing (as amended as described below, the "Mortgage"), dated as of July 7, 2000, executed by Borrower in favor of Agent and recorded on July 14, 2000 as Document No. 00528203 in the Office of the Recorder of Cook County, Illinois, with respect to certain real property as described on Exhibit "A" hereto and by this reference incorporated herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

THIS INSTRUMENT WAS PREPARED BY:

Carrie L. DeValk
GoodSmith, Gregg & Unruh
105 W. Adams, 26th Floor
Chicago, IL 60603

P:\cdevalk\us bank\rosemont\1st amendment\1st Amendment7.doc

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B. Borrower, Agent and Lenders have agreed to modify the Loan Agreement, Mortgage and other Loan Documents as set forth herein.

Agreement

NOW, THEREFORE, the parties hereto agree as follows:

1. Loan Agreement. The Loan Agreement is hereby amended as follows:

(a) The definition of "Approved Lease" contained in Section 1.1. is deleted in its entirety and the following is substituted therefor:

"Approved Lease: Any Lease approved by Agent in its reasonable discretion."

(b) The phrase "Reference Rate" in the definition of "Base Rate" contained in Section 1.1 is deleted and the phrase "Prime Rate" is substituted therefor.

(c) The definition of "Extension Certificate" contained in Section 1.1 is deleted in its entirety.

(d) The definition of "Extension Fee" contained in Section 1.1 is deleted in its entirety.

(e) The definition of "Interest Margin" contained in Section 1.1 is deleted in its entirety and the following is substituted therefor:

"Interest Margin: (a) Prior to October 8, 2002, one and three-quarters percent (1.75%) and (b) on and after October 8, 2002, two and one-quarter percent (2.25%)."

(f) The definition of "LIBOR" contained in Section 1.1 is deleted in its entirety and the following is substituted therefor:

"LIBOR: Relative to any Interest Period for any LIBOR Loan included in any Advance, the rate of interest determined by Agent (whose determination shall be conclusive absent manifest error, which shall not include any lower determination by any other banks) equal to the rates (rounded upwards, if necessary, to the nearest one-hundredth of one percent (.01%) per annum) reported by U.S. Bank from Telerate Page 3750 or any successor thereto (which shall be the LIBOR rate in effect two New York banking days prior to commencement of the beginning of such Interest Period for delivery on the first day of such Interest Period for a period approximately equal to such Interest Period and in an amount equal or comparable to the LIBOR Loan to which such interest period relates)."

(g) The definition of "Step-Down Period" contained in Section 1.1 is deleted in its entirety.

(h) The following definitions are inserted into Section 1.1:

“Interest Gross-Up Amount: An amount equal to the difference between (a) the interest that would have accrued on the Loan during the period from and including July 8, 2002 through and including October 7, 2002 if the Interest Margin had been Two and One-Quarter Percent (2.25%) and (b) the interest actually accrued on the Loan during the period from and including July 8, 2002 through and including October 7, 2002.

Money Markets: One or more wholesale funding markets available to Lenders, including negotiable certificates of deposit, commercial paper, eurodollar deposits, bank notes, federal funds and others.

Specified Lease Default: Any event or failure which, if it were to continue uncured, would, with notice or lapse of time or both, constitute a Specified Lease Event of Default.

Specified Lease Event of Default: (a) Any default under the terms of the Specified Lease beyond any grace or cure period provided therein; (b) the failure of the Specified Lease to be in full force or effect for any reason; or (c) the cancellation or termination of the Specified Lease for any reason.”

- (i) The definition of “Extension Option” contained in Section 1.2 is deleted in its entirety.
- (j) The following definitions are inserted into Section 1.2:
- | | |
|------------------------------|---------|
| “Gross Operating Income | 5.1(d) |
| Interest Differential | 2.21 |
| Permitted Operating Expenses | 5.1(d)” |
- (k) The first sentence of the second paragraph of Section 2.1 is deleted in its entirety and the following is substituted therefor:
- “In determining Loan Availability, Agent shall not require an Appraisal to be performed for the Project more frequently than once per year after the Effective Date unless either (i) such Appraisal is required under banking laws and regulations, or by any Governmental Authority having jurisdiction over Agent or its Affiliates or (ii) any material adverse change occurs with respect to the condition or operation of the Project or the Construction of the Project, or a Material Adverse Occurrence occurs with respect to Borrower.”
- (l) The phrase “July 7, 2002 (the 24 month anniversary of the Effective Date)” contained in Section 2.3(a) is deleted and the phrase “July 7, 2003” is substituted therefor.
- (m) Section 2.3(b) is deleted in its entirety and Borrower hereby waives any right to extend the Maturity Date.
- (n) The last sentence of Section 2.9(b) is deleted in its entirety and the following is substituted therefor:

"If Agent does not receive such a notice of election of the LIBOR Rate and the Interest Period as to such Advance by such time, Borrower shall be deemed to have elected to have selected the LIBOR Rate as the applicable rate for such Advance for an Interest Period equal to the then current Interest Period for such LIBOR Loan."

- (o) Section 2.11(d) is deleted in its entirety and the following is substituted therefor:

"On the 15th day of each Fiscal Quarter ending after July 7, 2002 (the 24 month anniversary of the Effective Date), Borrower shall make a principal payment to Agent, on behalf of Lenders (which will be a permanent repayment and not subject to re-borrowing), in an amount equal to (x) Gross Operating Income for the previous Fiscal Quarter less (y) the sum of (i) "additional rent" (as such term is defined in the Leases) received by or on behalf of Borrower with respect to the Project for the previous Fiscal Quarter, (ii) Permitted Operating Expenses for the previous Fiscal Quarter that were not defrayed by "additional rent" (as such term is defined in the Leases) received by or on behalf of Borrower with respect to the Project, (iii) interest accrued on the Loan during the previous Fiscal Quarter and (iv) with respect to the principal payment to be made on October 15, 2002 only, the lesser of (A) Six Hundred Thousand and NO/100ths Dollars (\$600,000.00) and (B) any Gross Operating Income received in July 2002 and used to make the Two Million and NO/100ths Dollars (\$2,000,000.00) principal payment required pursuant to Section 3(j) of the First Amendment to Construction Loan Agreement and Construction Mortgage with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of July 7, 2002, among Borrower, Agent and Lenders. Borrower shall apply all Gross Operating Income from the Property only to the payment of Permitted Operating Expenses and the payment of interest and outstanding principal on the Loan. To the extent Gross Operating Income exceeds Permitted Operating Expenses, such excess shall be used first to pay accrued interest, including the Interest Gross-Up Amount. In no event shall any Gross Operating Income be distributed or paid to any partner, venturer, member or equity investor of Borrower."

- (p) Section 2.21 is deleted in its entirety and the following is substituted therefor:

"If, whether by acceleration or otherwise, (a) any payment of a LIBOR Loan occurs on a date which is not the last day of an Interest Period, or (b) a LIBOR Loan is not made on the date specified in a Fixed Rate Notice to Agent, provided in accordance with the terms and provisions of Section 2.9 hereof for any reason other than a default by any Lender, Borrower will indemnify Agent and Lenders for any loss, cost or expense incurred by Agent and Lenders resulting therefrom, including any loss of profit and any loss, cost or expense in liquidating or reemploying deposits or other funds required to fund or maintain the LIBOR Loan or the re-lending or re-investing of such deposits or accounts paid or prepaid by Agent and Lenders ("Breakage Costs"). Borrower hereby agrees that Agent's and each Lender's losses shall include the Interest Differential (as determined by Agent and the applicable Lender) incurred as a result of such prepayment. The term Interest Differential shall mean that sum equal to the greater of (x) Zero Dollars (\$0) and (y) the financial loss incurred by Agent and the applicable Lender resulting from prepayment, calculated as the difference

between the amount of interest Agent and the applicable Lender would have earned on such LIBOR Loan had prepayment not occurred and, in Agent's and each Lender's sole discretion, either (i) the interest Agent and the applicable Lender will actually earn (from like investments in the Money Markets as of the date of prepayment) as a result of the redeployment of funds from the prepayment or (ii) the amount of interest Agent and the applicable Lender would earn on such LIBOR Loan assuming an Interest Period commencing on the date of prepayment and ending on the date that would have been the last date of the Interest Period had prepayment not occurred. Because of the short-term nature of this facility, Borrower agrees that the Interest Differential shall not be discounted to its present value. Any prepayment of a LIBOR Loan shall be in an amount equal to the remaining entire principal balance of such LIBOR Loan."

