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2012034804

PREPARED BY AND WHEN RECORDED,
PLEASE RETURN TO:

H. Daniel Smith
Smith, Gardner, Slusky,
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FIRST AMENDMENT TO CONSTRUCTION LOAN AGREEMENT,
PROMISSORY NOTE AND
DEED OF TRUST, CONSTRUCTION SECURITY AGREEMENT, SECURITY
AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING
STATEMENT

This Agreement is made and entered into this 2nd day of March, 2012, by and between **RAINWOOD TWO, L.L.C.**, a Nebraska limited liability company, 10547 Bondesson Circle, Omaha, NE 68122 (the "Borrower"), and **MUTUAL OF OMAHA BANK**, a federally chartered savings bank, and its successors and/or assigns 3333 Farnam Street, Omaha, Nebraska 68131, Attn: Jim Barrett (the "Lender").

PRELIMINARY STATEMENT

WHEREAS, on the 14th day of April, 2010, the parties made and entered into certain Loan Documents as defined in the Construction Loan Agreement ("**Loan Agreement**"), including but not limited to the Loan Agreement, Promissory Note, and a Deed of Trust, Construction Security Agreement, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement (the "**Mortgage**") recorded April 14, 2010, at Record 2010031416 in the office of the Register of Deeds of Douglas County, Nebraska together with certain other agreements under which Lender was granted a first lien security interest in and to the Mortgaged Property as described in the Mortgage and as also described on the attached and incorporated Exhibit A hereto, the purpose of which was to secure the indebtedness of the Promissory Note, in the original principal amount of Two Million Six Hundred Ninety-Five Thousand One Hundred Twenty and No/100ths Dollars (\$2,695,120.00) (the "**Note**"); and

WHEREAS, the Lender has agreed to consent to the following requested actions (the “**Requested Actions**”): Decrease of the loan amount, extension of the Maturity Date, a change in the Note Rate, a change in the nominal amortization period used for calculation of payments of principal and interest, conversion of payments from interest only to payments of principal and interest, permit certain collateral for this Loan to be additional collateral for another loan, and other matters set forth herein;

NOW THEREFORE, the parties agree:

ARTICLE 1

ACKNOWLEDGMENTS, WARRANTIES AND REPRESENTATIONS

As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, Borrower acknowledges, warrants, represents and agrees to and with Lender as follows:

1.1 **Incorporation of Recitals.** All of the facts set forth in the Preliminary Statement of this Agreement are true and correct and incorporated into this Agreement by reference.

1.2 **Authority of Borrower.** Borrower is a duly organized and validly existing limited liability company in good standing under the laws of the State of Nebraska, and authorized to do business in Nebraska. The execution and delivery of, and performance under, this Agreement by Borrower has been duly and properly authorized pursuant to all requisite company action and will not (i) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Borrower or the Articles of Organization or Operating Agreement or any other organizational document of Borrower or (ii) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which Borrower is a party or by which the Project may be bound or affected.

1.3 **Compliance with Laws.** To Borrower's knowledge, all permits, licenses, franchises or other evidences of authority to use and operate the Project as it is presently being operated and as contemplated by the Loan Documents are current, valid and in full force and effect. Borrower has not received any written notice from any governmental entity claiming that Borrower or the Project is not presently in compliance with any laws, ordinances, rules and regulations bearing upon the use and operation of the Project, including, without limitation, any notice relating to any violations of zoning, building, environmental, fire, health, or other laws, ordinances, rules, codes or regulations.

1.4 **Title to Project and Legal Proceedings; Pledges of Equity in Borrower.** Borrower is the current owner of fee title in the Project. There are no pending or threatened suits, judgments, arbitration proceedings, administrative claims, executions or other legal or equitable actions or proceedings against Borrower or the Project, or any pending or threatened condemnation proceedings or annexation

proceedings affecting the Project, or any agreements to convey any portion of the Project, or any rights thereto to any person, entity, or government body or agency not disclosed in this Agreement. The Project is not encumbered by any mortgage lien other than the lien created by the Loan Documents. The membership interests in Borrower are not encumbered by any mortgage, pledge, security interest or hypothecation.

1.5 **Loan Documents.** The Loan Documents constitute valid and legally binding obligations of Borrower enforceable against Borrower, as limited herein, and the Project in accordance with their terms. Borrower acknowledges and agrees that nothing contained in this Agreement, nor the Requested Actions, shall release or relieve Borrower from its obligations, agreements, duties, liabilities, covenants and undertakings under the Loan Documents arising prior to the date hereof. All provisions of the Loan Documents not expressly modified herein or in other executed agreements between the parties are ratified and confirmed.

