

# UNOFFICIAL COPY

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## FIRST AMENDMENT TO LOAN AGREEMENT, NOTES, MORTGAGE, GUARANTY, AND OTHER LOAN DOCUMENTS

This First Amendment is entered into as of the 23rd day of August, 1993, by and among FIRST COLONIAL TRUST COMPANY, not personally, but solely as trustee (the "Trustee") under Trust Agreement dated July 24, 1992, and known as Trust No. 1-5067 (the "Trust"), THE ELK GROVE - DES PLAINES VENTURE, an Illinois partnership, (the "Partnership"), being the sole beneficiary of the Trust, FAIRMONT GROUP, INC. ("Fairmont", together with the Trust and the Partnership are sometimes jointly and severally referred to as "Borrower"), ANGELO PALUMBO, ANTHONY TANTILLO and THOMAS MEYER (individually, a "Guarantor" and collectively the "Guarantors"), and YORK STATE BANK, a state banking association (the "Bank").

### RECITALS:

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A. Borrower, Guarantors and Bank entered into a certain Loan Agreement dated ~~as~~ of June 1, 1993 (the "Loan Agreement"), pursuant to which, among other things, Bank agreed to loan to Borrower an amount not to exceed the sum of TWO MILLION NINE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$2,950,000.00) (the "Loan"), for the purposes, upon the terms and subject to the conditions contained in the Loan Agreement. The Loan Agreement provides, among other things, that the proceeds of the Loan are to be used by Borrower for purposes of constructing 40 single family townhomes on a four acre site, located on Oakton Street between Wolf and Mannheim Roads, Des Plaines, Illinois, and legally described on Exhibit A attached hereto (the "Premises").

B. Except as otherwise expressly indicated, all capitalized terms used herein shall have the same meaning ascribed to them in the Loan Agreement.

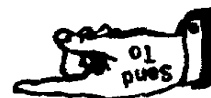
C. The Loan is evidenced by (i) a certain construction note ("Construction Note") dated June 1, 1993 in the original principal amount of ONE MILLION THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,300,000.00) and (ii) a certain term note ("Term Note") dated June 1, 1993 in the original principal amount of ONE MILLION SIX HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$1,650,000.00), made by the Borrower, and payable to the order of Bank. The Construction Note and Term Note are sometimes hereafter referred to as the "Notes".

D. The Note is secured by, among other things, the following documents, each of which is dated as of June 1, 1993:

(i) Mortgage, Assignment of Leases and Rents and Security Agreement (the "Mortgage") made by the Trust and Partnership to Bank and recorded in the office of the Recorder of Deeds of Cook County, Illinois on June 18, 1993 as Document 93470021 covering the Premises;

THIS DOCUMENT PREPARED BY AND AFTER RECORDING RETURN TO:

Ned S. Robertson  
Aronberg Goldgehn Davis & Garmisa  
One IBM Plaza  
Suite 3000  
Chicago, Illinois 60611  
(312) 828-9600



PIN NOS.: 09-20-320-044 through 047

335

First American Title Order # C-623361AB

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COOK COUNTY RECORDER  
#0091 # \*-93-673891  
#9999 TRIM 0211 08/25/93 09:57:00  
\$33.50

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(ii) Second Security Assignment of Beneficial Interest in Land Trust made by the Partnership, as Debtor, to Bank, as Secured Party, with respect to the Trust; and

(iii) Assignment of Plans and Specifications, Construction Contract and Purchase Agreements dated as of June 1, 1993 made by the Partnership to Bank.

E. Pursuant to a certain Guaranty of Payment and Performance (the "Guaranty") dated as of June 1, 1993 made by Guarantors, in favor of Bank, the Guarantors, jointly and severally, guaranteed (i) the payment by Borrower of the amounts provided for in the Notes, the Loan Agreement, the Mortgage and the other Loan Documents, and (ii) the performance by Borrower of the covenants to be performed and observed by Borrower pursuant to the provisions thereof.