(i) Section 5.1(d) is deleted in its entirety and the following is substituted therefor:

"Within fifteen (15) days after the close of each Fiscal Quarter, Borrower shall deliver to Agent an operating statement certified by Borrower's authorized representative as complete and accurate in all material respects and in form reasonably acceptable to Agent which shows in detail (i) the amounts and sources of operating income received by or on behalf of Borrower with respect to the Project for such Fiscal Quarter ("Gross Operating Income"), including any and all amounts, payments, fees, rentals, additional rentals, expense reimbursements (including all reimbursements by tenants, licensees and other users of the Project) and other income directly or indirectly received by or on behalf of or credited to Borrower from any Person with respect to Borrower's ownership, use, development, operations, leasing, franchising, marketing or licensing of the Project, and (ii) the amounts and purposes of operating expenses paid by or on behalf of Borrower with respect to the Project for such Fiscal Quarter (subject to the reasonable approval of Majority Lenders, "Permitted Operating Expenses"), including taxes and assessments imposed upon the Project and paid for by Borrower, insurance premiums for casualty and liability insurance fairly allocable to the Project, expenses incurred by Borrower for the management, operation, leasing, maintenance and repair of the Project, and expenses incurred by Borrower in connection with the sale of the Project; provided, however, that Permitted Operating Expenses shall include no more than Fifty Thousand and NO/100ths Dollars (\$50,000.00) of expenses incurred by Borrower in connection with the sale of the Project. Operating income and expenses shall be computed on a cash basis and each quarterly operating statement shall include all amounts actually received and expended in the Fiscal Quarter to which it relates."

(r) The following is inserted after the third sentence of Section 5.2(o):

"Agent's approval of any subletting under the Specified Lease is subject to the reasonableness standards set forth in the Specified Lease."

(s) The following is inserted at the end of Section 5.2:

"(ff) Purchase and Sale Agreements. Any deposit received by Borrower in connection with any agreement with respect to the sale of the Property other than the Real Estate Purchase and Sale Agreement, dated as of July 3, 2002, between

Borrower and MJH Rosemont LLC, a Delaware limited liability company, shall be placed in an account with Agent. Any deposit forfeited by any purchaser under such agreement shall be applied to the principal amount of the Loan. Borrower hereby grants and assigns to Agent for the benefit of Lenders, and to Lenders, a security interest, to secure payment and performance of all of the Secured Obligations (as such term is defined in the Mortgage), in all such accounts maintained with Agent pursuant to this Section 5.2(ff).

(gg) Additional Deliveries. If the unpaid principal balance, all accrued and unpaid interest and all other sums due and payable under the Note or other Loan Documents are not paid in full on or prior to October 7, 2002, Borrower shall deliver the following to Agent on October 8, 2002: (i) A certificate, in form reasonably acceptable to Agent and duly executed by Borrower, stating as of the date of such certificate that the representations and warranties contained in the Loan Documents are true and correct in all material respects, that the Loan Documents continue to remain in effect, that the security interests granted by the Loan Documents remain in effect to secure the Loan as extended, that no Specified Lease Default or Specified Lease Event of Default has occurred and that no Default or Event of Default has occurred; (ii) a fee for the benefit of and pro rata distribution to Lenders of Two Hundred Fifty-Nine Thousand Five Hundred Thirty-Five Dollars (\$259,535.00) (which is deemed fully earned when paid and is not refundable or proratable); (iii) payment for the benefit of and pro rata distribution to Lenders of an amount equal to the Interest Gross-Up Amount; (iv) an opinion of counsel to Borrower, Guarantor and HDP Asset Co., L.L.C., a Delaware limited liability company ("Manager"), in form and substance acceptable to Agent, with respect to this Amendment and the Guaranty Amendment; and (v) a standby letter of credit in the amount of Four Million and NO/100ths Dollars (\$4,000,000.00), in form and substance and issued by a bank acceptable to Agent, drawable upon the certification by Agent that an Event of Default or Specified Lease Event of Default has occurred and to be applied to the Loan as determined by Agent. Such letter of credit shall expire no earlier than August 6, 2003 and shall remain in full force and effect until the earlier of (i) August 6, 2003 and (ii) the payment in full of all of the Obligations."

