

Mercury Title Company
2036367 1 of 1 DK

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THIS INSTRUMENT PREPARED BY:
Bruce A. Salk
Cohen, Salk & Huvard, P.C.
630 Dundee Road, Suite 120
Northbrook, Illinois 60062

AND AFTER RECORDING MAIL TO:
First Eagle National Bank
1201 West Madison Street
Chicago, Illinois 60607
Attn: Joseph Kunzon



Doc#: 0400819084
Eugene "Gene" Moore Fee: \$42.00
Cook County Recorder of Deeds
Date: 01/08/2004 10:40 AM Pg: 1 of 10

MODIFICATION AGREEMENT

10

THIS MODIFICATION AGREEMENT (hereinafter referred to as the "Modification Agreement") made as of this 1st day of August, 2003, by and among LASALLE BANK NATIONAL ASSOCIATION as successor trustee to Comerica Bank-Illinois not personally, but as Trustee under Trust Agreement dated June 10, 1993 and known as Trust No. 11806 ("Trustee"), POPLAR CREEK PROPERTIES, L.L.C., an Illinois limited liability company ("Beneficiary"), RWP 5250, L.L.C., an Illinois limited liability company ("Borrower"), ROBERT L. KOZONIS and JOANNE KOZONIS (Robert L. Kozonis and JoAnnie Kozonis, are each a "Guarantor", and collectively, the "Guarantors") (Trustee, Beneficiary, Borrower and Guarantors are hereinafter collectively referred to as the "Obligors") and FIRST EAGLE NATIONAL BANK ("Lender").

WITNESSETH:

WHEREAS, Borrower has executed and delivered to Lender that certain mortgage note dated as of December 18, 2001 in the original principal sum of One Million Seven Hundred Thousand and 00/100 (\$1,700,000.00) Dollars (the "Note"), which Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor are hereinafter collectively referred to as the "Loan Documents"):

- (i) junior mortgage and security agreement of even date therewith, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0020029946 (the "Mortgage") on property commonly known as 3 vacant lots in Hoffman Estates, Illinois and legally described on Exhibit "A" attached hereto and made a part hereof (the "Premises");
- (ii) junior assignment of rents and of lessor's interest in leases dated of even date with the Note made by Trustee and Beneficiary in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 0020029947 (the "Assignment");
- (iii) collateral assignment of beneficial interest in land trust and security agreement dated of even date with the Note made by Beneficiary in favor of Lender (the "ABI");

M.G.R. TITLE

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- (iv) guaranty dated of even date with the Note made by Guarantors in favor of Lender; and
- (v) environmental indemnity agreement dated of even date with the Note made by Guarantors in favor of Lender.

WHEREAS, Obligors are desirous of (i) increasing the principal sum of the Note from \$1,700,000.00 to \$2,200,000.00, and (ii) extending the maturity date of the Note from November 30, 2003 to August 31, 2005, and Lender is willing to consent to such changes subject to the terms and provisions hereinafter provided.

NOW THEREFORE, in consideration of the mutual promises of the parties hereto, and upon the express conditions that the lien of the Mortgage held by Lender is a valid, second and subsisting lien on the Premises and that the execution of this Modification Agreement will not impair the lien of said Mortgage and that there are no existing mortgages or other liens senior or subsequent to the lien of the Mortgage held by Lender that will not be paid in full and released concurrently herewith (for breach of which conditions, or either of them, this Modification Agreement, at the sole election of Lender, shall not take effect and shall be void), **IT IS AGREED AS FOLLOWS:**

1. The parties represent and agree that the foregoing recitals are true and correct. All defined terms used herein, and not otherwise defined shall have the meaning ascribed to such term as set forth in the Loan Documents.

2. Concurrent with the execution of this Modification Agreement, the Borrower shall execute and deliver to Lender an amended and restated mortgage note of even date herewith in the principal amount of Two Million Two Hundred Thousand and 00/100 Dollars (\$2,200,000.00), payable to the order of Lender (the "Amended Note"). Each reference in the Loan Documents to the "Note" shall hereafter be deemed to be a reference to the Amended Note.

3. The Mortgage is hereby modified by amending the first "Whereas" paragraph on page 1 to read as follows:

" **WHEREAS**, RWP 5250, L.L.C., an Illinois limited liability company has executed and delivered to the Mortgagee, the Mortgagor's Amended and Restated Mortgage Note dated as of August 1, 2003, payable to the order of Mortgagee, in the principal sum of Two Million Two Hundred Thousand and 00/100 Dollars (\$2,200,000.00) (herein called the "Note") bearing interest at the variable rate specified therein, due in the manner as provided therein and in any event on the 31st day of August, 2005, the terms and provisions of which Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and"

4. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Amended Note and this Modification Agreement. Each reference in the Loan Documents to the "Note" shall be deemed to be a reference to the

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Amended Note. Each reference in the Amended Note and the Loan Documents to the "Maturity Date" shall hereafter mean "August 31, 2005".