F. Borrower has requested that Bank increase the amount of the Loan to THREE MILLION ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$3,100,000.00) and Bank has agreed to do so subject to Borrower and the Guarantors agreeing to the terms and conditions contained in this Amendment.

NOW, THEREFORE, in order to induce Bank to increase the amount of the Loan and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, the Guarantors and Bank hereby agree as follows:

1. The Recitals set forth above are hereby incorporated herein and made a part hereof.

2. The principal amount of the Construction Note is increased to ONE MILLION SEVEN HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,700,000.00) and the principal amount of the Term Note is increased to ONE MILLION FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,400,000.00).

3. The Unit Release Price as defined in Paragraph 7.1(b) of the Loan Agreement is hereby changed from SIXTY ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$61,500.00) to FIFTY EIGHT THOUSAND SIX HUNDRED TWENTY FIVE AND NO/100 DOLLARS (\$58,625.00).

4. The reference in Paragraph 7.2(b)(iii) of the Loan Agreement is hereby changed from NINETY EIGHT THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$98,500.00) to ONE HUNDRED FOUR THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$104,300.00).

5. The Mortgage, the other Loan Documents and the Guaranty are hereby amended to secure the obligations and liabilities evidenced by the Notes, as amended by this Amendment.

6. Borrower hereby agrees to pay all expenses, charges, costs and fees relating to increasing the amount of the Loan, including a loan fee of ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,500.00) and Bank's reasonable attorneys' fees in connection with the negotiation and documentation of the agreements contained in this Amendment, all recording fees and charges, title insurance charges and premiums, and all other expenses, charges, costs and fees referred to in or necessitated by the terms of this Amendment (collectively, the "Additional Loan Expenses"). In the event the Additional Loan Expenses are not paid to Bank within five (5) days after written demand therefor by Bank, the Additional Loan Expenses shall bear interest from the date so incurred until paid at the Default Rate, or may be paid by Bank at any time following said five (5) day written demand by disbursement of proceeds of the Loan, as hereby amended.

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7. All references in the Notes, Loan Agreement, Mortgage, or other Loan Documents or the Guaranty to any of the other Loan Documents or the Guaranty shall mean such document as amended hereby.

8. Borrower and each Guarantor represents and the Partnership, Fairmont and each Guarantor warrants to Bank that each has full power and authority to execute and deliver this Amendment and to perform their respective obligations hereunder. Upon the execution and delivery hereof, this Amendment will be valid, binding and enforceable upon Borrower and each Guarantor in accordance with its terms. Execution and delivery of this Amendment does not and will not contravene, conflict with, violate or constitute a default under (i) the Partnership Agreement creating the Partnership, or (ii) any applicable law, rule, regulation, judgment, decree or order or any agreement, indenture or instrument to which Borrower or any Guarantor is a party or is bound or which is binding upon or applicable to the Project, or any portion thereof.

9. Borrower and each Guarantor represents and the Partnership, Fairmont and each Guarantor warrant to Bank that after giving effect to this Amendment no Event of Default or event or condition which could become an Event of Default with the giving of notice or passage of time, or both, exists under the Loan Agreement, the Notes, Mortgage or any of the other Loan Documents or the Guaranty.

10. Each Borrower hereby ratifies and confirms its respective liabilities and obligations under the Loan Agreement, the Notes, the Mortgage and the other Loan Documents, all as amended by this Amendment, and the liens and security interests created thereby, and acknowledges that it has no defenses, claims or set-offs to the enforcement by Bank of the obligations and liabilities of each Borrower under the Loan Agreement, the Notes, the Mortgage and the other Loan Documents, all as amended by this Amendment.

11. Each Guarantor hereby consents to the execution and delivery by Borrower of this Amendment. Each Guarantor hereby ratifies and confirms his respective liabilities and obligations under the Guaranty, as amended by this Amendment, with respect to the Loan Agreement, the Notes, the Mortgage and the other Loan Documents, all as amended by this Amendment, and acknowledges that he has no defenses, claims or set-offs to the enforcement by Bank of the liabilities and obligations of each Guarantor under the Guaranty, as amended by this Amendment.

