

# UNOFFICIAL COPY

This Third Modification Agreement prepared by  
and after recording should be returned to:

Winston & Strawn  
200 Park Avenue  
New York, New York 10166  
Attention: John Phelan, Esq.

97044211

. DEPT-01 RECORDING \$41.50  
. T40010 TRAN 7061 01/21/97 14:44:00  
. 52706 & C J \*-97-044211  
. COOK COUNTY RECORDER

## THIRD MODIFICATION AGREEMENT

This Third Modification Agreement (this "Agreement") is made as of the 10<sup>th</sup> day of January, 1997 by and between GARDEN TANGLEWOOD L.P., a Delaware limited partnership ("Borrower"), with its principal place of business and mailing address at Three Forest Plaza, 12221 Merit Drive, Suite 600, Dallas, Texas 75251, and DRESDNER BANK AG, NEW YORK BRANCH, a United States branch of a bank organized under the laws of the Federal Republic of Germany ("Lender"), with its principal place of business and mailing address at 75 Wall Street, New York, New York 10005.

### RECITALS:

WHEREAS, certain obligations of Borrower under a certain Reimbursement Agreement dated as of November 24, 1992 (the "Original Reimbursement Agreement") by and between, among others, Borrower and Heller Financial, Inc. ("Heller") are secured by (i) a certain Mortgage, Security Agreement and Assignment of Leases and Rents dated as of June 21, 1988 made by National Operating, L.P. ("NOLP") in favor of Heller, recorded in the Office of the Cook County Recorder, State of Illinois (the "Recorder's Office") on June 22, 1988 as Document No. 88272918, encumbering the property legally described on Exhibit A attached hereto and incorporated herein by reference and commonly known as Tanglewood Apartments, 2134 South Goebbert Road, Arlington Heights, Cook County, State of Illinois (comprising part of the "Premises," as that term is defined in said Mortgage, Security Agreement and Assignment of Leases and Rents), and more particularly described in Exhibit B attached hereto and made a part hereof (the "Security Instrument"), (ii) a certain Assignment of Leases and Rents dated June 21, 1988 (the "Assignment of Leases and Rents") and (iii) certain UCC Financing Statements (collectively, the "Security Documents");

WHEREAS, Heller has assigned to Lender Heller's right, title and interest in the Security Instrument by that certain Assignment of Mortgage dated as of January 10<sup>th</sup>, 1997 and intended to be recorded immediately prior hereto in the Recorder's Office;

WHEREAS, Heller has assigned to Lender Heller's right, title and interest in the Original Reimbursement Agreement and the Security Documents;

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WHEREAS, Lender intends to issue a letter of credit in the amount of \$18,500,000 and, in connection therewith, has requested that Borrower, among others, enter into an Amended and Restated Reimbursement Agreement (the "Reimbursement Agreement"), dated as of the date hereof that amends and restates the Original Reimbursement Agreement in its entirety and Borrower agrees, upon the terms set forth in the Reimbursement Agreement, to repay any funds disbursed by Lender pursuant to the letter of credit and all other amounts that may become due and owing thereunder, which obligations of Borrower shall be secured by, among other things, the Security Instrument; and

WHEREAS, Borrower and Lender desire to modify the Security Documents to reflect their understanding and agreement in connection with the foregoing.

NOW, THEREFORE, in consideration of the covenants, promises and conditions herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrower hereby regrants and reconveys the Mortgaged Property (as defined in the Security Instrument) unto Lender under the terms and subject to the terms set forth in the Security Instrument. Borrower and Lender hereby agree as follows:

1. The Recitals to this Agreement are fully incorporated herein by this reference thereto with the same force and effect as though restated herein.

2. From and after the date hereof:

(a) The term "Other Agreements" as used in the Security Instrument and the Assignment of Leases and Rents shall be deemed to mean the Reimbursement Agreement and the other "Loan Documents" (as defined in the Reimbursement Agreement); and

(b) The term "Indebtedness" as used in the Security Instrument and the Assignment of Leases and Rents shall be modified to mean all liabilities, obligations and indebtedness heretofore, now or hereafter due and payable by Borrower to Lender under or pursuant to the Reimbursement Agreement, including without limitation, interest on said liabilities, obligations and indebtedness and including, without limitation, the "Letter of Credit Fee," all "Extension Fees", if any, the "Principal Amount", all "Accrued Interest" and all other "Liabilities" (as each of those terms is defined in the Reimbursement Agreement), and all expenses and costs incurred by Lender in connection with the Security Instrument and the Loan Documents and the enforcement thereof.

