

# UNOFFICIAL COPY



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Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 12/15/2006 11:28 AM Pg: 1 of 9

Recording Requested By:

Chicago Title Insurance Company

When recorded Mail To:  
DUANE MORRIS LLP  
227 West Monroe Street  
Suite 3400  
Chicago, Illinois 60606  
Attention: Daniel Kohn, Esq.

MERCURY TITLE COMPANY, L.L.C.

2057622 APPEAR SBAG 11/10/06

## FIRST AMENDMENT TO LOAN DOCUMENTS

**THIS FIRST AMENDMENT TO CONSTRUCTION LOAN AGREEMENT** (this "Amendment") dated as of November 27, 2006, by and among **CLYBOURN BUILDING COMPANY II LLC**, an Illinois limited liability company ("Clybourn"), **ESTATE HOMES OF WELLINGTON PARK ON GEORGE ST. LLC**, an Illinois limited liability company ("Estate Homes"), **STUART ROSE ("Rose"**; Clybourn, Estate Homes and Rose are sometimes collectively referred to as the "**Borrowers**") and **NEW CENTURY BANK**, an Illinois banking corporation (the "**Lender**").

### WITNESSETH:

**WHEREAS**, Borrowers executed and delivered to Lender a Revolving Mortgage Note dated August 26, 2004, payable to Lender in the maximum stated principal amount of Six Million Seven Hundred Fifty Thousand and No/100 Dollars (\$6,750,000.00) (the "**Note**"), reflecting a loan in the original maximum principal amount of Six Million Seven Hundred Fifty Thousand and No/100 Dollars (\$6,750,000.00) (the "**Loan**"), pursuant to which Note Borrowers promise to pay such principal sum thereof (or so much thereof as may be outstanding at the Maturity Date (as such term is defined in the Note), or such earlier date as the Note may be accelerated in accordance with the terms of the Loan Agreement (as hereinafter defined), together with interest on the balance of principal from time to time outstanding and unpaid thereon at the rates and at the times specified in the Note.

**WHEREAS**, the Note has been issued under and subject to the provisions of that certain Construction Loan Agreement dated as of August 26, 2004, by and between Borrowers and Lender (as the same has and may be amended, restated, modified and/or supplemented from time to time, including the First Amendment to Construction Loan Agreement of even date herewith between Borrowers and Lender, the "**Loan Agreement**").

M.G.R. TITLE

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**WHEREAS**, the Loan and Borrowers' obligations thereunder are secured by, among other things, that (i) certain Environmental Indemnity Agreement dated August 26, 2004, from Borrowers in favor of Lender, as amended from time to time, (ii) that certain Construction Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Financing Statement dated August 26, 2004, from Clybourn and Estate Homes in favor of Lender, recorded with the Cook County Recorder of Deeds on August 27, 2004, as Document No. 0424041052, (iii) that certain Security Agreement dated as of August 26, 2004, from Borrowers in favor of Lender, (iv) that certain Collateral Assignment of Sales Contracts dated as of August 26, 2004, from Borrowers in favor of Lender, and (v) that certain Security Agreement and Assignment of Contractual Agreements Affecting Real Estate dated August 26, 2004, from Borrowers in favor of Lender (collectively, as such documents have been or may be modified, amended or replaced from time to time, the "**Loan Documents**").

**WHEREAS**, Borrowers have requested, among other things, that Lender (a) amend and restate the Note to (i) eliminate all provisions authorizing reborrowing thereunder, (ii) modify the maximum stated principal amount of the Note to Four Million One Hundred Fifty-Eight Thousand Three Hundred Forty-One and No/100 Dollars (\$4,158,341.00), and (iii) extend the Maturity Date of the Note to February 26, 2008, and (b) amend the Loan Agreement to reflect the aforesaid modifications to the Note.

