

DOC # 746271
06/29/2009 04:01PM Deputy: SG
OFFICIAL RECORD
Requested By:
FIRST AMERICAN TITLE REN
Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 16 Fee: 29.00
BK-609 PG-9322 RPTT: 0.00



RECORDING REQUESTED BY:

First American Title

WHEN RECORDED RETURN TO:

First American Title
5310 Kietzke Lane Ste 100
Reno, Nevada 89511

APN: 1319-30-544-001

ORDER #: 2309889

THIRD LOAN AMENDMENT AGREEMENT

Title of Document

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

THIRD LOAN AMENDMENT AGREEMENT

THIS THIRD LOAN AMENDMENT AGREEMENT (this "Agreement") is made and entered into effective as of January ~~14~~ 2009, by and among BANK OF AMERICA, N.A., a national banking association (together with its successors and assigns, "Lender"), BEHRINGER HARVARD LAKE TAHOE, LLC, a Nevada limited liability company ("Borrower"), and BEHRINGER HARVARD STRATEGIC OPPORTUNITY FUND I, LP, a Texas limited partnership ("Strat I"), and BEHRINGER HARVARD STRATEGIC OPPORTUNITY FUND II, LP, a Texas limited partnership ("Strat II"; Strat I and Strat II are sometimes referred to herein, together, as "Guarantors").

RECITALS

A. Lender and Borrower executed that certain Deed of Trust Note dated as of March 2, 2007 (as amended by the Amendments described below, the "Note") pursuant to the terms of which, among other things, Lender agreed to make a land loan (the "Loan") to Borrower in an amount up to \$9,400,000.00.

B. The Note is secured by, among other things, a Deed of Trust, Assignment of Rents and Leases, Security Agreement, Fixture Filing, and Financing Statement, dated March 2, 2007 executed by Borrower and recorded in Book 307, Page 1183 of the Real Property Records of Douglas County, Nevada (as amended by the Amendments described below, the "Deed of Trust").

C. Guarantors guaranteed the repayment of the Loan pursuant to those certain Guaranty Agreements dated as of March 2, 2007 (individually, a "Guaranty" and, together, the "Guaranties").

D. The Note and Deed of Trust were modified pursuant to (i) that certain Extension and Amendment Agreement dated as effective March 2, 2008 (the "First Amendment"), executed by and among Borrower, Guarantor, and Lender, and (ii) that certain Second Extension Agreement dated as effective May 1, 2008 (the "Second Amendment"), executed by and among Borrower, Guarantor, and Lender (the First Extension and the Second Extension are sometimes referred to herein, together, as the "Amendments"), pursuant to which Lender, among other things, agreed to extend the Maturity Date of the Loan to March 1, 2009.

E. Guarantors have requested that Lender agree to modify certain financial covenants in their respective Guaranties. Lender is willing to modify such financial covenants subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the premises, the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed, the parties hereto agree as follows:

1. **DEFINITIONS.** The Note, the Deed of Trust, and all other documents or instruments executed in connection therewith are hereinafter referred to, collectively, as the "Loan Documents". Unless the context otherwise requires or unless otherwise expressly defined



herein, the terms defined in the Deed of Trust and the Note shall have the same meanings whenever used in this Agreement.

2. AMENDMENTS TO NOTE.

(a) Interest Rate. Notwithstanding the provisions in the Note and the other Loan Documents to the contrary, Borrower will no longer have the option to request or require that the Loan accrue interest with respect to the Base Rate or LIBOR Rate. Accordingly,

(i) Section 3.1 of the Note is hereby amended and restated as follows:

The Principal Debt from day to day outstanding which is not past due shall bear interest at a rate per annum equal to the lesser of (i) the maximum non-usurious rate of interest allowed by applicable law or (ii) the applicable LIBOR Daily Rate computed as provided in Section 3.4 hereof; provided, however, that if for any reason on the date for determining the LIBOR Daily Rate, Lender shall determine that any of the circumstances or events described in Sections 3.5 and 3.6 of this Note exist, then Lender shall promptly give to Borrower telephonic notice (confirmed as soon as practicable in writing) of such events or circumstances. After receipt of such notice and during the existence of such events or circumstances, the interest rate applicable to the Principal Debt from day to day outstanding shall be determined based upon an alternate index selected by Lender in its sole discretion (the "Alternative Rate") reasonably comparable to that of the BBA LIBOR Daily Rate, intended to generate a return substantially the same as the LIBOR Daily Rate (based upon the most recently reported or ascertainable BBA LIBOR Daily Rate as determined by Lender).

