

UNOFFICIAL COPY

8364483 / 26116042

Prepared by and when
recorded mail to:

Eric M. Roberson
Chapman and Cutler LLP
111 West Monroe
Chicago, Illinois 60603



Doc#: 0636102230 Fee: \$42.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/27/2006 01:59 PM Pg: 1 of 10

SPACE ABOVE THIS LINE RESERVED FOR
RECORDER'S USE ONLY

ASSIGNMENT AND ASSUMPTION AGREEMENT

Loan No. 158416

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, is dated as of December 18, 2006 and is to be effective from and after that date (this "Agreement"), among ROSE FP LLC, an Illinois limited liability company (the "Original Borrower"), having its principal office at c/o The Crown Group, 1564 Algonquin Road, Hoffman Estates, Illinois 60192, JCG INDUSTRIES, INC., an Illinois corporation ("New Borrower") having its principal place of business at 1300 West Higgins Road, Park Ridge, Illinois 60068, and THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, an Indiana corporation ("Lincoln") with its principal place of business at 1300 South Clinton Street, Fort Wayne, Indiana 46802.

WITNESSETH:

WHEREAS, the New Borrower has acquired the Original Borrower's right, title and interest in and to the site and improvements located in Cook County, Illinois (the "Project") described in Schedule I attached hereto; and

WHEREAS, this Agreement is being delivered to effect the agreement by the New Borrower to assume the Original Borrower's indebtedness, obligations and liabilities, and to be bound by and comply with the covenants and agreements set forth in these documents described in Schedule II attached hereto and all of the other documents and agreements relating thereto (collectively, the "Financing Documents"); and

NOW, THEREFORE, the parties hereto agree as follows:

BOX 333-CA

UNOFFICIAL COPY

Section 1. Definitions. All capitalized terms used in this Agreement and not otherwise defined herein shall have the same meanings as set forth in the Financing Documents, unless the context clearly requires otherwise.

Section 2. Assumption of Obligations under Financing Documents. The New Borrower hereby covenants and agrees, (i) to pay and perform all indebtedness, obligations and liabilities of the Original Borrower as and when due under, and in accordance with the terms of, the Financing Documents, whether now or hereafter existing, fixed or contingent, and (ii) to be bound by and comply with all covenants, agreements, conditions, representations, warranties, restrictions and limitations now or hereafter made by or applicable to the Original Borrower or otherwise, pursuant to the Financing Documents. The New Borrower's assumption of and agreement to pay, perform, be bound by and comply with, all of the indebtedness, obligations, liabilities, covenants, agreements, conditions, representations, warranties, restrictions and limitations referred to above shall have the same force and effect as though the New Borrower had originally executed and delivered the Financing Documents. The New Borrower hereby assumes all indebtedness, liabilities and other obligations (whether now existing or hereafter arising, fixed or contingent, foreseen or unforeseen) of the Original Borrower, and agrees to comply with and be bound by all the covenants, agreements, conditions, representations, warranties, restrictions and limitations contained in, the Financing Documents.

Section 3. Representations and Warranties. The New Borrower hereby represents and warrants to Lincoln as follows:

(a) Executed counterparts or photocopies of executed counterparts of all of the Financing Documents, have been received and reviewed by the New Borrower and its counsel. The New Borrower is knowledgeable about the Project and has made an independent investigation of all facts and circumstances deemed relevant to it in connection with the acquisition of the Original Borrower's interest in this Project and has reviewed and is familiar with all of the terms, provisions and conditions of the Financing Documents and all of the obligations thereunder which have been assumed in their entirety by the New Borrower under this Agreement.

(b) The New Borrower has not failed to obtain any consent, authorization or approval from any governmental agency or authority necessary for its acquisition of the Original Borrower's interest in the Project.

(c) The New Borrower has full power, authority and legal right to enter into, execute and deliver this Agreement executed by it and to assume and perform the obligations under the Financing Documents and to engage in, the transactions contemplated thereby.

Section 4. Further Assurances. The parties hereto hereby agree to execute and deliver, record and file, at any time and from time to time such additional documents, instruments and agreements deemed necessary or desirable for more fully amending and supplementing the Financing Documents to reflect the New Borrower's assumption of the obligations, indebtedness

UNOFFICIAL COPY

and liabilities thereunder and its agreements hereunder consistent with the provisions of this Agreement.

Section 5. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and the other parties to the Financing Documents, and their respective successors and assigns.

Section 6. Counterparts. This Agreement may be executed in counterparts, and all counterparts together shall be construed as one document.

Section 7. Governing Law. The law governing this Agreement shall be the same law which governs the individual Financing Documents being assumed hereunder.