1.6 **Bankruptcy.** Borrower has no intent to (i) file any voluntary petition under any Chapter of the Bankruptcy Code, Title 11, U.S.C.A. ("**Bankruptcy Code**"), or in any manner to seek any proceeding for relief, protection, reorganization, liquidation, dissolution or similar relief for debtors ("**Debtor Proceeding**") under any local, state, federal or other insolvency law or laws providing relief for debtors, (ii) directly or indirectly to cause any involuntary petition under any Chapter of the Bankruptcy Code to be filed against Borrower or any partners thereof or (iii) directly or indirectly to cause the Project or any portion or any interest of Borrower in the Project to become the property of any bankrupt estate or the subject of any Debtor Proceeding.

1.7 **No Default.** To Borrower's knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both, could constitute a default or Event of Default under the Loan Documents.

1.8 **Reaffirmation.** Borrower reaffirms and confirms the truth and accuracy of all representations and warranties set forth in the Loan Documents, in all material respects, as if made on the date hereof.

ARTICLE 2

ADDITIONAL PROVISIONS

2.1 **Consent of Lender.** Subject to the terms of this Agreement, Lender hereby consents to the Requested Actions, as follows:

(a) **Amendment to the Note.** The Promissory Note is amended as follows:

- 1) To state that the principal amount of the Promissory Note shall be One Million Six Hundred Eighty-Three Thousand Sixty-Six and Ninety-Eight/100ths Dollars (\$1,683,066.98).

- 2) To change the Note Rate to a fixed rate equal to, per annum, five and seventy five one hundredths percent (5.75%) effective as of May 1, 2012, and which rate shall be the Note Rate up to but not including April 1, 2017. Provided that the Borrower is in compliance with the provisions of this Note and the Loan Agreement, the Note Rate shall, on April 1, 2017, be reset to, per annum, a fixed rate equal to two and seventy-five hundredths percent (2.75%) above the then current 5-year Constant Maturity Treasury Rate, and the Note Rate as reset shall be effective up to and including the Maturity Date as defined below.
- 3) To add the following definition: The 5-year Constant Maturity Treasury Rate shall mean the yield curve rate for the index referenced as set by the U.S. Treasury and published at www.ustreas.gov or equivalent site on the date of the interest rate adjustment. In the event that U.S. Treasury ceases to publish such a rate, then Lender, its assigns or successors, shall establish and choose a substitute rate which is based upon comparable information, in the exercise of its reasonable discretion, without any notice to the Borrower or any person being required. The 5-year Constant Maturity Treasury Rate is a reference rate and does not necessarily represent Lender's best or lowest rate or a favored rate, and Lender disclaims any statement, representation or warranty to the contrary.
- 4) To state that all interest payable hereunder shall be calculated on the basis of a 360 day year, but shall be charged for the actual number of days elapsed, that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under the Note shall be computed using this method. This calculation method results in a higher effective interest rate than any numeric interest rate stated herein. In no event shall the Note Rate, or any other interest rate hereunder ever exceed the maximum rate permitted by applicable law, and such maximum rate shall change if and when applicable law changes to permit a higher maximum rate.
- 5) To state that the Borrower shall pay to the Lender, commencing with May 1, 2012 and continuing on the first day of each succeeding calendar month thereafter up to and including April 1, 2022 (the "Maturity Date"), monthly installments of principal and interest, each in an amount calculated by Lender based upon a 20-year mortgage style amortization of the outstanding Principal Balance of this Note together with interest accrued thereon at the Note Rate, shall be due and payable; and
- 6) To state that the installment payments due from Borrower shall be recalculated by Lender at the time that the Note Rate changes in accordance with the provisions of this Note. Borrower acknowledges that the amount of the payments of principal and interest will change accordingly.

- 7) To extend the "Maturity Date" to April 1, 2022.
- 8) To state that the entire unpaid principal sum of this Note and all interest accrued and unpaid thereon shall be fully and finally due and payable on the Maturity Date. THIS NOTE REQUIRES A BALLOON PAYMENT.

All other provisions of the Promissory Note, including without limitation the Prepayment Fee, are ratified and confirmed hereby and shall remain in full force and effect.

(b) **Amendment to the Loan Agreement.** The Loan Agreement is hereby amended as follows:

- 1) In the "Definitions" section the definition of "Note" is amended to: "The Promissory Note as amended in the maximum principal amount of up to One Million Six Hundred Eighty-Three Thousand Sixty-Six and Ninety-Eight/100ths Dollars (\$1,683,066.98), to evidence the Loan, as the same may be amended, modified or replaced from time to time."
- 2) In the "Definitions" section the definition of "Maturity Date" is amended to April 1, 2022.
- 3) To permit subordinate debt to be secured against the Land only as follows: A deed of trust securing the amount of \$734,887.64, pursuant to a promissory note in such amount from Borrower to the Nebraska Economic Development Corporation and the United States Small Business Administration.