(ii) Sections 3.2 and 3.3 of the Note are hereby deleted.

(b) Definitions. Commencing on the date of this Agreement, the following capitalized terms shall have the meaning set forth below when used in the Note, and to the extent such capitalized terms are also defined in the Note, such definitions are amended by this Agreement:

"Base Rate" means, on any day, a simple rate per annum equal to the LIBOR Daily Rate.

"Base Rate Principal" means LIBOR Daily Rate Principal.

"BBA LIBOR Daily Rate" means a fluctuating rate of interest per annum equal to the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or other commercially available source providing quotations of BBA LIBOR as selected by Lender from time to time) as determined for each Business Day at approximately 11:00 a.m. London time, two (2) Business Days prior to the date in question, for U.S. dollar deposits (for



delivery on the first day of such interest period) with a one month term, as adjusted from time to time in Lender's sole discretion for reserve requirements, deposit insurance assessment rates and other regulatory costs. If such rate is not available at such time for any reason, then the rate will be determined by such alternate method as reasonably selected by Lender.

"LIBOR Daily Rate" means a simple rate per annum equal to the sum of the BBA LIBOR Daily Rate plus 2.50%.

"LIBOR Daily Rate Principal" means any portion of the Loan which bears interest at a rate determined by reference to the LIBOR Daily Rate.

"LIBOR Rate" means, on any day, a simple rate per annum equal to the LIBOR Daily Rate.

"LIBOR Rate Principal" means LIBOR Daily Rate Principal.

(c) Past Due Rate. Section 3.7 of the Note is hereby amended and restated in its entirety as follows:

If any amount payable by Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), such amount shall thereafter bear interest at the Past Due Rate (as defined below) to the fullest extent permitted by applicable Law. Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable on demand, at a fluctuating rate per annum (the "Past Due Rate") equal to the lesser of (i) the maximum non-usurious rate of interest allowed by applicable law or (ii) four percent (4%) plus the higher of the Prime Rate or the LIBOR Daily Rate.

3. AMENDMENT TO STRAT I GUARANTY. Paragraph (c) of Section 17 of the Guaranty executed by Strat I is hereby amended and restated in its entirety as follows:

(c) Guarantor covenants and agrees with Lender as follows:

(i) Guarantor will maintain, as of each Test Date during the term of the Loan, Liquid Assets of at least \$1,300,000.00;

(ii) Guarantor will maintain, as of each Test Date during the term of the Loan, a Net Worth of not less than \$19,500,000.00; and

(iii) As of each Test Date during the term of the Loan, the ratio (expressed as a percentage) of all Liabilities of Guarantor to all Assets of Guarantor shall not be greater than seventy-five percent (75%).

4. AMENDMENT TO STRAT II GUARANTY. Paragraph (c) of Section 17 of the Guaranty executed by Strat II is hereby amended and restated in its entirety as follows:



(c) Guarantor covenants and agrees with Lender as follows:

(i) Guarantor will maintain, as of each Test Date during the term of the Loan, Liquid Assets of at least \$700,000.00;

(ii) Guarantor will maintain, as of each Test Date during the term of the Loan, a Net Worth of not less than \$10,500,000.00; and

(iii) As of each Test Date during the term of the Loan, the ratio (expressed as a percentage) of all Liabilities of Guarantor to all Assets of Guarantor shall not be greater than seventy-five percent (75%).

