

DOC # 746273
06/29/2009 04:02PM Deputy: SG
OFFICIAL RECORD
Requested By:
FIRST AMERICAN TITLE REN
Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 9 Fee: 22.00
BK-609 PG-9347 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

FIFTH 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)

FIFTH LOAN AMENDMENT AGREEMENT

THIS FIFTH LOAN AMENDMENT AGREEMENT (this "Agreement") is made and entered into effective as of May 2, 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, (ii) that certain Second Extension Agreement dated as effective May 1, 2008 (the "Second Amendment"), executed by and among Borrower, Guarantor, and Lender, (iii) that certain Third Loan Amendment Agreement dated effective as of January 14, 2009 (the "Third Amendment"), executed by and among Borrower, Guarantor and Lender, and (iv) that certain Fourth Loan Amendment Agreement dated effective as of March 2, 2009 (the "Fourth Amendment"), executed by and among Borrower, Guarantor and Lender (the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment are sometimes referred to herein, together, as the "Amendments").

E. Pursuant to the Amendments, the Maturity Date of the Loan is May 2, 2009 and Borrower and Guarantors have requested that Lender agree to further extend the Maturity Date of the Loan. Lender is willing to further extend the Maturity Date of the Loan, 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. **EXTENSION OF MATURITY DATE.** Hereinafter, the term "Maturity Date" and all other references to the maturity date of the Loan, in the Note, the Deed of Trust, and the other Loan Documents shall mean June 2, 2009. The unpaid principal balance of the Loan, together with all accrued but unpaid interest thereon, shall be due and payable on the Maturity Date, as extended hereby. Borrower hereby renews, but does not extinguish, the Note and the liens, security interests and assignments created and evidenced by the Deed of Trust and the other Loan Documents, and all of the Loan Documents are hereby renewed and modified by extending the maturity date thereof as set forth above.

3. **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 3 shall survive the termination of the Loan Documents.

4. **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

FIFTH LOAN AMENDMENT AGREEMENT- Page 2

5520787v.2



746273 Page: 3 of 9 06/29/2009

BK-609
PG-9349

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.

5. **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.

6. **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.

7. **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.

8. **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.

9. **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.



10. **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.

11. **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.

12. **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: Brett Bell, SVP
Name: Brett Bell
Title: Senior Vice President

STATE OF TEXAS

§
§
§

COUNTY OF DALLAS

This instrument was acknowledged before me on this 2nd day of ~~May~~ ^{June}, 2009, by Brett Bell, Senior Vice President of Bank of America, N.A., a national banking association, on behalf of said association.



[SE]

My Commission Expires:

August 11, 2012

Brenda Cooke
Printed Name of Notary:
Brenda Cooke



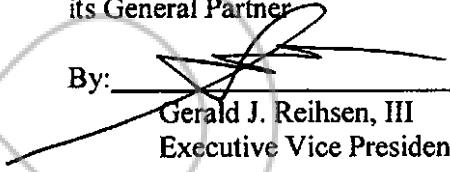
BORROWER:

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

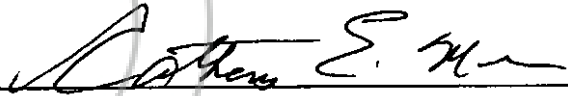
By: 
Gerald J. Reihsen, III
Executive Vice President

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on ^{June} ~~May~~ 7, 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

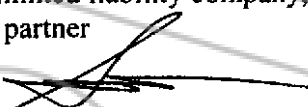
Notary's commission expires:
7/28/2012

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 May ^{June} 1, 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



Printed Name of Notary


Catherine E. Mea

FIFTH LOAN AMENDMENT AGREEMENT - Signature Page

5520787v.2



BK-609
PG-9354


746273 Page: 8 of 9 06/29/2009

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 15th day of May, 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

176612012


Printed Name of Notary
Catherine E. Mea

FIFTH LOAN AMENDMENT AGREEMENT - Signature Page

5520787v.2



BK-609
PG-9355

746273 Page: 9 of 9 06/29/2009