



Doc#: 0629739101 Fee: \$44.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/24/2006 03:33 PM Pg: 1 of 11

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Fremont Investment & Loan
2727 E. Imperial Highway
Brea, California 92821
Attn: Pam Kelly
Loan No.: 950113823

REAFFIRMATION OF GROUND LEASE ESTOPPEL AND AGREEMENT

THIS REAFFIRMATION OF GROUND LEASE ESTOPPEL AND AGREEMENT (this "Reaffirmation") is made as of Sept 11, 2006 by CHICAGO TITLE LAND TRUST COMPANY, SUCCESSOR TRUSTEE TO COLE TAYLOR BANK, AS TRUSTEE UNDER A TRUST AGREEMENT DATED AUGUST 20, 1999, AND KNOWN AS TRUST NO. 99-8160, an Illinois land trust ("Land Trust") and DIVINE WORD TECHNICAL COMMUNITY CORPORATION, an Illinois not-for-profit corporation ("DWTCC") (Land Trust and DWTCC are hereinafter collectively referred to as "Lessor") and FIVE SEASONS COUNTRY CLUB OF NORTHBROOK, INC., an Ohio corporation ("Lessee") in favor of FREMONT INVESTMENT & LOAN, a California industrial bank ("Lender").

RECITALS

- A. Lender and Lessee previously entered into that certain Loan and Security Agreement dated as of February 25, 2000, as amended prior to the date hereof (as amended, the "Loan Agreement"), pursuant to which Lender previously made a bridge loan to Lessee in the original principal amount of Eleven Million One Hundred Thousand Dollars (\$11,100,000) (the "Loan"). The Loan is evidenced by that certain Amended and Restated Secured Promissory Note (Bridge Loan) dated July 30, 2003, in the original principal amount of the Bridge Loan, executed by Lessee, as maker, in favor of Lender, as holder (the "Note"). The repayment of the Note and Lessee's performance of its obligations under the Note are secured, *inter alia*, by that certain Mortgage and Fixture Filing dated as of February 25, 2000, executed by Lessee in favor of Lender recorded on February 28, 2000, as Instrument No. 00143156 in the Official Records of Cook County, Illinois (the "Official Records"), as amended prior to the date hereof (as amended, the "Mortgage").
- B. Land Trust is the owner of the fee simple title to, and the Lessor is the legal and beneficial owner of, that certain real property located in the City of Northbrook, County of Cook State of Illinois which was leased to Lessee pursuant to that certain Ground Lease dated as of September 1, 1999, between Lessor and Lessee, as amended by that certain First Amendment to Ground Lease dated as of July 1, 2001, between Lessor and Lessee (as amended, the "Ground Lease"), and more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Premises")
- C. Lessor, Lessee and Lender are the parties to that certain Ground Lease Estoppel and Agreement dated as of February 25, 2000, recorded on February 28, 2000, as Instrument No. 00143158 in the Official Records (the "Original Estoppel"), which sets forth the rights and obligations of the parties with respect to the Ground Lease as it relates to the Loan. The Ground Lease Estoppel was reaffirmed pursuant to that certain Consent to Lease Amendment and Amendment and Reaffirmation of Ground Lease Estoppel and Agreement dated as of July 30, 2001, executed by Lessor, Lessee and Lender (the "First Reaffirmation"), recorded on August 28, 2001, as Instrument No. 0010797780 in the Official Records and that certain Reaffirmation of Ground Lease Estoppel and Agreement dated as of October 27, 2003, executed by Lessor, Lessee and Lender (the "Second Reaffirmation"). The Original Estoppel, the First Reaffirmation and the Second Reaffirmation are hereinafter collectively referred to as the "Ground Lease Estoppel".

NCS 195890-x chg
DEC 10/1

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D. Lender has required the execution and delivery of this Reaffirmation in connection with the modification of the Loan.

E. As used herein, "**Security Documents**" shall mean the Loan Agreement, the Note, and the Mortgage and all other documents and instruments evidencing or securing the Loan, each as modified prior to the date hereof, together with all renewals, substitutions, extensions, modifications and replacements thereof.