5. **AMENDMENT TO EACH GUARANTY.** Paragraph (d) of Section 17 of each of the Guaranties is hereby amended and restated in its entirety as follows:

(d) For purposes of this Section 17, the following capitalized terms have the meanings set forth below:

"Assets" means, with respect to any Person and without duplication, (1) all real property, together with all buildings and improvements located on such real property, owned in whole or in part by such Person, (2) all fixtures, personal property and equipment owned by such Person, and (3) all Liquid Assets of such Person; provided, however, that (i) the value of real property wholly owned by such Person shall be determined based upon the fair value of such real property, as set forth in a Current Appraisal of such real property, (ii) the value of real property owned, in part, by such Person shall be determined based upon the fair value of such real property, as set forth in a Current Appraisal of such real property, *multiplied by* such Person's partial ownership interest (expressed as a percentage of the total ownership interests in such real property), and (iii) the value of Equity Investments in another Person shall be the fair value of such Equity Investment (based upon a Current Appraisal of such Equity Investment or, alternatively, if no Current Appraisal of such Equity Investment is available, then based upon the fair value, without duplication and as set forth in a Current Appraisal, of all real property owned indirectly through such Equity Investment, *multiplied by* such Person's percentage ownership interest (expressed as a percentage of the Equity Interests owned in such other Person to the total Equity Interests issued by such other Person). Guarantor covenants and agrees with Lender that, for purposes of determining the value of the real property Assets of Guarantor, Guarantor shall obtain and deliver to Lender Current Appraisals with respect to all real property owned by Guarantor, directly or indirectly and in whole or in part, once every twelve (12) months; provided, however, that if as of any Test Date, Guarantor has failed to deliver to Lender a Current Appraisal for any such real property, then the value of such real property shall be determined by Lender in its sole discretion based upon Lender's assessment of relevant information readily available to Lender regarding such real property.



"Attributable Indebtedness" means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

"Current Appraisal" means, as to any real property or Equity Investment owned by a Person, an "as is" appraisal (or update to a prior "as is" appraisal) of such real property or Equity Investment, as applicable, prepared by CB Richard Ellis, Integra Realty Resources, Inc., Cushman & Wakefield Inc., or any other nationally recognized appraisal firm acceptable to Lender, in form and content reasonably satisfactory to Lender, and bearing a date no more than twelve (12) months prior to the applicable Test Date.

"Equity Interests" means, with respect to any Person and without duplication, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Equity Investment" means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of capital stock or other securities of another Person, and (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees any Liabilities of such other Person.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.



"Guarantee" means, as to any Person and without duplication, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Liabilities or other obligation payable or performable by another Person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Liabilities or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Liabilities or other obligation of the payment or performance of such Liabilities or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Liabilities or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Liabilities or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Liabilities or other obligation of any other Person, whether or not such Liabilities or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Liabilities to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

"Liabilities" means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements, repurchase agreements or other similar instruments;
- (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers' acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Transaction;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business [and, in each case, not past due for more than 60 days]);
- (e) all indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned (directly or indirectly or in whole or



in part) or being purchased by such Person (in the nature of indebtedness arising under conditional sales or other title retention agreements and indebtedness secured by a Lien on such property), whether or not such Person is personally liable for the repayment of such indebtedness or such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) capital leases and Synthetic Lease Obligations;

(g) all refundable advances, deposits or similar funds representing advance payment to such Person for good or services not yet rendered;

(h) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and

(i) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, (1) the Liabilities of any Person shall include the Liabilities of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Liabilities are expressly made non-recourse to such Person, (2) the amount of any net obligation under any Swap Transaction on any date shall be deemed to be the Swap Termination Value thereof as of such date, (3) the amount of any capital lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date, (4) the term "Liabilities" shall exclude the Permitted Subordinated Debt, and (5) the Liabilities for indebtedness of such Person pursuant to clause (e) above shall, as to indebtedness secured by a Lien on real property owned, in part, by such Person, be determined based upon the unpaid amount of such indebtedness *multiplied by* such Person's partial ownership interest (expressed as a percentage of the total ownership interests in such real property).

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).



"Liquid Assets" means the sum of the total assets of Guarantor that are cash, cash equivalents, accounts and other highly liquid investments that are not pledged, hypothecated, subject to rights of offset (other than pursuant to customary banker's liens with respect to deposit or similar accounts not maintained for the purpose of providing security) or otherwise restricted.