(t) Section 8.1(c) is deleted in its entirety and the following is substituted therefor:

"(c) The breach of any of the provisions of Section 5.1(a), 5.2(s) or 5.2(gg) of this Agreement; provided, that, with respect to Section 5.2(s) only, Borrower shall have a period of thirty (30) days from the date of a Release, non-compliance with Environmental Laws or such other breach as described in Section 5.2(s) to cure such breach to the satisfaction of Agent, in Agent's sole discretion."

(u) The following is inserted at the end of Section 8.1(d):

"or (iii) any subletting under (such subletting without the consent of Agent, subject to the reasonableness standards set forth in the Specified Lease) the Specified Lease."

(v) Section 8.1(l) is deleted in its entirety and the following is substituted therefor:

“(i) Borrower shall be in default under the terms of the Specified Lease beyond any grace or cure period provided therein; (ii) the failure of the Specified Lease to be in full force or effect for any reason; or (iii) the cancellation or termination, or attempted cancellation or termination, of the Specified Lease for any reason.”

(w) Section 9.2(b)(2)(A) is deleted in its entirety and the following is substituted therefor:

“(A) (i) any release, substitution or addition of any property (whether real or personal) to or from the collateral which secures Borrower's obligations under the Loan (other than pursuant to a Post-Foreclosure Plan), (ii) the consent to any of the actions set forth in Section 9(f) of the Completion Guaranty or Section 9(f) of the Payment Guaranty, (iii) the consent to any Transfer (provided, however, that Borrower may enter into Leases that are not Material Leases with the consent of Majority Lenders) other than (a) Permitted Transfers, (b) in connection with a foreclosure of the Project or any portion thereof, or (c) pursuant to a Post-Foreclosure Plan, and (iv) the consent to the termination of, or the amendment or modification of any of the financial or other economic terms of, any Material Lease.”

(x) Section 9.2(b)(3)(A) is deleted in its entirety and the following is substituted therefor:

“(A) the approval of any Lease that is not a Material Lease or the consent to the termination of, or the amendment or modification of any of the financial or other economic terms of, any Lease that is not a Material Lease. Lenders agree to use their diligent efforts to respond to any written request for approval of any such proposed transaction within five (5) Business Days after receipt of such request.”

(y) The notice address of Agent contained in Section 10.2 is deleted in its entirety and the following is substituted therefor:

“If to Agent:

U.S. Bank National Association
U.S. Bank Place
601 Second Avenue South
Minneapolis, Minnesota 55402-4302
Attention: Real Estate Banking Division
Facsimile: (612) 970-0830

with a copy to:

U.S. Bank National Association
Wrigley Building
400 North Michigan Avenue - MW-IL-CHRE
Chicago, Illinois 60611
Attention: John Suhs
Facsimile: (312) 836-6702".

(z) The Commitments set forth under the signatures of Lenders on the signatures pages of the Loan Agreement are deleted and replaced with the following:

	<u>Commitment</u>
U.S. Bank National Association	\$ 17,655,436.00
PNC Bank, National Association	\$ 17,655,436.00
The Northern Trust Company	\$ 7,944,947.00

(aa) The address of Agent contained in Exhibit D is deleted its entirety and the following is substituted therefor:

"U.S. Bank National Association
Wrigley Building
400 North Michigan Avenue - MW-IL-CHRE
Chicago, Illinois 60611
Attention: John Suhs".

(bb) The notice address of Agent contained in Exhibit F is deleted in its entirety and the following is substituted therefor:

"To Agent and U.S. Bank:

U.S. Bank National Association
U.S. Bank Place
601 Second Avenue South
Minneapolis, Minnesota 55402-4302
Attention: Real Estate Banking Division
Facsimile: (612) 970-0830

with a copy to:

U.S. Bank National Association
Wrigley Building
400 North Michigan Avenue - MW-IL-CHRE
Chicago, Illinois 60611
Attention: John Suhs
Facsimile: (312) 836-6702".