All other provisions of the Loan Agreement are ratified and confirmed hereby and shall remain in full force and effect.

(c) **Amendment to the Mortgage.** The Mortgage is hereby amended as follows:

- 1) All references to the loan amount are amended to One Million Six Hundred Eighty-Three Thousand Sixty-Six and Ninety-Eight/100ths Dollars (\$1,683,066.98).
- 2) All references to "Maturity Date" or references to when the loan matures or is due and payable in full, however stated, are amended to April 1, 2022.
- 3) To permit subordinate debt to be secured against the Mortgaged Property only as follows: A deed of trust securing the amount of \$734,887.64, pursuant to a promissory note in such amount from Borrower to the Nebraska Economic Development Corporation and the United States Small Business Administration, and permitting the deed of trust to be a Permitted Encumbrance.

All other provisions of the Mortgage are ratified and confirmed hereby and shall remain in full force and effect.

2.2 **Extension Agreement.** Lender further acknowledges that certain Loan Extension Agreement dated the ____ day of February, 2012 pursuant to which the Maturity Date was extended to May 1, 2012.

2.3 **No Consent To Other Modifications.** Borrower agrees that this Agreement shall not be deemed an agreement by Lender to consent to any other modification of the Loan Documents, or a consent to any additional financing, secondary financing or secondary encumbrance on the Project, or financing of any kind on any future phases of the Project or any other project.

2.4 **References to Loan Documents.** All references to the term Loan Documents in the Mortgage and the other Loan Documents shall hereinafter be modified to include this Agreement and all documents executed and/or required in connection with the Requested Actions.

2.5 **Filing for Record.** This document may be filed for record in Douglas County, State of Nebraska by Lender.

ARTICLE 3

MISCELLANEOUS PROVISIONS

3.1 **Defined Terms.** All capitalized or defined terms shall have the meaning as set forth in the Loan Agreement unless the context of this Agreement clearly requires otherwise.

3.2 **Borrower's Claims.** Borrower has no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature whatsoever against Lender or any of Lender's predecessors in interest, and any subsidiary or affiliate of Lender and all of the past, present and future officers, directors, contractors, employees, agents, attorneys, representatives, participants, successors and assigns of Lender and Lender's predecessors in interest (collectively, "**Lender Parties**") or with respect to (i) the Loan, (ii) the Loan Documents, or (iii) the Project. To the extent Borrower would be deemed to have any such defenses, setoffs, claims, counterclaims or causes of action as of the date hereof, Borrower knowingly waives and relinquishes them.

3.3 **No Limitation of Remedies.** No right, power or remedy conferred upon or reserved to or by Lender in this Agreement is intended to be exclusive of any other right, power or remedy conferred upon or reserved to or by Lender under this Agreement, the Loan Documents or at law, but each and every remedy shall be cumulative and concurrent, and shall be in addition to each and every other right, power and remedy given under this Agreement, the Loan Documents or now or subsequently existing at law.

3.4 **No Waivers.** Except as otherwise expressly set forth in this Agreement, nothing contained in this Agreement shall constitute a waiver of any rights or remedies of Lender under the Loan Documents or at law. No delay or failure on the part of any party hereto in the exercise of any right or remedy under this Agreement shall operate as a waiver, and no single or partial exercise of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action or forbearance by any party hereto contrary to the provisions of this Agreement shall be construed to constitute a waiver of any of the express provisions. Any party hereto may in writing expressly waive any of such party's rights under this Agreement without invalidating this Agreement.

3.5 **Successors or Assigns.** Whenever any party is named or referred to in this Agreement, the heirs, executors, legal representatives, successors, successors-in-title and assigns of such party shall be included. All covenants and agreements in this Agreement shall bind and inure to the benefit of the heirs, executors, legal representatives, successors, successors-in-title and assigns of the parties, whether so expressed or not.

3.6 **Construction of Agreement.** Each party hereto acknowledges that it has participated in the negotiation of this Agreement and no provision shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Borrower at all times has had access to an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement and has had the opportunity to review and analyze this Agreement for a sufficient period of time prior to execution and delivery. No representations or warranties have been made by or on behalf of Lender, or relied upon by Borrower pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. All prior statements, representations and warranties relating to this Agreement and its subject matter, if any, are totally superseded and merged into this Agreement, subject to the reaffirmations set forth herein, and this Agreement represents the final and sole agreement of the parties with respect to the subject matter. All of the terms of this Agreement were negotiated at arm's length, and this Agreement was prepared and executed without fraud, duress, undue influence or coercion of any kind exerted by any of the parties upon the others. The execution and delivery of this Agreement is the free and voluntary act of Borrower. THIS WRITTEN AGREEMENT TOGETHER WITH THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS OF THE PARTIES.

