



THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:

Schwartz, Cooper, Greenberger & Krauss  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601  
Attn: Dennis R. Ainger



PT-3526  
2062

EIGHTH MODIFICATION OF LOAN DOCUMENTS

**THIS EIGHTH MODIFICATION OF LOAN DOCUMENTS** (this "Agreement") is made as of the 31<sup>st</sup> day of October, 2002, by and among **WESTGATE VALLEY, L.L.C.**, an Illinois limited liability company ("Borrower"), having its principal place of business at 1904 Wright Boulevard, Schaumburg, Illinois 60193; and **RBC MORTGAGE COMPANY**, an Illinois corporation, its successors and assigns, formally known as and successor in interest of Prism Mortgage Company ("Lender"), having its principal place of business at 11011 Richmond Avenue, Suite 850, Houston, Texas 77042.

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**RECITALS:**

TICOR TITLE INSURANCE

A. Lender has heretofore made a certain Construction Revolving Line of Credit Loan ("RLC Loan") to Borrower in the principal amount of Twelve Million and 00/100ths Dollars (\$12,000,000.00) pursuant to the terms and conditions of a Loan Agreement dated as of July 20, 2001 between Borrower and Lender, (as amended from time to time, the "Loan Agreement", all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by a Note dated as of July 20, 2001, in the principal amount of the Loan made payable by Borrower to the order of Lender (collectively, "Note").

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement and Fixture Financing Statement with Assignment of Leases and Rents dated July 20, 2001 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on September 7, 2001, as Document No. 10830783 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A thereto ("Original Property"), (ii) that certain Indemnity Agreement dated July 20, 2001, from Borrower to Lender (the "Indemnity Agreement"); and (iii) certain other loan documents (the Note, the Mortgage, the Indemnity Agreement, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

C. The Loan is further secured by a Guaranty dated July 20, 2001 from Kenneth S. Struck ("Struck"), Kenar, L.L.C. ("Kenar"), and Frederick W. Clarke, Jr ("Clark") to Lender (the "Guaranty").

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D. Pursuant to that certain First Modification of Loan Documents dated as of February 19, 2002, in the office of the Cook County Recorder of Deeds ("First Amendment"), the parties amended the legal description of the Property to include additional real estate such that the lien of the Mortgage shall encumber the all of the real estate described on Exhibit C of the First Amendment, and pursuant to that certain Second Modification of Loan Documents dated as of February 21, 2002, and pursuant to that certain Third Modification of Loan Documents dated as of March 7, 2002, and pursuant to that certain Fourth Modification of Loan Documents dated as of April 12, 2002, and pursuant to that certain Fifth Modification of Loan Documents, and pursuant to that certain Sixth Modification of Loan Documents dated as of June 24, 2002, and pursuant to that certain Seventh Modification of Loan Documents dated as of August 15, 2002, the parties modified the description of the Property to include such additional real property described therein (the original Property described in the Mortgage, as amended by the various amendments thereto from time to time, is hereinafter referred to as the "Amended Property").

E. Borrower desires to amend the Loan Documents in order to amend the legal description of the Property to include additional real estate described on the attached Exhibit A (the "Additional Property") (together with the Amended Property, the "Property").

F. Clarke has died, and such death constitutes an event of default pursuant to the Loan Documents ("Existing Event of Default"). Pursuant to that certain letter dated October 21, 2002, from RBC Builder Finance to Struck, Lender has agreed to forebear from exercising its remedies until November 21, 2002 (the "Forbearance Agreement").

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Amendment of Loan Documents.** The Loan Documents are amended as follows:

(a) The legal description of the Land as set forth in the Loan Agreement is hereby amended to include the Additional Property.

(b) The legal description of the Premises as set forth as Exhibit A to the Mortgage is hereby amended to include the Additional Property.

(c) Any reference to the "Land," "Property," "Premises," "Real Property" or other legal description describing the Property in the Loan Documents shall be deemed a reference to the Property as amended by this Amendment.