12. This Amendment shall be binding on Borrower, each Guarantor and their respective partners, heirs, legatees, personal representatives, successors and permitted assigns, and shall inure to the benefit of Bank, and its successors and assigns.

13. Except as expressly provided herein, the Loan Agreement, the Notes, the Guaranty, the Mortgage and the other Loan Documents shall remain in full force and effect in accordance with their respective terms.

14. This Amendment is executed by First Colonial Trust Company, 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 Amendment shall be construed as creating any personal liability on said Trustee to perform any covenant, either express or implied herein contained, all such liability, if any, being expressly waived by Bank and by every person now or hereafter claiming any right or security hereunder.

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IN WITNESS WHEREOF, this Amendment has been entered into as of the date first above written.

YORK STATE BANK, a state banking association

By: [Signature]  
Name: JUDITH M. BENITA  
Title: AVP

FIRST COLONIAL TRUST COMPANY, not personally but as Trustee as aforesaid

By: [Signature]  
Name: \_\_\_\_\_  
Title: Local Trust Officer

ATTEST: [Signature]  
Name: \_\_\_\_\_  
Title: Local Trust Officer

THE ELK GROVE - DES PLAINES VENTURE, an Illinois partnership

By: THE ANTHONY J. TANTILLO COMPANY, Partner

By: [Signature]  
Name: Anthony J. Tantillo  
Title: President

By: E.C.I. GROUP, INC., Partner

By: [Signature]  
Name: Thomas Meyer  
Title: President

By: A & N CORPORATION, Partner

By: [Signature]  
Name: Angelo Palumbo  
Title: President

[Signature]  
Angelo Palumbo  
[Signature]  
Anthony Tantillo  
[Signature]  
Thomas Meyer

FAIRMONT GROUP, INC.

By: [Signature]  
Name: ANGELO PALUMBO  
Title: PRESIDENT

ATTEST: [Signature]  
Name: ANTHONY J. TANTILLO  
Title: Secretary

Property of Cook County Office

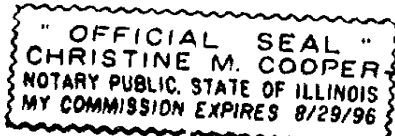
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, CHRISTINE COOPER, a Notary Public in and for said County, in the State aforesaid, do hereby certify that JUBIN M. BROWN, is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such AVP of YORK STATE BANK, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her 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 \_\_\_\_\_ day of \_\_\_\_\_, 1993.

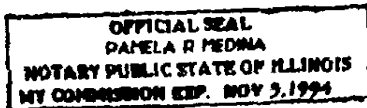


Christine Cooper  
Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Pamela R. Medina, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Angelo McClain, the Land Tr. Officer of FIRST COLONIAL TRUST COMPANY, and Leif O. Peterson, the Land Tr. Officer of said Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such Land Tr. Officers and Land Tr. Officers, respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Company, as trustee, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23rd day of August, 1993.



Pamela R. Medina  
Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, Susan A. Paoletti, a Notary Public in and for said County, in the State aforesaid, do hereby certify that ANTHONY J. TANTILLO, President of The Anthony J. Tantillo Company, Thomas Meyer, the President of E.C.I. Group, Inc. and Angelo Palumbo, the President of A & N Corporation, all being partners in THE ELK GROVE - DES PLAINES VENTURE, who are 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 and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of their respective Corporations, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 6th day of August, 1993.



Susan A. Paoletti  
Notary Public

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## EXHIBIT A

### Legal Description

LOTS 76 TO 79 BOTH INCLUSIVE IN KOZIOL AND WEDGEWOOD  
RESUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION  
20 AND PART OF THE SOUTHEAST 1/4 OF SECTION 19 ALL IN  
TOWNSHIP 41 NORTH, RANGE 12, EAST OF THE THIRD  
PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office

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