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

A. Except as otherwise expressly provided in this Reaffirmation, Lessor and Lessee hereby reaffirm and/or remake as of the date of this Reaffirmation each of their respective representations, obligations, agreements, warranties and acknowledgements under the Ground Lease Estoppel, subject to the terms and provisions of the Ground Lease Estoppel and this Reaffirmation. Lessor and Lessee further agree to remain fully bound by the Ground Lease Estoppel. Lessor and Lessee hereby agree that any reference made in the Ground Lease Estoppel to any of the documents and instruments evidencing or securing the Loan, including, without limitation, the Security Documents, shall mean such documents and instruments as amended prior to the date hereof, together with all renewals, substitutions, extensions, modifications and replacements thereof.

B. Lessor hereby certifies, represents and warrants to Lender that, except as set forth in Exhibit B attached hereto, as of the date hereof (a) all rent and other amounts under the Ground Lease have been paid by Lessee as and when due, (b) there are no known defaults or events of default on the part of Lessee under the Ground Lease, (c) the Ground Lease is a complete statement of the agreement of the parties thereto with respect to the leasing of the Premises and except as provided herein has not been amended or modified, (d) the Ground Lease is in full force and effect, and the term of the Ground Lease has commenced, (e) all conditions (including, without limitation, any payments to be made by Lessee and Lessor) to the effectiveness or continuing effectiveness of the Ground Lease required to be satisfied as of the date hereof have been satisfied, (f) Lessor has not assigned any of its rights under the Ground Lease, and (g) other than the Ground Lease and the Ground Lease Estoppel, there are no other agreements, written or oral, between Lessor and Lessee with respect to the Premises.

C. This Reaffirmation may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Reaffirmation shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

D. In the event any legal action or proceeding is commenced to interpret or enforce the terms of, or obligations arising out of, this Reaffirmation, or to recover damages for the breach thereof, the party prevailing in any such action or proceeding shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs and expenses incurred by the prevailing party.

E. The interpretation, validity and enforcement of this Reaffirmation shall be governed by and construed under the laws of the State of Illinois.

F. **THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY CONTROVERSY OR CLAIM, WHETHER ARISING IN TORT OR CONTRACT OR BY STATUTE OR LAW, BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS REAFFIRMATION (INCLUDING, WITHOUT LIMITATION, THE VALIDITY, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF), OR ANY**

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COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY IN CONNECTION HEREWITH. EACH PARTY ACKNOWLEDGES AND AGREES THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY PERSON TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES' ENTERING INTO THIS REAFFIRMATION AND THE PARTIES WOULD NOT HAVE ENTERED INTO THIS REAFFIRMATION WITHOUT THIS WAIVER. THE PARTIES HERETO ARE EACH HEREBY AUTHORIZED TO FILE A COPY OF THIS SECTION F IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER OF JURY TRIAL.

G. The parties hereto hereby consent to the jurisdiction of any state or federal court located within the State of Illinois in any suit, action or proceeding based hereon or arising out of, under or in connection with this Reaffirmation (and further agree not to assert or claim that such venue is inconvenient or otherwise inappropriate or unsuitable) and waive personal service of any and all process upon them and consent that all service of process be made by certified mail directed to the parties at the addresses set forth in this Reaffirmation.