5. Except for the modifications stated herein, the Amended Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the Amended Note and other Loan Documents and each other instrument or agreement delivered by any Obligor to or for the benefit of Lender in connection with the loan shall remain in full force and effect in accordance with their respective terms and the execution and delivery of this Modification Agreement shall not operate to waive any rights or remedies that Lender may have with respect to the Amended Note and other Loan Documents, to forgive or waive any violation, default or breach under the Amended Note or any other Loan Document, or to obligate Lender in any manner to make any further extensions of credit other than as expressly set forth herein.

6. Contemporaneously with or prior to the execution of this Modification Agreement by Lender, Obligors shall pay to Lender a non-refundable modification fee in the amount of \$11,000.00 plus all of Lender's attorneys' fees incurred in connection with the negotiation and documentation of the agreements contained in this Modification Agreement, all recording fees and charges, title insurance charges and premiums, appraisal fees, and all other expenses, charges, costs and fees necessitated by or otherwise relating to this Modification Agreement (the "Additional Fees"). If any of the Additional Fees are not paid at the time this Modification Agreement is executed by Lender, such Additional Fees shall be paid by Obligors within five days after written demand therefor by Lender, and if not timely paid, they shall bear interest from the date so incurred until paid at an annual rate equal to the Default Rate (as defined in the Amended Note).

7. The Premises described in the Mortgage shall remain in all events subject to the lien, charge or encumbrance of the Mortgage, or conveyance of title (if any) effected thereby, and nothing herein contained, and nothing done pursuant hereto, shall affect or be construed to effect the lien, charge or encumbrance of, or warranty of title in, or conveyance effected by the Mortgage, or the priority inure of over liens, charges, encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties whomsoever may now or hereafter be liable under or on account of the Amended Note and/or Mortgage, nor shall anything herein contained or done in pursuance thereof affect or be construed to affect any other security or instrument, if any, held by Lender as security for or evidence of the aforesaid indebtedness.

8. This Modification Agreement shall extend to and be binding upon each of the Obligors and their heirs, legatees, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

9. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Amended Note and other Loan Documents, as hereby amended, and the liens and security interest created thereby, and acknowledge that he or it have no defenses, claims or set-offs against the enforcement by Lender of their respective obligations and liabilities under the Amended Note and other Loan Documents, as so amended.

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10. This Modification Agreement shall, in all respects, be governed by and construed in accordance with the laws of the State of Illinois, including all matters of construction, validity and performance.

11. This Modification Agreement constitutes the entire agreement between the parties with respect to the aforesaid Modification and shall not be amended or modified in any way except by a document in writing executed by all of the parties thereto.

12. This Modification Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall be one agreement.

13. This Modification Agreement is executed by LaSalle Bank National Association, not personally, but solely as Trustee as aforesaid, in the exercise of the power and authority conferred upon and vested in said Trustee, and it is expressly understood and agreed that nothing in this Modification Agreement shall be construed as creating any personal liability on said Trustee.

14. Lender's consent to this Modification Agreement shall be subject to Lender (or Lender's nominee) having received the following in a form and substance acceptable to Lender on or before September 30, 2003 (the "Modification Termination Date"):

(a) An endorsement to Chicago Title Insurance Company Loan Policy No. 72107-504126 (Mercury Title Company, L.L.C. commitment number 2036367) (the "Title Policy") which (i) amends the description of the Mortgage insured under the Title Policy to include this Modification Agreement, (ii) amends the description of the Assignment to include this Modification Agreement, (iii) extends the effective date of the Title Policy to the date of the recording of this Modification Agreement, (iv) includes no additional exceptions to title other than those that have been approved in writing by Lender, (v) states that all real estate taxes and assessments applicable to the Premises which are due and payable as of the date of such endorsement have been paid in full; and (vi) increases the amount of insurance to \$2,200,000.00;

(b) Certified copy of land trust agreement showing Lender's ABI interest as lodged; and

(c) Such other documents as Lender may reasonably require.

The Obligors' failure to deliver the aforementioned documents and items to Lender on or before the Modification Termination Date shall, at the option of Lender, result in this Modification Agreement (including all agreements and waivers of Lender contained herein) being null and void.

15. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS MODIFICATION AGREEMENT SHALL BE TRIED AND DETERMINED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS, OR, AT THE SOLE OPTION OF LENDER IN ANY OTHER COURT IN WHICH LENDER SHALL INITIATE LEGAL OR EQUITABLE PROCEEDINGS AND WHICH HAS SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO

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THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS PARAGRAPH.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY EXPRESSLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY ACTION, CAUSE OF ACTION, CLAIM, DEMAND, OR PROCEEDING ARISING UNDER OR WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR IN ANY WAY CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE DEALINGS OF OBLIGORS AND LENDER WITH RESPECT TO THIS MODIFICATION AGREEMENT, OR THE TRANSACTION RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OBLIGOR AND LENDER HEREBY AGREE THAT ANY SUCH ACTION, CAUSE OF ACTION, CLAIM, DEMAND OR PROCEEDING SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY AND THAT ANY OBLIGOR OR LENDER MAY FILE A COPY OF THIS EXECUTED MODIFICATION AGREEMENT WITH ANY COURT OR OTHER TRIBUNAL AS WRITTEN EVIDENCE OF THE CONSENT OF EACH OBLIGOR AND LENDER TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

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IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the date first above written.

