

# UNOFFICIAL COPY



Doc#: 0531241059 Fee: \$40.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 11/08/2005 11:43 AM Pg: 1 of 9

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

**MERCURY TITLE COMPANY, LLC.**  
*203636757 Kelly*

## ASSUMPTION AND MODIFICATION AGREEMENT

**THIS ASSUMPTION AND MODIFICATION AGREEMENT** (hereinafter referred to as the "Modification Agreement") made as of this 31st day of August, 2005, by and among POPLAR CREEK PROPERTIES, L.L.C., an Illinois limited liability company ("Poplar"), ROBERT L. KOZONIS, JOANN KOZONIS (Robert L. Kozonis and Joann Kozonis, are each a "Guarantor", and are collectively, the "Guarantors") (Poplar and Guarantors are hereinafter collectively referred to as the "Obligors") and FIRST EAGLE NATIONAL BANK ("Lender").

### WITNESSETH:

**WHEREAS**, RWP 5250, L.L.C., an Illinois limited liability company ("RWP"), 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 "Original Note"), which Original Note is secured by the following documents (the following documents and any and all other instruments executed by any Obligor, as amended, restated or replaced from time to time, are hereinafter collectively referred to as the "Loan Documents"):

- (i) junior mortgage and security agreement dated as of December 18, 2001 made by 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") in favor of Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois (the "Recorder's Office"), 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 as of December 18, 2001 made by Trustee and Poplar in favor of Lender, recorded in the Recorder's Office as Document No. 0020029947 (the "Assignment");
- (iii) guaranty dated as of December 18, 2001 made by Guarantors in favor of Lender; and
- (iv) environmental indemnity agreement dated as of December 18, 2001 made by Guarantors in favor of Lender.

M.G.R. TITLE

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**WHEREAS**, RWP executed and delivered to Lender an amended and restated mortgage note dated as of August 1, 2003 in the original principal sum of \$2,200,000.00 (the "Amended Note"), and RWP, Obligors, Trustee and Lender executed that certain modification agreement dated as of August 1, 2003, and recorded in the Recorder's Office as Document No. 0400819084, whereby Original Note and the Loan Documents were modified to (1) increase the principal sum of the Original Note from \$1,700,000.00 to \$2,200,000.00, (2) extend the maturity date of the Original Note from November 30, 2003 to August 31, 2005, and (3) make certain other changes to the Original Note and Loan Documents.

**WHEREAS**, at the direction of the beneficiaries of the Trustee, the Trustee conveyed the Premises to Poplar, and Poplar assumed the duties and obligations of Trustee under the Mortgage and the Assignment pursuant to that certain assumption and modification agreement dated as of August 9, 2004, by and among Obligors, RWP and Lender, and recorded in the Recorder's Office as Document No. 0426427037.

**WHEREAS** Obligors are desirous of (i) having Poplar assume the obligations of RWP under the Amended Note, (ii) restructuring the loan evidenced by the Amended Note into one \$1,100,000.00 revolving line of credit note and one \$1,100,000.00 term note, (iii) re-setting the interest rate charged on the Amended Note, and (iv) extending the maturity date of the Amended Note from August 31, 2005 to August 31, 2007, 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, first 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 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. Poplar hereby assumes all of the indebtedness, liabilities, and obligations of RWP under the Amended Note, as if Poplar was an original maker or grantor of such document, and covenants and agrees to pay, perform and observe all of the indebtedness, liabilities, and obligations (including, without limitation, all covenants, agreements and undertakings) of RWP under the Amended Note.

3. Concurrent with the execution of this Modification Agreement, Poplar shall execute and deliver to Lender the following mortgage notes: (a) an amended and restated mortgage note of even date herewith in the principal amount of One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00), payable to the order of Lender on August 31, 2007 (the "Revolving Note"), and (b) an amended and restated mortgage note of even date herewith in the principal amount of One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00), payable to the order of Lender on August 31, 2007 (the "Term Note"). Each reference herein and in the Loan Documents to the term "Note" shall hereafter be deemed to be a reference to the Revolving Note and the Term Note, collectively.

4. The Mortgage is hereby modified as follows:

(a) The first "Whereas" paragraph on page 1 is hereby amended and restated in its entirety to read as follows:

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“**WHEREAS**, Mortgagor has executed and delivered to the Mortgagee the following mortgage notes (each individually and collectively hereinafter referred to as a “Note”) dated as of August 31, 2005: (i) an amended and restated mortgage note in the principal amount of One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00) bearing interest at the variable rate specified therein (the “Revolving Note”), due in the manner as provided therein and in any event on August 31, 2007, payable to the order of the Mortgagee, the terms and provisions of which Revolving Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length; and (ii) an amended and restated mortgage note in the principal amount of One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00) bearing interest at the fixed rate specified therein (the “Term Note”) due in the manner as provided therein and in any event on August 31, 2007, payable to the order of the Mortgagee, the terms and provisions of which Term Note are incorporated herein and made a part hereof by this reference with the same effect as if set forth at length.”

(b) The following is hereby added as new paragraph 44:

“44. **REVOLVING CREDIT.** THIS MORTGAGE SECURES A “REVOLVING CREDIT ARRANGEMENT” AS CONTEMPLATED BY 735 ILCS SECTION 5/15-1302(b)(2) AND, THEREFORE, ALL MONIES ADVANCED OR APPLIED IN ACCORDANCE WITH THE TERMS OF SAID REVOLVING CREDIT ARRANGEMENT SHALL BE SECURED BY THIS MORTGAGE AND THE OTHER LOAN DOCUMENTS AND SHALL BE A LIEN AGAINST THE PREMISES FROM THE DATE OF RECORDATION OF THIS MORTGAGE, REGARDLESS OF WHEN ADVANCED OR APPLIED, REGARDLESS OF WHETHER THEY ARE SUBSEQUENTLY REPAID AND REBORROWED AND REGARDLESS OF WHETHER OR NOT, AT ANY TIME AFTER THE RECORDATION OF THIS MORTGAGE, THERE ARE ANY AMOUNTS OUTSTANDING UNDER SAID REVOLVING CREDIT ARRANGEMENT.”