"Net Worth" shall mean the excess of total assets over total liabilities (contingent or otherwise, including without limitation, declared and unpaid distributions to partners of Guarantor) determined in accordance with GAAP (without giving effect to FASB 133 or any liability pursuant to a hedging arrangement which is entered into to reduce or eliminate or otherwise protect against the risk of fluctuations in prices or rates, including interest rates, foreign exchange rates, commodity prices and securities prices).

"Permitted Subordinated Debt" means unsecured indebtedness for borrowed money owing by Guarantor to Behringer Harvard Holdings, LLC. Guarantor hereby covenants and agrees with Lender that Guarantor shall not incur any indebtedness for borrowed money from any Affiliate unless such indebtedness (i) is subordinate, by its terms, or caused to be made subordinate by agreement approved by Lender, to the payment in full of the Loan, and (ii) is not due and payable, in whole or in part, prior to the maturity date of the Loan.

"Swap Termination Value" means, in respect of any one or more Swap Transactions, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Transactions, (a) for any date on or after the date such Swap Transactions have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Transactions, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Transactions (subject to the reasonable approval of Lender).

"Swap Transaction" means, with respect to any Person, any agreement, whether or not in writing, relating to any transaction that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swap option currency option or any other, similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and, unless the context otherwise clearly requires, any form of master agreement published by the International Swaps and Derivatives Association, Inc., or any other master agreement, entered into by such Person, together with any related schedules, as amended, supplemented, superseded or replaced from time to time, relating to or governing any or all of the foregoing.



"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Test Date" shall mean, the last date of each calendar quarter (i.e., every December 31st, March 31st, June 30th and September 30th) during the term of the Loan.

6. **WAIVER AND AGREEMENT.** To the extent that Guarantors fail to satisfy the financial covenants in Section 17 of the Guaranty for the calendar quarters ending on September 30, 2008 and December 31, 2008, Lender hereby waives compliance by Guarantors of such financial covenants for such calendar quarters. For purposes of determining the value of each Guarantor's Assets, Guarantors will obtain, within 90 days after the date of this Agreement, Current Appraisals (as defined above) for all real property which is owned, in whole or in part, by Guarantors.

7. **RELEASE OF CLAIMS.** In consideration of, among other things, the accommodations which Lender has agreed to extend for the benefit of Borrower and Guarantors pursuant to this Agreement, each of Borrower and Guarantors hereby forever waives, releases and discharges any and all claims (including, without limitation, cross-claims, counterclaims, rights of setoff and recoupment), causes of action, demands, suits, costs, expenses and damages that they now have or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether now existing or hereafter arising, whether arising at law or in equity (collectively, the "Claims"), against Lender and its subsidiaries, affiliates, successors, assigns, officers, directors, employees, agents, attorneys and other representatives (collectively, the "Released Parties"), based in whole or in part on facts, whether or not known, existing on or prior to the date of this Agreement. The acceptance by Borrower and Guarantors of the accommodations and other consideration provided by Lender as set forth in this Agreement, shall constitute a ratification, adoption and confirmation by Borrower and Guarantors of the foregoing general release of all Claims against each Released Party which is based in whole or in part on facts, whether or not now known or unknown, existing on or prior to the date of receipt of any such proceeds or other financial accommodations. The provisions of this Section 7 shall survive the termination of the Loan Documents.

8. **MODIFICATION FEE.** Simultaneously with the execution of this Agreement, Borrower shall pay to Lender the sum of \$23,500 ("Modification Fee"), representing the fee payable by Borrower to Lender in connection with the modification of the Loan. Borrower acknowledges and agrees that the Modification Fee is a bona fide fee and is intended as reasonable compensation to Lender for agreeing to modify the Loan Documents.

8. **REPRESENTATIONS.** Borrower and Guarantors each hereby severally represents and warrants to Lender that (a) to the best of such party's knowledge, the execution and delivery of this Agreement does not contravene, result in a breach of or constitute a default



under any deed of trust, loan agreement, indenture or other contract or agreement to which it/he is a party or by which it or any of its properties may be bound; (b) this Agreement constitutes the legal, valid and binding obligation of such party enforceable in accordance with its terms, subject to the limitations of equitable principles and bankruptcy, insolvency, debtor relief or other similar laws affecting generally the enforcement of creditors' rights; (c) the execution and delivery of, and performance under this Agreement is within such party's power and authority without the joinder or consent of any other party and has been duly authorized by all requisite action and are not in contravention of law or the provisions of any organizational documents governing such party or of any indenture, agreement or undertaking to which Borrower or Guarantors, as applicable, is a party or by which it is bound; and (d) upon the execution of this Agreement, no Default or Event of Default shall exist under any Loan Document.