3. Borrower also hereby warrants to Lender that it is lawfully seized, possessed and is the owner of and has good and indefeasible, marketable fee simple title to the property and/or other interests which are the subject of the Security Instrument, free and clear of all debts, liabilities, claims, security interests, assessments, charges, impositions, levies, taxes, liens and all other types of encumbrances evidencing or securing the payment of money, except (i) security interests and/or liens created thereby in favor of Lender, (ii) the debts, liabilities and liens to and in favor of Yasuda Bank and Trust Company (U.S.A.), as Trustee for the Holders of DLJ Mortgage Acceptance Corp. Multi-Family Mortgage Pass-Through Certificates, Series 1992-MF10 ("Trustee"), as successor-in-interest to First Commonwealth Realty Credit

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Corporation ("FCRCC") pursuant to the "Loan Agreement" (as defined in the Reimbursement Agreement); and (iii) as set forth in title insurance policies issued in favor of Trustee as successor-in-interest to FCRCC concurrently with the Loan Agreement.

4. Borrower hereby (i) represents that there are no liabilities or obligations outstanding under the terms of the Original Reimbursement Agreement or letter of credit issued by Heller pursuant to the terms thereof and (ii) acknowledges and agrees that no further draws shall be permitted and no new loans shall be made under the Original Reimbursement Agreement or the letter of credit issued by Heller in connection therewith, and Lender's obligations to Borrower are limited to those provided under the Reimbursement Agreement.

5. The Security Instrument and the Security Documents are hereby amended to provide that all of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of New York, except as to matters relating to title to the Mortgaged Property and the creation, perfection, priority and enforcement of the liens on and security interests in the Mortgaged Property which shall be governed by the laws of the state in which the Mortgaged Property is located.

6. This Agreement and all of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement or the transactions contemplated hereby, shall be governed by, construed and enforced in accordance with the laws of the State of New York, except as to matters relating to title to the Mortgaged Property and the creation, perfection, priority and enforcement of the liens on and security interests in the Mortgaged Property which shall be governed by the laws of the state in which the Mortgaged Property is located.

7. Borrower represents, warrants and covenants that there are no offsets, counterclaims or defenses against this Agreement, the Security Instrument or the other Security Documents and that Borrower (and the undersigned representative of Borrower, if any) have full power, authority and legal right to execute this Agreement and to keep and observe all of the terms of this Agreement on Borrower's part to be observed or performed.

8. This Agreement, the Security Instrument, the Reimbursement Agreement and the other Security Documents renew, extend and modify the original indebtedness of Borrower to Lender and nothing herein is intended to nor shall it constitute a novation of the original indebtedness; provided, however, Borrower shall have no liability with respect to said original indebtedness but shall be liable for the Indebtedness (as modified hereinabove), to the extent provided in the Security Instrument, the other Security Documents the Reimbursement Agreement and the other Loan Documents.

9. This Agreement may not be modified, amended, waived, changed or terminated orally, but only by an agreement in writing signed by the party against whom the enforcement of the modification, amendment, waiver, change or termination is sought.

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10. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns.

11. This Agreement may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument.

12. If any term, covenant or condition of this Agreement shall be held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

13. Except as expressly modified hereby, all of the terms, covenants and provisions of the Security Instrument, the Assignment of Leases and Rents and the other Security Documents shall continue in full force and effect. In the event of any conflict or ambiguity between the terms, covenants and provisions of this Agreement and those of the Security Instrument, the Assignment of Leases and Rents and the other Security Documents, the terms, covenants and provisions of this Agreement shall control.