**WHEREAS**, Lender has agreed to so modify the Note and the Loan Agreement as aforesaid provided, among other things, that Borrowers execute this Amendment whereby the Loan Documents are modified to reflect that (a) the Note is no longer a revolving Note, (b) the maximum stated principal amount of the Note has been so modified, and (c) to reflect the extension of the Maturity Date of the Note.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises of the parties, and for other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. **Recitals**. The foregoing recitals are hereby incorporated by this reference into this Amendment.
2. **Elimination of Right to Reborrow**. Borrowers and Lender acknowledge and agree that the Loan has been modified to eliminate any and all rights to reborrow funds under the Loan, and that the Note (as defined in the Loan Agreement) is no longer a revolving note. As such, any and all rights to reborrow funds under the Loan contained in the Loan Documents, and any references in the Loan Documents to the Loan being a revolving loan are hereby deleted in their entirety.
3. **Modification of Loan Amount**. Borrowers and Lender agree that the maximum principal amount under the Loan and Note has been modified to be Four Million One Hundred Fifty-Eight Thousand Three Hundred Forty-One and No/100 Dollars (\$4,158,341.00). As such, any and all references contained in the Loan Documents to the amount of "Six Million Seven Hundred Fifty Thousand and No/100 Dollars (\$6,750,000.00)" are hereby deleted and replaced with the amount of "Four Million One Hundred Fifty-Eight Thousand Three Hundred Forty-One and No/100 Dollars (\$4,158,341.00)."

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4. **Extension of Maturity Date.** Borrowers and Lender agree that the Maturity Date of the Note has been extended to February 26, 2008. As such, any and all references in the Loan Documents to the Maturity Date are hereby revised to refer to the date "February 26, 2008." Borrowers and Lender agree that notwithstanding anything to the contrary contained in the Loan Documents, Borrowers shall have no right to extend the Maturity Date of the Note.

5. Nothing herein contained shall impair the Loan Documents in any way, nor alter, waive, annul, vary nor affect any provision, condition or covenant therein contained except as expressly herein provided nor affect or impair any right, power or remedy of Lender, it being the intention of the parties hereto that the terms and provisions of the Loan Documents shall continue in full force and effect except as expressly modified in connection herewith.

6. This Amendment shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

7. No extension, change, modification or amendment of any kind or nature whatsoever, to or of this Amendment shall be made or claimed by Borrowers, and no notice of any extension, change, modification or amendment, made or claimed by Borrowers shall have any force or effect whatsoever unless the same shall be reduced to writing and signed by the parties.

8. This Amendment may be executed in one or more counterpart signature pages, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(signature page follows)

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IN WITNESS WHEREOF, the undersigned have caused these presents to be signed as of the day and year first above written.

**CLYBOURN BUILDING COMPANY II LLC,**  
an Illinois limited liability company

By: Stuart Rose  
Name: Stuart R. Rose  
Its: Manager

**ESTATE HOMES OF WELLINGTON PARK  
ON GEORGE ST. LLC,**  
an Illinois limited liability company

By: Stuart Rose  
Name: Stuart R. Rose  
Its: Manager

Stuart Rose  
**STUART R. ROSE**

**NEW CENTURY BANK,** an Illinois banking  
corporation

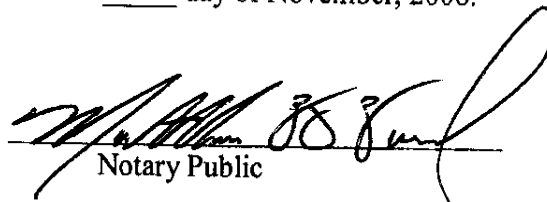
By: James M. Dwyer  
Name: James M. Dwyer  
Title: Assistant Vice President

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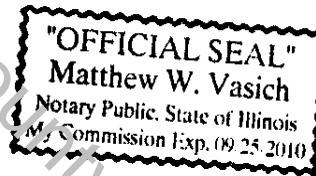
STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, MATTHEW W. VASICH a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Stuart R. Rose, personally known to me to be the Manager of **CLYBOURN BUILDING COMPANY II LLC**, an Illinois limited liability company, is 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 the said instrument as his free and voluntary act as Manager of such limited liability company as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of November, 2006.

