



Doc#: 0612933066 Fee: \$40.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 05/09/2006 08:59 AM Pg: 1 of 9

THIS INSTRUMENT PREPARED
BY AND AFTER RECORDING,
RETURN TO:

William J. Mitchell
Meltzer Purtil & Stelle LLC
300 South Wacker Drive, Suite 3500
Chicago, IL 60606

CTSC
8317453

Permanent Real Estate Tax Index Nos.:
See Exhibit A attached hereto

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FIRST MODIFICATION OF LOAN DOCUMENTS

THIS FIRST MODIFICATION OF LOAN DOCUMENTS ("Agreement") is made as of the 26th day of April, 2006, by and among MONTALBANO BUILDERS, INC., an Illinois corporation ("MBI"), and MONTALBANO HOMES OF ARIZONA, INC., an Illinois corporation and MONTALBANO BUILDERS OF ARIZONA, INC., an Illinois corporation (collectively, "Borrower Parties", Borrower Parties and MPI are collectively referred to as "Borrower"), ANTHONY P. MONTALBANO, individually ("Guarantor"), and RBC CENTURA BANK, a North Carolina banking corporation ("Lender").

Montal

RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the original principal amount of not more than Thirty Five Million and No/100 Dollars (\$35,000,000.00) outstanding at any one time pursuant to the terms and conditions of a Master Revolving Line of Credit Loan Agreement dated as of November 7, 2005 between Borrower, Borrower Parties and Lender ("Loan Agreement"), (all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement), and as evidenced by (i) a certain Promissory Note (Master Revolving Line of Credit) ("RLC Note") dated as of November 7, 2005, payable to the order of Lender in the original principal amount of not more than \$35,000,000.00 and (ii) a certain Note (Letter of Credit Note) ("LOC Note") dated as of November 7, 2005, payable to the order of Lender in the original principal amount of not more than \$10,500,000.00 (collectively, RLC Note and LOC Note, together with all extensions, renewals or modifications thereof, being hereinafter referred to as the "Note").

B. The Note is secured by, among other things, (i) that certain Mortgage, Security Agreement and Fixture Financing Statement with Assignment of Leases and Rents dated November 7, 2005 from Borrower to Lender recorded with the Cook County Recorder of Deeds, Illinois on December 8, 2005 as Document No. 0534204006 ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Indemnity Agreement dated November 7, 2005 from Borrower and Guarantor to Lender ("Indemnity Agreement"); and (iii) certain other loan documents (the Note, the Mortgage, the Guaranty (as defined below), the Indemnity Agreement, the other documents evidencing, securing

BOX 333-CT

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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 November 7, 2005 from Guarantor to Lender ("**Guaranty**").

D. Borrower has now requested that Lender amend the Loan Documents to, among other things, extend the Maturity Date of the Loan from April 26, 2006 to June 30, 2006.

E. Lender has agreed to amend the Loan Documents upon the terms, and subject to the conditions, contained herein. Borrower has agreed to execute and deliver to Lender this Amendment and such other documents and instruments as shall be reasonably required by Lender.

AGREEMENTS:

ACCORDINGLY, in consideration of (i) the agreements by Lender to modify the Loan Documents, as provided herein, (ii) the covenants and agreements contained herein, and (iii) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** The Recitals set forth above are incorporated by this reference and shall be and constitute a part of this Agreement.
2. **Capitalized Terms.** The capitalized terms used herein without definition shall have the same meaning herein as such terms have in the Loan Agreement.
3. **Confirmation.** Borrower hereby confirms and certifies to Lender that each representation and warranty contained in the Loan Agreement, as amended by this Agreement, is true, complete and correct in all respects as of the date hereof.
4. **Maturity Date.** The Maturity Date is hereby extended from April 26, 2006, to June 30, 2006. Any reference in the Loan Agreement, the Note, the Mortgage or any of the other Loan Documents to the Maturity Date shall mean and refer to June 30, 2006.
5. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:
 - (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.

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(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.

6. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor knows of no default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

7. **Additional Requirements.** The obligations of Lender hereunder shall be subject to Borrower and others having delivered, or having caused to be delivered, to Lender, the following items, all of which shall be in form and substance acceptable to Lender:

- (a) This Agreement, executed by all parties (other than Lender); and
- (b) Such other documents as Lender may reasonably require.

8. **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 attorneys' fees and expenses.

9. **Miscellaneous.**

(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

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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.

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

[Remainder of page intentionally left blank]

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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 CENTURA BANK, a North Carolina banking corporation

By: _____
Name: _____
Title: _____

BORROWER:

MONTALBANO BUILDERS, INC., an Illinois corporation

By: Anthony Montalbano
Anthony Montalbano, its President

MONTALBANO HOMES OF ARIZONA, INC., an Illinois corporation

By: Anthony Montalbano
Anthony Montalbano, its President

MONTALBANO BUILDERS OF ARIZONA, INC., an Illinois corporation

By: Anthony Montalbano
Anthony Montalbano, its President

GUARANTOR:

Anthony Montalbano
Anthony Montalbano

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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 CENTURA BANK, a North Carolina banking corporation

By: Donna Keller
Name: Donna Keller
Title: Vice President

BORROWER:

MONTALBANO BUILDERS, INC., an Illinois corporation

By: _____
Anthony Montalbano, its President

MONTALBANO HOMES OF ARIZONA, INC., an Illinois corporation

By: _____
Anthony Montalbano, its President

MONTALBANO BUILDERS OF ARIZONA, INC., an Illinois corporation

By: _____
Anthony Montalbano, its President

GUARANTOR:

Anthony Montalbano

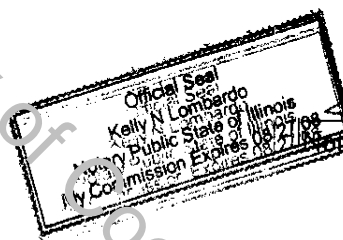
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STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Anthony Montalbano, the President of **MONTALBANO HOMES, INC.**, personally known to me to be the same person whose name is subscribed to the foregoing Amendment, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, on behalf of said Company and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this ___ day of April, 2006.



[Handwritten Signature]

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that _____, the _____ of **RBC CENTURA BANK**, a North Carolina banking corporation, personally known to me to be the same person whose name is subscribed to the foregoing Amendment, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument, on behalf of said Bank and as his/her free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this ___ day of April, 2006.

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STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Anthony Montalbano, the President of **MONTALBANO HOMES, INC.**, personally known to me to be the same person whose name is subscribed to the foregoing Amendment, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument, on behalf of said Company and as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this ___ day of April, 2006.

Notary Public

STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, the undersigned, a notary public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Donna Kelly, the Vice President of **RBC CENTURA BANK**, a North Carolina banking corporation, personally known to me to be the same person whose name is subscribed to the foregoing Amendment, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered the said instrument on behalf of said Bank and as his/her free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and seal, this ___ day of April, 2006.



Irene A. Schulte

Notary Public

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EXHIBIT A

Legal Description

LOTS 40, 43 THROUGH 46, BOTH INCLUSIVE, 49 THROUGH 52 BOTH INCLUSIVE, 70 THROUGH 74, BOTH INCLUSIVE, 76, 77, 79, 80, 104, 122 THROUGH 139, BOTH INCLUSIVE, 153 THROUGH 178, BOTH INCLUSIVE, 199 THROUGH 212 BOTH INCLUSIVE, 254 THROUGH 259 BOTH INCLUSIVE, 265 THROUGH 274 BOTH INCLUSIVE AND LOTS 241 THROUGH 246 IN THE POINTE, BEING A SUBDIVISION OF PART OF THE SOUTHEAST QUARTER OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 4, 2005 AS DOCUMENT 0509444003, IN COOK COUNTY, ILLINOIS.

pin# 31-19-000-004 affects underlying land

Vacant lots south west corner of Lincoln Hwy
(U.S. Route 30) & Ridgeland Ave., Matteson