2. Mortgage.

(a) Amendment. The Mortgage is hereby amended as follows:

(i) The phrase "FORTY-NINE MILLION AND NO/100THS DOLLARS (\$49,000,000.00)" contained in Recital B is deleted and the phrase "FORTY-THREE MILLION TWO HUNDRED FIFTY-FIVE THOUSAND EIGHT HUNDRED NINETEEN AND NO/100THS DOLLARS (\$43,255,819.00)" is substituted therefor.

(ii) The notice address of Agent contained in Section VII.I is deleted in its entirety and the following is substituted therefor:

"If to Agent:

U.S. Bank National Association
U.S. Bank Place
601 Second Avenue South
Minneapolis, Minnesota 55402-4302
Attention: Real Estate Banking Division
Facsimile: (612) 970-0830

with a copy to:

U.S. Bank National Association
Wrigley Building
400 North Michigan Avenue - MW-IL-CHRE
Chicago, Illinois 60611
Attention: John Suh
Facsimile: (312) 836-6702".

(b) No Novation. The parties hereby confirm that the Note (as defined herein) shall constitute the Note under, and all amounts evidenced by the Note and all amounts secured by the Mortgage constitute indebtedness under and are secured by, the Mortgage. The parties agree that the lien of the Mortgage is continued and no novation has occurred.

3. Definitions. The definitions of the terms "Loan Agreement," "Mortgage" and "Loan Documents" in the Loan Agreement, Mortgage and other Loan Documents are amended to refer to (a) the Loan Agreement as amended by this Amendment, (b) the Mortgage as amended by this Amendment, (c) the Payment Guaranty as amended by the First Amendment to Payment Guaranty and Indemnity Agreement, of even date herewith, between Guarantor and Agent (the "Guaranty Amendment"), and (d) the Indemnity Agreement, dated as of July 7, 2000, executed by Guarantor in favor of Agent, as amended by the Guaranty Amendment.

4. Liens. Borrower, Agent and Lenders hereby agree that this Amendment modifies the Loan Agreement and Mortgage and in no way acts as a release or relinquishment of liens, security interests and rights (collectively, the "Liens") securing payment of the Note, including without limitation, the Liens created by the Mortgage. The Liens are hereby renewed, extended, ratified and confirmed by Borrower in all respects.

5. Continuation. This Amendment is made upon all of the terms, covenants and agreements of the Loan Agreement, Mortgage and other Loan Documents, which are incorporated herein by reference, and the provisions contained herein shall have the same effect as if such provisions were originally included therein. Except as supplemented and amended hereby, all of the terms, covenants and agreements in the Loan Agreement, Mortgage and other Loan Documents remain unchanged, and as supplemented and amended, they continue in full force and effect.

6. Reaffirmation. Borrower hereby reaffirms to Agent and Lenders each of the representations, warranties, covenants and agreements of Borrower set forth in the Loan Agreement, Mortgage and other Loan Documents with the same force and effect as if each were separately stated herein and made as of the date hereof.

7. ratification. Borrower hereby ratifies, affirms, reaffirms, acknowledges, confirms and agrees that the Loan Agreement, Mortgage and other Loan Documents (all as amended by this Amendment) represent the valid, enforceable and collectible obligations of Borrower, and Borrower further acknowledges that there are no existing claims, defenses, personal or otherwise or rights of setoff whatsoever with respect to any of the aforementioned instruments or documents, and Borrower further acknowledges and represents that no event has occurred and no condition exists which would constitute a default under the Loan Agreement, Mortgage, any other Loan Document or this Amendment, either with or without notice or lapse of time, or both. Borrower confirms the waiver of any rights of redemption and reinstatement, to the full extent provided by law.

8. Conditions. This Amendment shall become effective as of July 7, 2002 upon receipt by Agent of the following:

- (a) A copy of this Amendment executed by the parties hereto.
- (b) Duly executed UCC-1 Financing Statements (or consents to the filing thereof), to be filed against Borrower with respect to the Project with the Delaware Secretary of State.
- (c) Duly executed amendments to the UCC-1 Financing Statements (or consents to the filing thereof) filed against Borrower with respect to the Project reflecting the change of Agent's address.
- (d) A copy of the Guaranty Amendment executed by the parties hereto.
- (e) Payment by Borrower of all costs and expenses incurred by Agent in connection with this Amendment, including, without limitation, appraisal/market study fees, internal appraisal review fees and attorneys' fees.
- (f) An endorsement to Title Policy Number 2000-000452847-STO, issued by Tigor Title Insurance Company in form and substance acceptable to Agent.
- (g) A legal opinion or certificate stating that the organizational documents for Borrower, Guarantor and Manager have not changed (or if changed, in what manner) since July 7, 2000.
- (h) A Certificate of Good Standing for each of Borrower, Guarantor and Manager from the State of Delaware.