2. **Representations and Warranties of Borrower.** Except for the Existing Event of Default, Borrower hereby represents, covenants and warrants to Lender as follows:

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(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) There is currently no Event of Default (as defined in the Mortgage) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

3. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Patriot Real Estate Title Services, Inc. to issue an endorsement to Lender's title insurance policy No. PT 2929 (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage encumbering the Property, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

4. **No Release or Waiver.** Nothing herein shall be construed or interpreted to release any Guarantor, or such Guarantor's successors or assigns, from any of such Guarantor's obligations under the Guaranty, nor shall any provision herein to be deemed a waiver or modification of the Forbearance Agreement.

5. **Expenses.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and reasonable attorneys' fees and expenses.

6. **Miscellaneous.**

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(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

*[The remainder of this page is left blank intentionally.]*

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


**LENDER:**

**RBC MORTGAGE COMPANY,**  
an Illinois corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_, Vice President

**BORROWER:**

**WESTGATE VALLEY, L.L.C.,**  
an Illinois limited liability company

By:   
Kenneth S. Struck, Member

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STATE OF TEXAS            )  
  ).ss  
COUNTY OF \_\_\_\_\_ )

I \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_, Vice President of **RBC Mortgage Company**, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of October, 2002.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

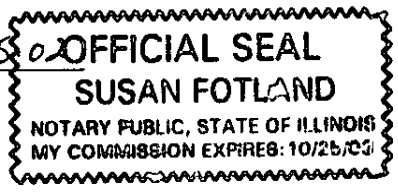
STATE OF ILLINOIS        )  
  ).ss  
COUNTY OF COOK        )

I Susan Fotland, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kenneth S. Struck, member of **Westgate Valley, L.L.C.**, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 31 day of October, 2002.

Susan Fotland  
Notary Public

My Commission Expires: 10-25-02



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

**LENDER:**

**RBC MORTGAGE COMPANY,**  
an Illinois corporation

By: *Cherie Kimberling*  
Name: CHERIE KIMBERLING Vice President

**BORROWER:**

**WESTGATE VALLEY, L.L.C.,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Kenneth S. Struck, Member

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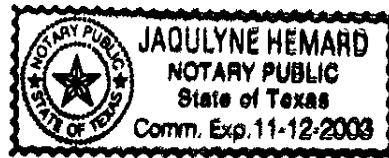
STATE OF TEXAS )  
 ) .ss  
COUNTY OF Harris )

I Jaquelyne Hemard, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that C. Kimberling, Vice President of **RBC Mortgage Company**, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 30<sup>ST</sup> day of October, 2002.

Jaquelyne Hemard  
Notary Public

My Commission Expires: 11/12/03



STATE OF ILLINOIS )  
 ) .ss  
COUNTY OF COOK )

I \_\_\_\_\_, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Kenneth S. Struck, member of **Westgate Valley, L.L.C.**, is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of October, 2002.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



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PARCEL 1:

BUILDING 34:

THAT PART OF LOT 9 IN FOREST RIDGE AT WESTGATE VALLEY UNIT II, BEING A SUBDIVISION OF PART OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE SOUTH LINE OF GREENLEAF TRAIL (LOT 10 IN AFORESAID FOREST RIDGE AT WESTGATE VALLEY UNIT II) AND THE EAST LINE OF FOREST RIDGE DRIVE (LOT 6 IN FOREST RIDGE AT WESTGATE VALLEY, BEING A SUBDIVISION OF PART OF THE AFORESAID WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 32) AND RUNNING THENCE SOUTH 42 DEGREES 06 MINUTES 40 SECONDS EAST, ALONG SAID EAST LINE OF FOREST RIDGE DRIVE, 85.89 FEET, TO THE SOUTH LINE OF SAID LOT 9; THENCE NORTH 76 DEGREES 07 MINUTES 05 SECONDS EAST, ALONG SAID SOUTH LINE, 240.93 FEET; THENCE SOUTH 86 DEGREES 34 MINUTES 29 SECONDS EAST, ALONG SAID SOUTH LINE, 284.35 FEET; THENCE NORTH 81 DEGREES 57 MINUTES 32 SECONDS EAST, 46.70 FEET, TO THE POINT OF BEGINNING; THENCE NORTH 00 DEGREES 01 MINUTES 01 SECONDS EAST, 107.84 FEET, TO A POINT ON THE AFORESAID SOUTH LINE OF GREENLEAF TRAIL (LOT 10 IN AFORESAID FOREST RIDGE AT WESTGATE VALLEY UNIT II); THENCE SOUTH 89 DEGREES 58 MINUTES 59 SECONDS EAST, ALONG SAID SOUTH LINE, 115.95 FEET, TO A POINT ON THE WEST LINE OF TIMBER COURT (LOT 10 IN AFORESAID FOREST RIDGE AT WESTGATE VALLEY UNIT II); THENCE SOUTH 00 DEGREES 01 MINUTES 01 SECONDS WEST, ALONG SAID WEST LINE, 107.84 FEET; THENCE NORTH 89 DEGREES 58 MINUTES 59 SECONDS WEST, 115.95 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PARCEL 2:

BUILDING 43:

THAT PART OF LOT 2 IN FOREST RIDGE AT WESTGATE VALLEY, BEING A SUBDIVISION OF PART OF THE WEST 1/2 OF THE SOUTHWEST 1/4 OF SECTION 32, TOWNSHIP 37 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 2 AND RUNNING THENCE NORTH 86 DEGREES 57 MINUTES 59 SECONDS WEST, ALONG THE NORTH LINE OF LOT 2, A DISTANCE OF 367.90 FEET; THENCE NORTH 13 DEGREES 57 MINUTES 22 SECONDS EAST, ALONG SAID NORTH LINE, 196.43 FEET; THENCE NORTH 76 DEGREES 02 MINUTES 38 SECONDS WEST, ALONG SAID NORTH LINE 96.69 FEET; THENCE NORTH 43 DEGREES 26 MINUTES 32 SECONDS WEST, ALONG SAID NORTH LINE, 114.97 FEET; THENCE SOUTH 46 DEGREES 33 MINUTES 28 SECONDS WEST, ALONG SAID NORTH LINE, 176.99 FEET; THENCE NORTH 71 DEGREES 14 MINUTES 38 SECONDS WEST, ALONG SAID NORTH LINE, 33.71 FEET, TO THE POINT OF BEGINNING; THENCE SOUTH 04 DEGREES 21 MINUTES 47 SECONDS WEST, 111.64 FEET, TO A POINT ON AN EASTERLY LINE OF FOREST RIDGE DRIVE, (LOT 6 OF AFORESAID FOREST RIDGE AT WESTGATE VALLEY); THENCE NORTH 85 DEGREES 38 MINUTES 13 SECONDS WEST, ALONG THE EASTERLY LINE OF SAID FOREST RIDGE DRIVE, 48.46 FEET, TO A POINT OF

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CURVE; THENCE NORTHWESTERLY, ALONG SAID EAST LINE, ALONG A CURVE WHOSE CENTER LIES NORTHEASTERLY AND HAS A RADIUS OF 70.00 FEET, 104.63 FEET, ARC, (CHORD BEARING NORTH 42 DEGREES 49 MINUTES 03 SECONDS WEST, 95.16 FEET, CHORD), TO A POINT OF TANGENCY; THENCE NORTH 00 DEGREES 00 MINUTES 08 SECONDS WEST, ALONG SAID EAST LINE, 127.24 FEET, TO THE NORTHWEST CORNER OF AFORESAID LOT 2; THENCE SOUTH 89 DEGREES 59 MINUTES 52 SECONDS EAST, ALONG THE NORTH LINE OF SAID LOT 2, A DISTANCE OF 94.25 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 08 SECONDS WEST, ALONG SAID NORTH LINE, 18.22 FEET; THENCE SOUTH 06 DEGREES 10 MINUTES 07 SECONDS EAST, ALONG SAID NORTH LINE, 64.66 FEET; THENCE SOUTH 71 DEGREES 14 MINUTES 38 SECONDS EAST, ALONG SAID NORTH LINE, 21.43 FEET, MORE OR LESS, TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

PERMANENT INDEX NUMBERS:           24-32-300-015  
  24-32-300-016

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