9. **RATIFICATION.** The parties to this Agreement agree that the terms and provisions of this Agreement shall modify and supersede all inconsistent terms and provisions of the Note and the other Loan Documents and, except as expressly modified and superseded by this Agreement, the terms and provisions of the Note and the other Loan Documents are ratified and confirmed and shall continue in full force and effect. The liens, security interests, collateral assignments and financing statements in respect of the Loan are hereby ratified and confirmed as valid, subsisting and continuing to secure the Loan Documents. Nothing herein shall in any manner diminish, impair or extinguish the Note or any of the other duties, liabilities and obligations of Borrower under the Loan Documents. Borrower hereby ratifies and acknowledges that the Loan Documents are valid, subsisting and enforceable against Borrower and Borrower agrees and warrants to Lender that there are no offsets, claims or defenses with respect to any of the duties, liabilities and obligations of Borrower under the Loan Documents.

10. **CONSENT AND RATIFICATION.** Each Guarantor hereby severally, unconditionally and irrevocably acknowledges and agrees that the Guaranty executed by such Guarantor and such Guarantor's obligations, covenants, agreements and duties thereunder remain in full force and effect in accordance with its terms, notwithstanding the modifications effected hereby. Each Guarantor hereby severally, unconditionally and irrevocably ratifies, reaffirms and confirms the Guaranty executed by it and its obligations thereunder.

11. **RELEASE OF USURY CLAIMS.** Borrower and Guarantors each hereby releases Lender and its successors and assigns, from all claims, demands, liabilities, rights of offsets, defenses and causes of action which Borrower and/or Guarantors may be entitled to assert (although no such claims are known to exist) against Lender in respect of the Loan, the Note and the other Loan Documents for any reason whatsoever, including without limitation, by reason of Lender's contracting, charging or receiving for the use, forbearance or detention of money, interest on the Loan prior to the execution of this Agreement in excess of that permitted to be charged to Borrower or Guarantors under applicable law.

12. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart.



13. **BINDING EFFECT.** The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto, their representatives, successors and assigns.

14. **HEADINGS.** The Section headings in this Agreement are inserted for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any provision hereof.

15. **APPLICABLE LAW.** This Agreement shall be construed in accordance with the laws of the State of Texas and the laws of the United States applicable to transactions in the State of Texas.

16. **PRIOR UNDERSTANDINGS.** This Agreement sets forth the entire understanding of the parties relating to the subject matter hereof, and supersedes all prior understandings and agreements, written or oral.

THE WRITTEN 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 BETWEEN THE PARTIES.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

LENDER:

BANK OF AMERICA, N.A., a national banking association

By: _____
Name: Jamison L. Fox
Title: Senior Vice President

STATE OF TEXAS

COUNTY OF DALLAS

§
§
§

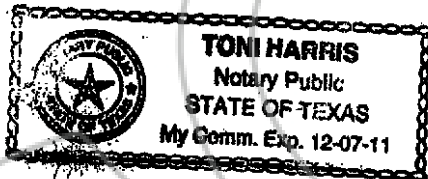
This instrument was acknowledged before me on this 14th day of January, 2009, by Jamison L. Fox, Senior Vice President of Bank of America, N.A., a national banking association, on behalf of said association.