- (i) A Certificate of Good Standing for Borrower from the State of Illinois.
- (j) Payment by Borrower to Agent (for the benefit of and pro rata distribution to Lenders) of a principal payment with respect to the Loan of not less than Two Million and NO/100ths Dollars (\$2,000,000.00), which shall be a permanent repayment and not subject to re-borrowing.

(k) A certificate of HTF LLC, a Delaware limited liability company ("HTF"), consenting to this Amendment and the Guaranty Amendment and confirming that Agent is a third-party beneficiary to the Amended and Restated Contribution Agreement, dated as of January 1, 2000, between HTF and Guarantor (including a statement that no defenses or set-offs exist to HTF's obligation to make contributions).

9. Counterparts. This Amendment may be executed in one or more counterparts, each of which is an original and all of which constitute one agreement.

10. Governing Law. This Amendment shall be governed by and construed in accordance with the internal laws of the State of Minnesota, except to the extent preempted by United States Federal law; provided, however, that all remedies of Agent against and with respect to the Project, and the exercise and enforcement thereof, and the exercise of any rights in connection therewith, shall be governed by the internal laws of the State of Illinois.

11. Heirs, Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the heirs, successors, assigns and personal representatives of the parties hereto; provided, however, that Borrower shall not assign its rights hereunder in whole or in part. Any such assignment shall be void.

12. Consent to Subleases. Lenders hereby consent, pursuant to Section 8.1(d) of the Loan Agreement, to (a) the Sublease Agreement, dated as of February 28, 2002, between Dean Holding Company, a Delaware corporation, and Ecker Enterprises, Inc., a Delaware corporation, and (b) the Sublease Agreement, dated as of June 10, 2002, between Dean Foods Company, a Delaware corporation, and Banco Popular North America, a New York chartered bank.

13. Interest Rate Elections. Borrower shall be deemed to have elected to continue LIBOR Loans in an aggregate principal amount of Forty-Three Million Two Hundred Fifty-Five Thousand Eight Hundred Nineteen and NO/100ths Dollars (\$43,819,255.00) as a LIBOR Loan with a Funding Date of July 8, 2002 and a three (3) month Interest Period. Borrower, Agent and Lenders hereby agree that LIBOR for such Interest Period shall be one and eighty-six one hundredths percent (1.86%). In addition, Borrower shall be deemed to have elected to convert LIBOR Loans in an aggregate principal amount of Two Million and NO/100ths Dollars (\$2,000,000.00) to a Base Rate Loan as of July 8, 2002.

14. Loan Document. This Amendment is a "Loan Document" as defined in, and for purposes of, the Loan Agreement.

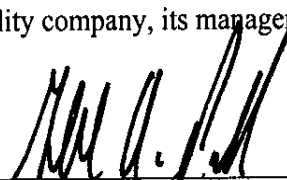
* * *

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Amendment as of the day and year first above written.

BORROWER:

ROSEMONT BRYN MAWR LAND, L.L.C., a Delaware limited liability company

By: HDP Asset Co., L.L.C., a Delaware limited liability company, its manager

By: 
Name: Gerald A. Pentka
Title: Authorized Representative

Property of Cook County Clerk's Office

AGENT AND LENDERS:

U.S. BANK NATIONAL ASSOCIATION, as Agent and a Lender

By: _____
Name:
Title:

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: _____
Name:
Title:

THE NORTHERN TRUST COMPANY, as a Lender

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Amendment as of the day and year first above written.