H. This Reaffirmation is executed by CHICAGO TITLE LAND TRUST COMPANY, not personally, but solely as Successor Trustee to Cole Taylor Bank, Trustee under a Trust Agreement dated August 20, 1999, and known as Trust No. 99-8160, solely in the exercise of the power and authority conferred upon and vested in said Trustee in its capacity as such Trustee (and said Trustee hereby warrants that it possesses full power and authority to execute this instrument), and it is expressly understood and agreed that nothing contained in this Reaffirmation shall be construed as creating any liability whatsoever against said Trustee personally and in particular, without limiting the generality of the foregoing, there shall be no personal liability to comply with the terms of this Reaffirmation or to perform any covenant, either express or implied, herein contained, or to keep, preserve or sequester any property of said Trust, and that all personal liability of said Trustee of every sort, if any, is hereby expressly waived by every person now or hereafter claiming any right or security under this Reaffirmation; and that so far as said Trustee is concerned all parties to this Reaffirmation shall look solely to the interest of the Trustee in the Premises. It is further understood and agreed that said Trustee has no agents or employees and merely holds naked title to the Premises described in this Reaffirmation; that said Trustee has no control over, or under this Reaffirmation, and assumes no responsibility for (a) the management or control of the Premises, (b) the upkeep, inspection, maintenance or repair of the Premises, (c) the collection of rents or rental from the Premises, or (d) the conduct of any business which is carried on upon the Premises. It is hereby agreed that said Trustee shall be permitted to attach the form of exculpation customarily used by it to all documents, agreements, instruments, or other writings executed by it.

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IN WITNESS WHEREOF, the parties have executed this Reaffirmation as of the date first above written.

"Lessor"

**CHICAGO TITLE LAND TRUST COMPANY,
SUCCESSOR TRUSTEE TO COLE TAYLOR BANK,
AS TRUSTEE UNDER A TRUST AGREEMENT DATED
AUGUST 20, 1999, AND KNOWN AS TRUST NO. 99-
8160, an Illinois land trust**

This instrument is executed by the undersigned Land Trustee not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and not personally. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

By: Sheila Dugan
Its: ASST. VICE PRESIDENT

Attest: Attestation not required
pursuant to corporate by-laws.
Sr. Trust Officer

**DIVINE WORD TECNHY COMMUNITY
CORPORATION, an Illinois not-for-profit corporation**

By: J. Mark D'Arco S/D
Its: President

"Lessee"

**FIVE SEASONS COUNTRY CLUB OF
NORTHBROOK, INC.,
an Ohio corporation**

By: Thomas Bank
Its: F. J. P.

"Lender"

**FREMONT INVESTMENT & LOAN,
a California industrial bank**

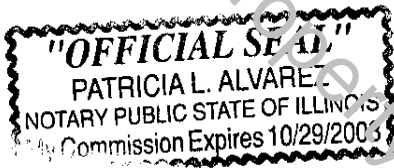
By: Rud J. Miller
Its: VICE PRESIDENT

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On Sept. 13, 2006 before me, the undersigned, a Notary Public, personally appeared SHEILA DAVENPORT, the ASST VICE PRESIDENT of **CHICAGO TITLE LAND TRUST COMPANY**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her 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.



Patricia L. Alvarez
Notary Public

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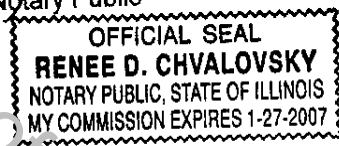
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On 11th of September, 2006, before me, Renee Chvalovsky a Notary Public, personally appeared Walter Bracken, the _____ of **DIVINE WORD TECHNY COMMUNITY CORPORATION**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her 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.

Renee D. Chvalovsky
Notary Public



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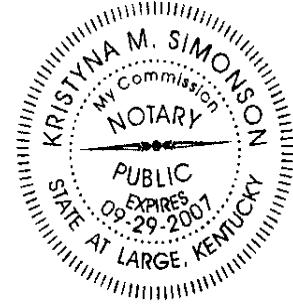
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STATE OF Kentucky)
) SS.
COUNTY OF Kenton)

On 9/20/06, before me, Kristyna Simonson a Notary Public, personally appeared Thomas Banta, E.V.P., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her 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.

Kristyna Simonson
Notary Public



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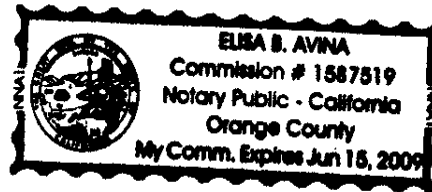
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STATE OF California)
) SS.
COUNTY OF Orange)

On October 19, 2006, before me, Elisa B. Avina, a Notary Public, personally appeared Rick Gitterman, Vice President, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her 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.