5. The first “Whereas” paragraph on page 1 of the Assignment is hereby amended and restated in its entirety to read as follows:

“**WHEREAS**, Assignor has executed the following mortgage notes (each hereinafter individually and collectively referred to as a “Note”) dated as of August 31, 2005, payable to the order of FIRST EAGLE NATIONAL BANK (hereinafter referred to as “Assignee”): (a) an amended and restated mortgage note in the principal amount of One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00) (the “Revolving Note”); and (ii) an amended and restated mortgage note in the principal amount of One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00) (the “Term Note”); and”

6. The Loan Documents are hereby amended to secure the obligations and liabilities evidenced by the Revolving Note, the Term Note and this Modification Agreement. Each reference in the Loan Documents to the “Maturity Date” shall hereafter mean “August 31, 2007”.

7. Except for the modifications stated herein, the Note and Loan Documents are not otherwise changed, modified or amended. Except as expressly provided herein, the 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 Note and other Loan Documents, to forgive or waive any violation, default or

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breach under the 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.

8. Contemporaneously with or prior to the execution of this Modification Agreement by Lender, Obligors shall pay to Lender 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 Note).

9. 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 thereof over liens, charges, encumbrances or conveyances, or, except as expressly provided herein, to release or affect the liability of any party or parties who in soever may now or hereafter be liable under or on account of the 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.

10. Guarantors hereby irrevocably consent to the aforesaid assumption of the Note, as aforesaid, by Poplar and the modification of the Loan Documents and irrevocably agree that their liability under the Note and the Loan Documents shall not in any way be affected, modified, or discharged in any fashion by the assumption of the Note, as aforesaid.

11. Each Obligor hereby ratifies and confirms his or its respective obligations and liabilities under the Note and other Loan Documents, as hereby assumed and modified, and the liens and security interest created thereby, and acknowledge that they have no defenses, claims or set-offs against the enforcement by Lender of the respective obligations and liabilities of the Obligors under such documents, as so assumed and modified.

12. 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.

13. 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.

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

15. 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 October 31, 2005 (the "Modification Termination Date"):

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(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, and (v) states that all real estate taxes and assessments applicable to the Real Property which are due and payable as of the date of such endorsement have been paid in full; and

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

16. 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 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.


**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK]**





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

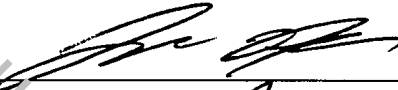
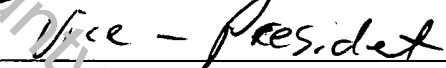
POPLAR CREEK PROPERTIES, L.L.C., an Illinois limited liability company

By:   
Robert L. Kozonis, Manager

  
ROBERT L. KOZONIS, individually

  
JOANN KOZONIS, individually

FIRST EAGLE NATIONAL BANK

By:   
Its:  - President

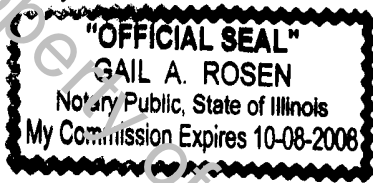
Property of Cook County Clerk's Office

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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 Robert L. Kozonis, personally known to me a managers of POPLAR CREEK PROPERTIES, L.L.C., an Illinois limited liability company, and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he 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 his 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 14<sup>th</sup> day of October, 2005.



Gail A. Rosen  
 Notary Public

My Commission Expires: 10/08/08

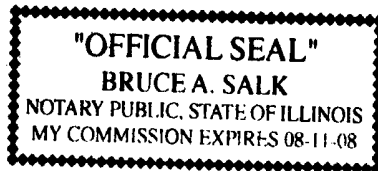
STATE OF ILLINOIS        )  
   )  
 COUNTY OF COOK         )       SS

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that ROBERT L. 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 14<sup>th</sup> day of Oct, 2005

Bruce A. Salk  
 Notary Public

My Commission Expires: \_\_\_\_\_

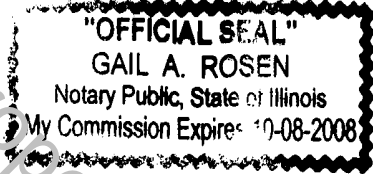


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STATE OF ILLINOIS )  
 )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that JOANNY 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 14th day of October, 2005.



Gail A. Rosen  
Notary Public

My Commission Expires: 10/08/08

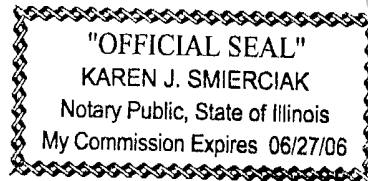
STATE OF ILLINOIS )  
 )  
 ) SS  
COUNTY OF COOK )

I, the undersigned, a Notary Public in and for said County in the State aforesaid, do hereby certify that Joe Runzon, 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 17th day of October, 2005.

Karen J. Smierciak  
Notary Public

My Commission Expires: 6/27/06





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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 *1721 MOON LAKE BOULEVARD  
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.