[SEAL]

My Commission Expires:

12-7-11

Toni Harris
Printed Name of Notary: Toni Harris



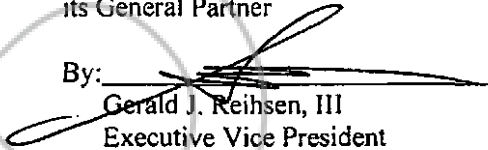
BORROWER:

BEHRINGER HARVARD LAKE TAHOE, LLC,
a Nevada limited liability company

By: Behringer Harvard Strategic Opportunity Fund I LP,
a Texas limited partnership, its Manager

By: Behringer Harvard Strategic Advisors I LP, a
Texas limited partnership, its General Partner

By: Harvard Property Trust, LLC, a
Delaware limited liability company,
its General Partner

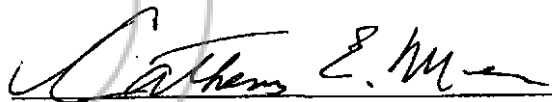
By: 
Gerald J. Reihsen, III
Executive Vice President

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on January 13 2009, by Gerald J. Reihsen, III, Executive Vice President of Harvard Property Trust, LLC, a Delaware limited liability company, general partner of Behringer Harvard Strategic Advisors I LP, a Texas limited partnership, general partner of Behringer Harvard Strategic Opportunity Fund I LP, a Texas limited partnership, manager of Behringer Harvard Lake Tahoe, LLC, a Nevada limited liability company, on behalf of said companies and limited partnerships.

(SEAL)




Notary Public, State of Texas

Notary's name (Printed):
Catherine E. Mea

Notary's commission expires:
7/28/2012

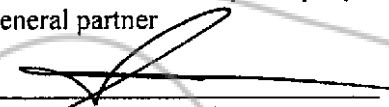


GUARANTOR:

BEHRINGER HARVARD STRATEGIC OPPORTUNITY
FUND I, LP, a Texas limited partnership

By: Behringer Harvard Strategic Advisors I LP, a Texas
limited partnership, its general partner

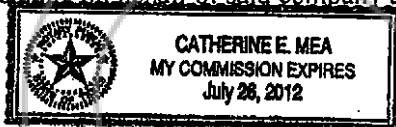
By: Harvard Property Trust, LLC,
Delaware limited liability company,
its general partner

By: 
Gerald J. Reihsen, III,
Executive Vice President

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

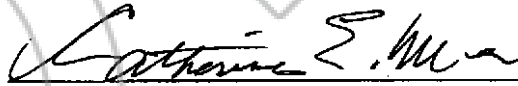
This instrument was acknowledged before me on January 13, 2009, by Gerald J. Reihsen, III, Executive Vice President of Harvard Property Trust, LLC, a Delaware limited liability company, general partner of Behringer Harvard Strategic Advisors I LP, a Texas limited partnership, general partner of Behringer Harvard Strategic Opportunity Fund I, LP, a Texas limited partnership, on behalf of said company and limited partnerships.

[SEAL]



My Commission Expires:

7/28/2012


Printed Name of Notary
Catherine E. Mea

THIRD LOAN AMENDMENT AGREEMENT - Signature Page



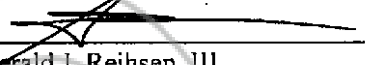
BK-609
PG-9336

GUARANTOR:

BEHRINGER HARVARD STRATEGIC OPPORTUNITY
FUND II, LP, a Texas limited partnership

By: Behringer Harvard Strategic Advisors II LP, a
Texas limited partnership, its general partner

By: Harvard Property Trust, LLC,
a Delaware limited liability company,
its general partner

By: 
Gerald J. Reihsen, III
Executive Vice President

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

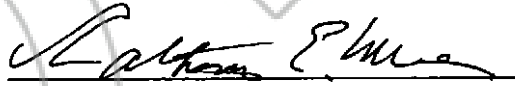
This instrument was acknowledged before me on this 13th day of January, 2009, by Gerald J. Reihsen, III, Executive Vice President of Harvard Property Trust, LLC, a Delaware limited liability company, general partner of Behringer Harvard Strategic Advisors II LP, a Texas limited partnership, general partner of Behringer Harvard Strategic Opportunity Fund II, LP, a Texas limited partnership, on behalf of said company and limited partnerships.

[SEAL]



My Commission Expires:

7/26/2012


Printed Name of Notary
Catherine E. Mea

THIRD LOAN AMENDMENT AGREEMENT - Signature Page



BK-609
PG-9337

746271 Page: 16 of 16 06/29/2009