Section 8. Release of Original Borrower. By its execution of this Agreement, Lincoln thereby releases the Original Borrower from all of its obligations and liabilities under the Financing Documents. In addition, Lincoln releases the Guarantors under that certain Limited Guaranty dated June 12, 2002 and releases Mark Lambert, Craig Whitehead, Frank A. Maratea and Lawrence L. Lantero, Jr. under that certain Environmental Indemnity dated as of June 12, 2002

UNOFFICIAL COPY


IN WITNESS WHEREOF, the Original Borrower, the New Borrower, and Lincoln have caused this Agreement to be executed as of the date first above stated to be effective from and after that date.

ROSE FP LLC., an Illinois limited liability company

By: ROSE FPC LLC, an Illinois limited liability company,
Its Manager

By: 
Printed Name: Mark Lambert
Its: Manager

JCG INDUSTRIES, INC., an Illinois corporation

By: 
Printed Name: Mark Kaminsky
Its: Secretary

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, an Indiana corporation

By: Delaware Investment Advisers, a Series of Delaware Management Business Trust
Its Attorney-in-Fact

By: _____
Printed Name: _____
Its: _____

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Original Borrower, the New Borrower, and Lincoln have caused this Agreement to be executed as of the date first above stated to be effective from and after that date.

ROSE FP LLC., an Illinois limited liability company

By: ROSE FPC LLC, an Illinois limited liability company,
Its Manager

By: _____
Printed Name: _____
Its: _____

JCG INDUSTRIES, INC., an Illinois corporation

By: _____
Printed Name: _____
Its: _____

THE LINCOLN NATIONAL LIFE INSURANCE COMPANY, an Indiana corporation

By: Delaware Investment Advisers, a Series of Delaware Management Business Trust
Its Attorney-in-Fact

By: Sherrie R. Davis
Printed Name: Sherrie R. Davis
Its: Second Vice President

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, CAROL A. FEO, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MARK LAMBERT, the MANAGER of ROSE FPC LLC, an Illinois limited liability company, the manager of ROSE FP LLC, an Illinois limited liability company, who is 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 and delivered the said instrument as his own free and voluntary act and as the free and voluntary act and deed of said corporation and limited partnership for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 18TH day of DECEMBER, 2006.



Carol A. FEO
Notary Public

CAROL A. FEO
(TYPE OR PRINT NAME)

(SEAL)

My Commission Expires: 9-8-09

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, CAROL A. FEO, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MARK KAMINSKY, the SECRETARY of JCG Industries, Inc., an Illinois corporation, who is 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 and delivered the said instrument as his own free and voluntary act and as the free and voluntary act and deed of said corporation and partnership for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 18TH day of DECEMBER, 2006.



Carol A. FEO
Notary Public

CAROL A. FEO
(TYPE OR PRINT NAME)

(SEAL)

My Commission Expires: 9-8-09

UNOFFICIAL COPY

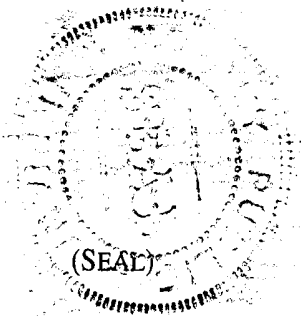
STATE OF INDIANA)
) SS.
COUNTY OF ALLEN)

I, Susan L. Bishop, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Sherrie R. Davis, the ^{Second}~~Vice President~~ of Delaware Investment Advisers, a series of Delaware Management Business Trust, the attorney-in-fact of The Lincoln National Life Insurance Company, an Indiana corporation, who is 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 and delivered the said instrument as his own free and voluntary act and as the free and voluntary act and deed of said association for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 19th day of December, 2006.

Susan L. Bishop
Notary Public

Susan L. Bishop
(TYPE OR PRINT NAME)



My Commission Expires: 12/10/2009

UNOFFICIAL COPY

SCHEDULE I LEGAL DESCRIPTION

LOT 1 IN KOCH POULTRY SUBDIVISION, BEING A SUBDIVISION OF THE NORTH THREE-QUARTERS OF THE WEST HALF OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT SURVEY THEREOF RECORDED NOVEMBER 8, 2001 IN COOK COUNTY, ILLINOIS.

Commonly known as 2155 Rose Street, Franklin Park, Illinois

Property of Cook County Clerk's Office

UNOFFICIAL COPY

SCHEDULE II

FINANCING DOCUMENTS

1. \$6,500,000 Replacement Note dated as of December 19, 2005.
2. Mortgage and Security Agreement dated as of June 12, 2002, as amended by that certain First Amendment to Mortgage and Security Agreement dated as of December 19, 2005. #0020681104
#0601335086
3. Loan Agreement dated as of June 12, 2002.
4. Assignment of Leases, Rents and Profits dated as of June 12, 2002. #0020681105
5. Environmental Indemnity dated as of June 12, 2002, as reaffirmed by that certain Reaffirmation of Environmental Indemnity dated as of December 19, 2005.
6. Assignment of Contract Documents, Permits, Licenses and Management Agreement and Security Agreement dated as of June 12, 2002.
7. UCC Financing Statement. #0025664836