[No Further Text on this Page]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

GARDEN TANGLEWOOD L.P., a Delaware limited partnership

Brad Kyle  
Witness: Brad Kyle

By: GARDEN CAPITAL, INCORPORATED,  
its general partner

Carol A. Williams  
Witness: CAROL A. WILLIAMS

By: Steve M. Johnson  
Name: STEVE M. JOHNSON  
Title: VICE PRESIDENT

DRESDNER BANK AG, NEW YORK BRANCH,  
a United States branch of a bank organized under  
the laws of the Federal Republic of Germany

\_\_\_\_\_  
Witness:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Witness:

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Witness:

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

GARDEN TANGLEWOOD L.P., a Delaware limited partnership

By: GARDEN CAPITAL, INCORPORATED, its general partner

Witness: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Witness: \_\_\_\_\_

DRESDNER BANK AG, NEW YORK BRANCH, a United States branch of a bank organized under the laws of the Federal Republic of Germany

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Johannes Boeckmann  
Vice President

Witness: Michael A. Schu

Witness: Melissa Soto

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Joey Harrison  
Assistant Treasurer

Witness: Michael A. Schu

Witness: Melissa Soto

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STATE OF TEXAS )  
 ) SS.:  
COUNTY OF DALLAS )

I, LOUISE PUTNAM, a Notary Public in and for the County and State aforesaid, do hereby certify that STEVE K. JOHNSON, VICE PRESIDENT of Garden Capital, Incorporated, sole general partner of GARDEN TANGLEWOOD L.P., a Delaware limited partnership, personally known to me to be the same person whose name is subscribed to the foregoing instrument as VICE PRESIDENT of such authorized general partner, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

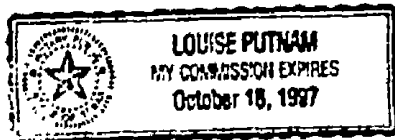
GIVEN under my hand and notarial seal this 6<sup>th</sup> day of JANUARY, 1997.

Louise Putnam  
Notary Public

My Commission Expires:

Oct. 18, 1997

(Notarial Seal)



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STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK )

I, Heyley D. Yandoli, a Notary Public in and for the County and State aforesaid, do hereby certify that Johannes Pochman the VP of DRESDNER BANK AG, NEW YORK BRANCH, a Bank, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer of said Bank, 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 8 day of January, 1997.

Heyley D. Yandoli  
Notary Public

My Commission Expires: (Notarial Seal)

7/28/98

STATE OF NEW YORK )  
 ) SS.:  
COUNTY OF NEW YORK )

I, Heyley D. Yandoli, a Notary Public in and for the County and State aforesaid, do hereby certify that Judy Harrison the Assist. Treasurer of DRESDNER BANK AG, NEW YORK BRANCH, a Bank, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument as such officer of said Bank, 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 8 day of January, 1997.

Heyley D. Yandoli  
Notary Public

My Commission Expires: (Notarial Seal)

7/28/98

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## PARCEL 1:

THAT PARCEL OF LAND LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS AND DESCRIBED AS FOLLOWS: THAT PART OF THE NORTH 3/4 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF SEEGER'S ROAD, IN COOK COUNTY, ILLINOIS; BEGINNING AT THE SOUTHEAST CORNER OF THE NORTH 3/4 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE WESTERLY ALONG THE SOUTH LINE OF THE NORTH 3/4 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SAID SECTION 15, A DISTANCE OF 858.86 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS NORTHERLY, A DISTANCE OF 441.776 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS EASTERLY, A DISTANCE OF 120.83 FEET; THENCE TURNING A LEFT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS NORTHERLY, A DISTANCE OF 436.11 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS EASTERLY, A DISTANCE OF 546.34 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 02 MINUTES 32 SECONDS SOUTHERLY, A DISTANCE OF 351.05 FEET; THENCE TURNING A LEFT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS EASTERLY, A DISTANCE OF 200.00 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS SOUTHERLY, A DISTANCE OF 525.00 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS, (EXCEPTING FROM THE ABOVE DESCRIBED TRACT THAT PART OF THE LAND DEDICATED FOR PUBLIC STREETS BY DOCUMENT 21541064).

## PARCEL 2:

THAT PART OF THE NORTH 3/4 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING SOUTH OF SEEGER'S ROAD, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTH 3/4 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTHERLY ALONG THE WEST LINE OF THE SAID SECTION 15, A DISTANCE OF 1168.26 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 89 DEGREES 25 MINUTES 01 SECONDS EASTERLY, A DISTANCE OF 381.27 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS SOUTHERLY, A DISTANCE OF 181.10 FEET; THENCE TURNING A LEFT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS EASTERLY, A DISTANCE OF 100.34 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS SOUTHERLY, A DISTANCE OF 258.14 FEET; THENCE TURNING A LEFT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS EASTERLY, A DISTANCE OF 92.31 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS SOUTHERLY, A DISTANCE OF 287.16 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS WESTERLY, A DISTANCE OF 120.83 FEET; THENCE TURNING A LEFT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS SOUTHERLY, A DISTANCE OF 441.776 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS WESTERLY, A DISTANCE OF 464.96 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS, (EXCEPTING FROM THE ABOVE DESCRIBED TRACT THAT PART OF THE LAND DEDICATED FOR PUBLIC STREETS BY DOCUMENTS 21541064 AND 22568064).