Elisa B. Avina
Notary Public



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EXHIBIT A LEGAL DESCRIPTION

PARCEL NC-1C:

THAT PART OF LOT 1 IN TECHNY PARCEL NC-1 SUBDIVISION, ACCORDING TO THE FINAL PLAT OF SUBDIVISION OF TECHNY PARCEL NC-1 RECORDED ON NOVEMBER 12, 1999, AS DOCUMENT NO. 09067611, IN COOK COUNTY, ILLINOIS, BEING DESCRIBED AS FOLLOWS:

THAT PART OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 42 NORTH, RANGE 12 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 15; THENCE SOUTH 89 DEGREES 02 MINUTES 23 SECONDS EAST ALONG THE SOUTH LINE OF NORTHEAST QUARTER OF SAID SECTION 15 A DISTANCE OF 1710.55 FEET; THENCE NORTH 00 DEGREES 57 MINUTES 37 SECONDS EAST 40.00 FEET FOR A PLACE OF BEGINNING; THENCE CONTINUING NORTH 00 DEGREES 57 MINUTES 37 SECONDS EAST 266.23 FEET; THENCE NORTH 54 DEGREES 02 MINUTES 09 SECONDS WEST 564.01 FEET; THENCE NORTH 35 DEGREES 57 MINUTES 51 SECONDS EAST ALONG THE EASTERLY LINE OF THE CHICAGO AND NORTHWESTERN RAILROAD RIGHT-OF-WAY A DISTANCE OF 724.19 FEET; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS EAST 592.66 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 1524.58 FEET, HAVING A CHORD BEARING OF SOUTH 39 DEGREES 58 MINUTES 01 SECONDS EAST 6.15 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 40 DEGREES 04 MINUTES 57 SECONDS EAST ALONG THE WESTERLY RIGHT-OF-WAY LINE OF WAUKEGAN ROAD PER DOCUMENT 93174460, A DISTANCE OF 14.45 FEET; THENCE NORTH 49 DEGREES 55 MINUTES 03 SECONDS EAST 19.69 FEET; THENCE SOUTH 40 DEGREES 09 MINUTES 19 SECONDS EAST ALONG A LINE THAT IS 33.00 FEET SOUTHWESTERLY OF THE CENTERLINE OF WAUKEGAN ROAD (SAID LINE BEING THE WESTERLY RIGHT-OF-WAY LINE OF WAUKEGAN ROAD PER THE SURVEY PREPARED FOR THE COOK COUNTY HIGHWAY DEPARTMENT IN 1927), A DISTANCE OF 309.27 FEET; THENCE SOUTH 43 DEGREES 42 MINUTES 23 SECONDS WEST 792.27 FEET; THENCE SOUTH 00 DEGREES 57 MINUTES 37 SECONDS WEST 410.97 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 480.00 FEET, HAVING A CHORD BEARING OF NORTH 77 DEGREES 57 MINUTES 03 SECONDS WEST 185.80 FEET TO A POINT OF TANGENCY; THENCE NORTH 89 DEGREES 02 MINUTES 23 SECONDS WEST ALONG A LINE THAT IS 40.00 FEET NORTHERLY OF AND PARALLEL WITH THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 58.81 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

Common Address: 1300 Techny Road, Northbrook, Illinois 60062

Permanent Real Estate Index No.: 14-15-200-022-0000

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EXHIBIT B EXCEPTIONS TO LESSOR CERTIFICATIONS

The following are the exceptions to the statements by Lessor contained in paragraph B of the Reaffirmation to which this Exhibit B is attached (all capitalized terms used but not defined in this Exhibit B shall have the meanings ascribed to them in the Ground Lease), and while items 1 through 3 constitute technical defaults under the Ground Lease, Lessor has chosen not to send any formal notice of default at this time, believing the items to be corrected will be satisfied in due course by Lessee, but if not, Lessor reserves all rights with respect thereto:

1. Pursuant to Section 3.2 of the Ground Lease, Lessee is to pay Percentage Rent, commencing July 1, 2003, based on the formula stated therein. On July 31, 2003, Lessee provided to Lessor a written calculation showing no Percentage Rent was due. Such statement did not meet the requirements of Section 3.2 of the Ground Lease in two respects. First, it was not based on audited financial statements, as required pursuant to Section 3.2(e) of the Ground Lease, nor was it certified as being true correct and complete on an interim basis by the chief financial officer of Lessee, pending delivery of audited financial statements. Second, pursuant to clause (iv)(H) of Section 3.2(b) definition of Gross Project Revenue, refundable initiation fees were to be excluded from Gross Project Revenue for purposes of the calculation of Percentage Rent "(unless actually applied against payment obligations of a patron, member or user)". According to the information provided by Lessee, initiation fees were included in both the 2001 and the 2002 years amounts of "(net of refundable portion)", but without distinguishing between refundable and non-refundable initiation fees or providing audited information as to those amounts. These discrepancies between the requirements of the Ground Lease and the documents delivered must be resolved to the satisfaction of Ground Lessor. No calculations of Percentage Rent were provided for 2003, 2004 or 2005. On September 6, 2006, Lessor received copies of the audited financial statements for Lessee for 2005 which included some information for 2004, along with copies of certain financial information or computations that is incomplete, is not certified as required under Section 3.2 of the Ground Lease and does not provide sufficient explanation for Lessor to be able to determine the accuracy of the calculations provided. Lessor intends to provide a written request for additional information, but by Lessee's own calculations there are amounts of Percentage Rent due and owing Lessor that must be paid upon demand. Lessor's counsel has provided preliminary information to Lessee of the amounts immediately due and owing. As of September 11, 2006, such amounts had not yet been paid.
2. Pursuant to Section 5.2 of the Ground Lease, the Lessee was to construct all On-Site Improvements in accordance with the provisions of the Annexation Agreement. Under Section 7(a) of the Annexation Agreement and Exhibit U to the Annexation Agreement, "All wiring and connections for power. . . shall be installed underground. No overhead wiring, except of a temporary nature, shall be permitted." A temporary above-ground service line adjacent to Waukegan Road was provided to permit Lessee and the adjoining development of Crate & Barrel to proceed. That temporary above-ground service line has not yet been buried. Lessee is responsible for the cost to bury that line as part of the On-Site Improvements. Lessor has been advised by Lessee that Lessee has been working with the lessee of the adjoining property and with Commonwealth Edison Company on plans for this work, but despite being provided a deadline of Labor Day 2006 for completion of the work, it had not yet been commenced or completed as of September 11, 2006.
3. Landscaping for the Premises and the afforested area portions of the Premises was not conducted in accordance with the approved landscape plan. Trees that were designated for the afforested area were spread out over the balance of the premises in areas designated for future parking should the facility be expanded in the future to include a hotel, as contemplated in the Ground Lease. In addition, insufficient landscaping was provided in and adjacent to the parking lots within the Premises. Additional landscape materials must be added to the afforested areas and within and adjacent to the parking lots. Plans for such additional landscaping need to be

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provided to Lessor for approval prior to installation. As of September 11, 2006, no such plans for additional landscaping have been provided to Lessor.

4. Pursuant to Section 6.8 of the Ground Lease, the Lessor reserved the permanent right of access to Parcel NC-1C for purposes of using, repairing, removing, replacing, constructing, reconstructing, operating and maintaining Lessor's Storm Sewer. However, as part of the Final Plans and Specifications, Lessor approved a joint storm sewer serving both the Society's Retained Land and Parcel NC-1C located within Parcel NC-1C. As part of those approvals, Lessor has requested Lessee enter into a permanent easement allocating the future costs of such joint storm sewer. As of September 11, 2006, that easement has not yet been granted and finalized.

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