BORROWER:

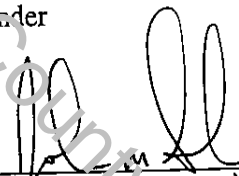
ROSEMONT BRYN MAWR LAND, L.L.C., a Delaware limited liability company

By: HDP Asset Co., L.L.C., a Delaware limited liability company, its manager

By: _____
Name:
Title:

AGENT AND LENDERS:

U.S. BANK NATIONAL ASSOCIATION, as Agent and a Lender

By:  _____
Name: John M. Suhls
Title: Vice President

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: _____
Name:
Title:

THE NORTHERN TRUST COMPANY, as a Lender

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Amendment as of the day and year first above written.

BORROWER:

ROSEMONT BRYN MAWR LAND, L.L.C., a Delaware limited liability company

By: HDP Asset Co., L.L.C., a Delaware limited liability company, its manager

By: _____
Name:
Title:

AGENT AND LENDERS:

U.S. BANK NATIONAL ASSOCIATION, as Agent and a Lender

By: _____
Name:
Title:

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: Terri Wyda
Name: Terri Wyda
Title: Vice President

THE NORTHERN TRUST COMPANY, as a Lender

By: _____
Name:
Title:

UNOFFICIAL COPY ²⁰⁸³⁹⁵¹⁷

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Amendment as of the day and year first above written.

BORROWER:

ROSEMONT BRYN MAWR LAND, L.L.C., a
Delaware limited liability company

By: HDP Asset Co., L.L.C., a Delaware limited
liability company, its manager

By: _____
Name:
Title:

AGENT AND LENDERS:

U.S. BANK NATIONAL ASSOCIATION, as Agent and
a Lender

By: _____
Name:
Title:

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: _____
Name:
Title:

THE NORTHERN TRUST COMPANY, as a Lender

By: *R. W. Wiarda*
Name: *R.W. Wiarda*
Title: *U.P.*

UNOFFICIAL COPY

20839517

STATE OF ILLINOIS)
)
COUNTY OF COOK) ss

On this 29th day of July, 2002, before me, Aisha Charleston a Notary Public in and for the State of Illinois, personally appeared Gerald A. Perka, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his authorized capacity, and that by her/his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal:

Signature: Aisha Charleston

My commission expires Jan. 22, 2005.

OFFICIAL SEAL
AISHA CHARLESTON
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. JAN. 22, 2005

Property of Cook County Clerk's Office

UNOFFICIAL COPY

20839517

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

On this 22nd day of July, 2002, before me, Dawn M. Hill a
Notary Public in and for the State of Illinois personally appeared Robert Wada
personally known to me (or proved on the basis of satisfactory evidence) to be the person whose
name is subscribed to the within instrument and acknowledged to me that s/he executed the same
in her/his authorized capacity, and that by her/his signature on the instrument the person, or the
entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal:

Signature: Dawn M. Hill

My commission expires May 20, 2004



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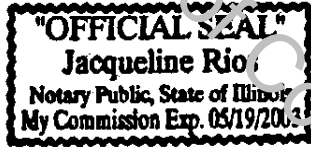
STATE OF ILLINOIS)
)
) SS
COUNTY OF COOK)

On this 2nd day of July, 2002, before me, Jacqueline Rio, a Notary Public in and for the State of Illinois personally appeared John M. Smith, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his authorized capacity, and that by her/his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal:

Signature: Jacqueline Rio

My commission expires 05-19-2003



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20839517

STATE OF PENNSYLVANIA)
)
) SS
COUNTY OF ALLEGHENY)

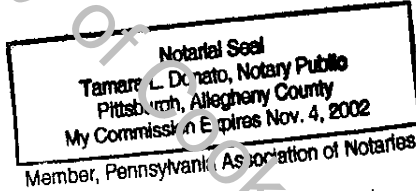
On this 23rd day of July, 2002, before me, Tamara L. Donato, a Notary Public in and for the State of Pennsylvania personally appeared Terri Wyda, personally known to me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that s/he executed the same in her/his authorized capacity, and that by her/his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal:

Signature: _____

Tamara L. Donato

My commission expires: November 4, 2002



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20839517



TICOR TITLE INSURANCE COMPANY

ORDER NUMBER: 2000 000452847 STO
STREET ADDRESS: 9500 and 9600 Bryn Mawr Ave.
CITY: Rosemont, IL COUNTY: COOK COUNTY
TAX NUMBER: See page 2

LEGAL DESCRIPTION:

PARCEL A:

LOTS 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 AND 11 IN WALTER D. PHILLIPS JR'S SUBDIVISION NO. 1, BEING A PART OF THE SOUTHWEST 1/4 OF SECTION 3, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED AS DOCUMENT 17270989, IN COOK COUNTY, ILLINOIS.