This instrument is executed by LASALLE BANK National Association, not personally but solely as Trustee, as aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. All the terms, provisions, stipulations, covenants and conditions to be performed by LASALLE BANK National Association are undertaken by it solely as Trustee, as aforesaid, and not individually and all statements herein made are made on information and belief and are to be construed accordingly, and no personal liability shall be asserted or be enforceable against LASALLE BANK National Association by reason of any of the terms, provisions, stipulations covenants and/or statements contained in this instrument

Attestation not required by
LaSalle Bank National Association

Attest: _____

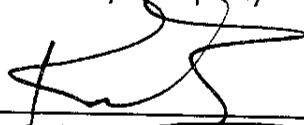
Its: _____

LASALLE BANK NATIONAL ASSOCIATION, as successor trustee to Comerica Bank-Illinois, not personally, but as Trustee as aforesaid

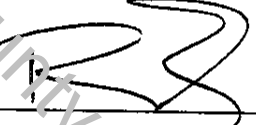
By: 

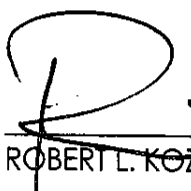
Its: TRUST OFFICER

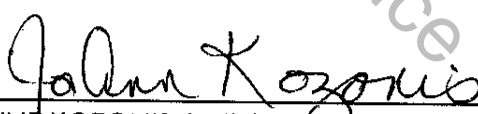
POPLAR CREEK PROPERTIES, L.L.C., an Illinois limited liability company

By: 
Robert L. Kozonis, Manager


RWP 5250, L.L.C., an Illinois limited liability company

By: 
Its: Manager


ROBERT L. KOZONIS, individually


JOANNE KOZONIS, individually

FIRST EAGLE NATIONAL BANK

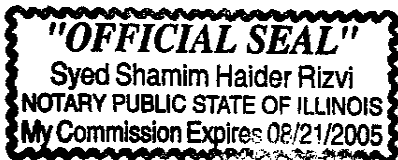
By: 
Its: Vice President

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for the said County, in the State aforesaid, DO CERTIFY GLENN J. RICHTER ~~TRUST OFFICER~~ of LASALLE BANK NATIONAL ASSOCIATION as successor trustee to Comerica Bank-Illinois and TRUST OFFICER of said Bank, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such officers respectively, appeared before me this day in person and acknowledged that ~~they~~^{HE} signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Bank, as Trustee, for the uses and purposes therein set forth; and the said TRUST OFFICER ~~Secretary~~ then and there acknowledged that as custodian of the corporate seal of said Bank (s)he affixed the seal as his/her own free and voluntary act and as the free and voluntary act of said Bank, as Trustee, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of AUGUST, 2003.



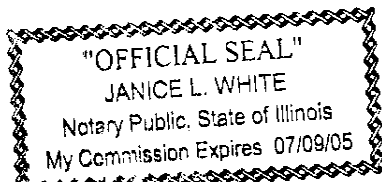
[Signature]
Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) SS
COUNTY OF Cook)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Robert L. Kozonis and Joanne Kozonis personally known to me as managers of POPLAR CREEK PROPERTIES, L.L.C., an Illinois limited liability company and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as such manager of said limited liability company, pursuant to authority, given by the members of said limited liability company, as their own and free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of August, 2003.



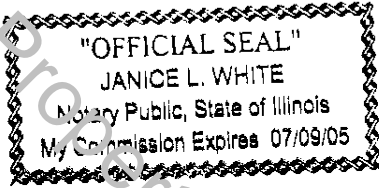
Janice L. White

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STATE OF ILLINOIS)
)
COUNTY OF Cook) SS

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that JOANNE KOZONIS personally appeared before me this day and subscribed his name to the foregoing instrument for the uses and purposes therein stated.

Given under my hand and notarial seal this 13th day of August, 2003.



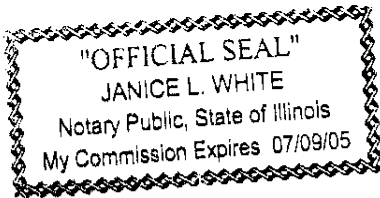
Janice L. White
Notary Public

My Commission Expires: 7-9-05

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Joseph Kuzon, of FIRST EAGLE NATIONAL BANK, a national bank, personally known to me to be the same person whose name is subscribed to the foregoing instrument as such vice President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, and as the free and voluntary act of said bank, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of August, 2003.



Janice L. White
Notary Public

My Commission Expires: 7-9-05

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EXHIBIT "A"

PIN: 07-07-400-061
07-07-400-062
07-07-400-063

ADDRESS: 3 vacant lots in Hoffman Estates, IL

LOTS 2, 3 AND 4 IN POPLAR CREEK OFFICE PLAZA, BEING A SUBDIVISION OF PART OF THE EAST HALF OF SECTION 7, TOWNSHIP 41 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 17, 1993 AS DOCUMENT 93747914 IN COOK COUNTY, ILLINOIS.