3.7 **Fees and Costs of Lender.** Borrower agrees to pay all fees and costs incurred by Lender in connection with this Agreement, including, without limitation, reasonable attorney's fees, title premiums, recording costs, escrow fees, mortgage or deed tax, and inspection or survey costs.

3.8 **Invalid Provision to Affect No Others.** If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any related transaction at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. If any clause or provision operates or would prospectively operate to invalidate this Agreement, in whole or in part, then such clause or provision only shall be deemed deleted, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

3.9 **Notices.** Any notice demand, consent, approval, request, or other communication or document required or permitted to be given by a party hereto to another party shall be deemed to have been given when (i) delivered personally (with written confirmation of receipt); (ii) sent by telefacsimile to a fax number as designated in writing by the party to whom the communication is addressed (with written confirmation of receipt), provided that a confirmation copy also is promptly mailed by certified mail, return receipt requested; (iii) received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested); or (iv) received by the addressee, if sent by certified mail, return receipt requested, to the address set forth below:

If to Borrower:	Rainwood Two, L.L.C. 10547 Bondesson Circle Omaha, NE 68122 Attn: Manager
with copy to:	McGill, Gotsdiner, Workman & Lepp 11404 West Dodge Road, Suite 500 Omaha, Nebraska 68154 Attn: Christina Fink
If to Lender:	Mutual of Omaha Bank 3333 Farnam Street Omaha, NE 68131 Attn: Jim Barrett
with copy to:	Smith, Gardner, Slusky, Lazer, Pohren & Rogers, LLP 8712 West Dodge Road Suite 400 Omaha, NE 68114 Attn: H. Daniel Smith

Each party may change its address for notice from time to time by delivering written notice as above provided at least ten (10) days prior to the effective date of such change.

3.10 **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Nebraska.

3.11 **Headings; Exhibits.** The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part of this Agreement and shall not be used to construe, limit or otherwise affect this Agreement.

3.12 **Modifications.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the Party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted. Lender's consent to the Requested Actions shall not be deemed to constitute Lender's consent to any provisions of the organizational documents that would be in violation of the terms and conditions of any of the Loan Documents.

3.13 **Time of Essence; Consents.** Time is of the essence of this Agreement and the Loan Documents. Any provisions for consents or approvals by Lender in this Agreement shall mean that such consents or approvals shall not be effective unless in writing and executed by Lender.

3.1 **Consent of the Guarantor.** Execution of this Agreement, or consent thereto by the Guarantor is not required for this Agreement to be valid and binding among and between the signatory parties.

3.2 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.


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

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

CONSENT OF GUARANTORS

The undersigned Guarantors of the Loan described herein do hereby represent and warrant that all of the facts set forth in the Preliminary Statement of this Agreement are true and correct, and request of the Lender that it agree to the Requested Action, and further consent to the above and foregoing Agreement. This Consent may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same agreement. Any signature page of this Consent may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

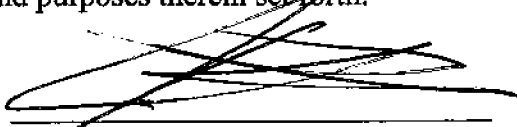
SCOTT ENTERPRISES, INC., a Nebraska corporation

By  Scott Seaton, President of Scott Enterprises, Inc.

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, this 2 day of March, 2012, by Scott Seaton, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the President of Scott Enterprises, Inc., a Nebraska corporation, for and on behalf of said Scott Enterprises, Inc., and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.




Notary Public




Scott Seaton

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, this 2 day of March, 2012, by Scott Seaton, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.





Notary Public

EXHIBIT A
Mortgaged Property

Lot 7, Rainwood Pointe, a subdivision in Douglas County, Nebraska.

BORROWER:

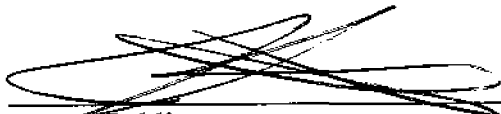
RAINWOOD TWO, L.L.C., a Nebraska limited liability company:

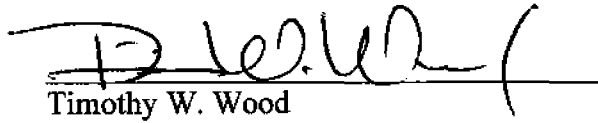
By: 
Scott Seaton, Manager of Rainwood Two, L.L.C.

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 9th day of March, 2012, by Scott Seaton, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the Manager of Rainwood Two, L.L.C., for and on behalf of said Rainwood Two, L.L.C., and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.




Notary Public


Timothy W. Wood

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, this 2 day of March, 2012, by Timothy W. Wood, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.




Notary Public