ALSO

THAT PART OF LOT 1 AND 2 IN BRYN MAWR AVENUE SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THAT PART OF VACATED LYMAN AVENUE AND VACATED SEMINOLE STREET, IN THE SOUTHWEST 1/4 OF SECTION 3, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, TOGETHER WITH THAT PART OF THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST WESTERLY CORNER OF LOT 2 IN BRYN MAWR AVENUE SUBDIVISION AFORESAID; THENCE NORTH 27 DEGREES 45 MINUTES 30 SECONDS EAST, ALONG THE WEST LINE OF LOT 2, 35.13 FEET; THENCE NORTH 70 DEGREES 36 MINUTES 08 SECONDS EAST, ALONG A WESTERLY LINE OF LOT 2, 22.03 FEET; THENCE NORTH 25 DEGREES 28 MINUTES 44 SECONDS EAST, ALONG A WESTERLY LINE OF LOT 2, 226.72 FEET; THENCE NORTH 10 DEGREES 12 MINUTES 58 SECONDS EAST, ALONG A WESTERLY LINE OF LOT 2, 134.77 FEET TO THE MOST NORTHERLY NORTHWEST CORNER OF SAID LOT 2; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG THE NORTH LINE OF LOT 2 TO THE NORTHEAST CORNER OF SAID LOT 2; THENCE NORTH 02 DEGREES 05 MINUTES 59 SECONDS EAST, 52.54 FEET; THENCE SOUTH 89 DEGREES 48 MINUTES 31 SECONDS EAST, 164.50 FEET TO THE NORTHERLY EXTENSION OF THE WEST LINE OF LOT 6 IN WALTER D. PHILLIP JR'S SUBDIVISION NO. 1, BEING A PART OF THE SOUTHWEST 1/4 OF SECTION 3, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE SOUTH 02 DEGREES 06 MINUTES 00 SECONDS WEST, ALONG THE WEST LINE OF LOTS 1 TO 6 IN WALTER D. PHILLIPS JR'S SUBDIVISION NO. 1 AFORESAID, 691.14 FEET TO THE SOUTHWEST CORNER OF LOT 1 AFORESAID; THENCE NORTH 89 DEGREES 49 MINUTES 30 SECONDS WEST, ALONG THE WESTERLY EXTENSION OF THE SOUTH LINE OF LOT 1, 33.02 FEET TO THE WEST LINE OF SAID SOUTHWEST 1/4; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, ALONG THE SOUTH LINE OF LOT 1 AND ITS EASTERLY EXTENSION IN BRYN MAWR AVENUE SUBDIVISION AFORESAID, 172.19 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 451.26 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, 156.24 FEET; THENCE SOUTH 02 DEGREES 06 MINUTES 00 SECONDS EAST, 206.36 FEET TO THE SOUTH LINE OF LOT 2 IN BRYN MAWR AVENUE SUBDIVISION AFORESAID; THENCE NORTH 87 DEGREES 54 MINUTES 00 SECONDS WEST, ALONG SAID SOUTH LINE, 174.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL C:

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 40 NORTH, RANGE 12, EAST

UNOFFICIAL COPY

20839517



TICOR TITLE INSURANCE COMPANY

ORDER NUMBER: 2000 000452847 STO

STREET ADDRESS:

CITY:

COUNTY: COOK COUNTY

TAX NUMBER:

LEGAL DESCRIPTION:

OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT THE MOST NORTHERLY NORTHEAST CORNER OF LOT 2 IN BRYN MAWR AVENUE SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SAID SECTION 4; THENCE NORTH 02 DEGREES 05 MINUTES 59 SECONDS EAST, 52.54 FEET; THENCE NORTH 89 DEGREES 48 MINUTES 31 SECONDS WEST, 66.07 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST, 52.72 FEET TO THE NORTH LINE OF LOT 2 AFORESAID; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST, ALONG SAID NORTH LINE, 64.11 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Pins: 12-03-309-012 | -013 | -014

12-04-402-068 | -069 | -070