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

My commission expires: 9/25/10

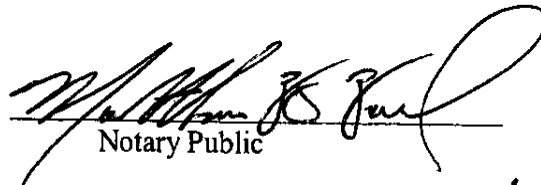


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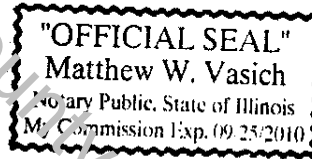
STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, MATTHEW W. VASICH a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Stuart R. Rose, personally known to me to be the Manager of **ESTATE HOMES OF WELLINGTON PARK ON GEORGE ST. LLC**, an Illinois limited liability company, is 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 the said instrument as his free and voluntary act as Manager of such limited liability company as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of November, 2006.

  
Notary Public

My commission expires: 9/25/10

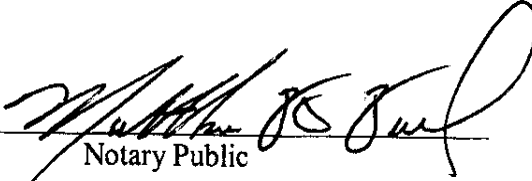


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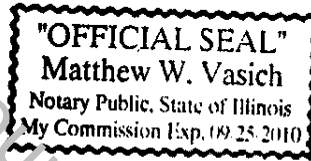
STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF COOK     )

I, MATTHEW W. VASICH a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **STUART R. ROSE** is 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 the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27<sup>th</sup> day of November, 2006.

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

My commission expires: 9/25/10



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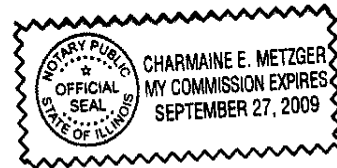
STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF IL     )

I, Charmaine E. Metzger a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that James McDonald, personally known to me to be the Assistant Vice President of **NEW CENTURY BANK**, an Illinois banking corporation, is 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 the said instrument as his/her free and voluntary act as \_\_\_\_\_ on of such Illinois banking corporation as aforesaid, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28<sup>th</sup> day of November, 2006.

Charmaine E. Metzger  
Notary Public

My commission expires: \_\_\_\_\_





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## EXHIBIT A

Real Property

### PARCEL 1:

LOT 11 (EXCEPT THE EAST 1.67 FEET THEREOF) AND LOT 18 (EXCEPT THE WEST 0.33 FEET THEREOF) IN RESUBDIVISION OF LOTS 8, 9, 10, 11, 12 AND PARTS OF PRIVATE STREETS IN WELLINGTON PARK SUBDIVISION, BEING A SUBDIVISION OF PART OF THE EAST 1/2 OF THE NORTHEAST 1/4 OF SECTION 30, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 5, 2000 AS DOCUMENT 00954797.

### PARCEL 2:

NON-EXCLUSIVE EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, EASEMENTS AND PARTY WALL RIGHTS FOR WELLINGTON PARK HOMEOWNERS' ASSOCIATION DATED DECEMBER 5, 2000 AND RECORDED DECEMBER 11, 2000 AS DOCUMENT 00970524, SAID EASEMENTS INCLUDING EASEMENTS OF ACCESS, EMERGENCY EXITWAY EASEMENT AND USE AND ENJOYMENT OF THE COMMON AREA AS SET FORTH IN EXHIBIT B OF AFORESAID DECLARATION.

### PARCEL 3:

LOTS 17, 18, 19, 20 AND 21 IN BLOCK 7 IN FULLERTON'S 2ND ADDITION TO CHICAGO, BEING A SUBDIVISION OF THAT PART OF THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 400 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING EAST OF THE CHICAGO AND NORTHWESTERN RAILROAD, AND THAT PART LYING WEST OF SAID RAILWAY AND EAST OF CLYBOURN AVENUE, IN COOK COUNTY, ILLINOIS

14-30-400-065-0000 (17, 18 & 19 of Parcel 3)  
 14-30-400-020-0000 (21 of Parcel 3)  
 14-30-400-019-0000 (20 of Parcel 3)  
 14-30-223-071-0000 (~~Lot 11~~ Lot 11 (except  
 1.67' etc) of Parcel 1)  
 14-30-223-078-000 (Lot 18 (except west .33 etc) of Parcel 1)