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## PARCEL 3:

THAT PART OF THE NORTH 3/4 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING SOUTH OF SEEGER'S ROAD, IN COOK COUNTY, ILLINOIS; COMMENCING AT THE SOUTHWEST CORNER OF THE NORTH 3/4 OF THE WEST 1/2 OF THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN; THENCE NORTHERLY ALONG THE WEST LINE OF THE NORTHWEST 1/4 OF THE SAID SECTION 15 A DISTANCE OF 1168.26 FEET TO A POINT OF BEGINNING; THENCE CONTINUING NORTHERLY ALONG THE WEST LINE OF THE NORTHWEST 1/4 OF SAID SECTION 15, A DISTANCE OF 239.22 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 71 DEGREES 09 MINUTES 13 SECONDS NORTHEASTERLY, A DISTANCE OF 467.09 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 3 DEGREES 41 MINUTES 20 SECONDS NORTHEASTERLY, A DISTANCE OF 168.00 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS SOUTHEASTERLY, A DISTANCE OF 213.00 FEET; THENCE TURNING A LEFT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS NORTHEASTERLY, A DISTANCE OF 181.06 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 7 DEGREES 10 MINUTES 00 SECONDS NORTHEASTERLY, A DISTANCE OF 290.87 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 97 DEGREES 57 MINUTES 00 SECONDS SOUTHERLY, A DISTANCE OF 595.10 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 89 DEGREES 27 MINUTES 28 SECONDS WESTERLY, A DISTANCE OF 546.34 FEET; THENCE TURNING A LEFT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS SOUTHERLY, A DISTANCE OF 148.95 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS WESTERLY, A DISTANCE OF 92.31 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS NORTHERLY, A DISTANCE OF 258.14 FEET; THENCE TURNING A LEFT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS WESTERLY, A DISTANCE OF 100.34 FEET; THENCE TURNING A RIGHT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS NORTHERLY, A DISTANCE OF 181.10 FEET; THENCE TURNING A LEFT ANGLE TO THE COURSE OF 90 DEGREES 00 MINUTES 00 SECONDS WESTERLY, A DISTANCE OF 381.27 FEET TO THE POINT OF BEGINNING IN COOK COUNTY, ILLINOIS (EXCEPTING FROM THE ABOVE DESCRIBED TRACT THAT PART OF THE LAND DEDICATED FOR PUBLIC STREETS BY DOCUMENTS 21541064 AND 22568065).

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## EXHIBIT B

### Tanglewood Apartments

Mortgage, Security Agreement and Assignment of Leases and Rents (the "Mortgage") dated June 21, 1988, made by National Operating, L.P. ("NOLP") in favor of Heller Financial, Inc. ("Heller"), and recorded on June 22, 1988 in the Office of the Recorder of Cook County, Illinois as document no. 88272918;

which Mortgage was restated in that certain Restatement of Mortgage, Security Agreement and Assignment of Leases and Rents dated October 24, 1988 by and between NOLP and Heller, and recorded on October 24, 1988 in the Office of the Recorder of Cook County, Illinois as No. 88488867;

which Mortgage was modified by that certain Modification Agreement dated February 20, 1992 by and between NOLP and Heller, and recorded on February 21, 1992 in the Office of the Recorder of Cook County, Illinois as no. 92108626;

which Mortgage was further modified by that certain Modification Agreement dated September 30, 1992, by and between NOLP and Heller, and recorded on November 12, 1992 in the Office of the Recorder of Cook County, Illinois as no. 92842383;

which Mortgage was further modified by that certain Second Modification Agreement dated November 24, 1992, by and between Garden Tanglewood L.P. and Heller, and recorded on November 30, 1992 in the Office of the Recorder of Cook County, Illinois as document no. 92894389.

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