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Doc#: 0712233053 Fee: \$44.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 05/02/2007 10:33 AM Pg: 1 of 11

Property of Cook County Clerk's Office

LOAN MODIFICATION AGREEMENT

THIS LOAN MODIFICATION AGREEMENT (this "Agreement") is made as of this 20th day of April, 2007 by and among E & R DEVELOPERS, LLC, an Illinois limited liability company with an address at 4911 S. Washington Park Court, Chicago, Illinois 60615 ("Mortgagor" and "Borrower") and HERITAGE COMMUNITY BANK, an Illinois banking corporation with an address at 18301 S. Halsted, Glenwood, Illinois 60425 ("Lender" and "Mortgagee").

RECITALS:

A. Lender is the owner and holder of two Loan Notes (the "Notes"), both dated February 25, 2005, one the Adjustable Rate Term Note, the other the Adjustable Rate Revolving Credit Note. The original principal amount of the Adjustable Rate Term note is Six Hundred Seventy Five Thousand and 00/100 Dollars (\$675,000.00), and the original principal amount of the Adjustable Rate Revolving Credit Note is Seven Hundred Twenty Five Thousand and 00/100 Dollars (\$725,000.00), for a total of One Million Four Hundred Thousand and 00/100 Dollars (\$ 1,400,000.00) made by Borrower to Lender.

B. The Notes were amended by the Loan Modification Agreement dated June 14, 2006, consolidating the Notes into one Note and increasing the Loan amount to Two Million Six Hundred Thirty Five Thousand Five Hundred and 00/100 Dollars (\$2,635,500.00).

C. The Notes are secured, among other things, by the following described documents, as well as additional documents (collectively referred to as the "Security Documents"):

PREPARED BY AND WHEN
RECORDED RETURN TO:

Property Address(es): 4954-4958 S. King Drive, and
352 E. 50th Street, Chicago, IL

BOX 333-CT1

HK9

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Alexander R. Domanskis
Boodell & Domanskis, LLC
205 N. Michigan Avenue, Suite 4307
Chicago, IL 60601

Tax Numbers: 20-10-117-021-0000

1. Loan Agreement, dated as of February 25, 2005, in the principal amount of One Million Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00), by and among Borrower and Lender;
2. Mortgage and Security Agreement (the "Mortgage"), dated as of February 25, 2005 made by Borrower as Mortgagor in favor of Lender as Mortgagee, recorded in Cook County, Illinois Recorder's Office (the "Recorder's Office") on March 4, 2005 as document no. 0506333028, encumbering certain real estate (the "Property") in the City of Chicago, County of Cook, State of Illinois, which is legally described in Exhibit A which is attached hereto and incorporated herein by reference, and more fully described in the Mortgage;
3. Assignment of Leases and Rents, dated as of February 25, 2005, made by Borrower in favor of Lender, and recorded in the Recorder's office on March 4, 2005 as document no. 0506333029;
4. Loan Modification Agreement, dated as of June 14, 2006, by and among Borrower and Lender, converting the Adjustable Rate Revolving Credit Note to a Variable Rate Note and the principal amount increased to Two Million Six Hundred Thirty Five Thousand Five Hundred and 00/100 Dollars (\$2,635,500.00);
5. Modification of Mortgage and Security Agreement, dated as of June 14, 2006, made by Borrower as Mortgagor in favor of Lender as Mortgagee, recorded in the Recorder's Office on July 10, 2006 as document no. 0619133079, encumbering the Property;
6. Collateral Assignment of Agreements Affecting Real Estate, dated as of February 25, 2005, made by Borrower in Favor of Lender;
7. Borrower's Assignment of Real Estate Brokers' Agreement and Subordination of Brokerage Fees, dated as of February 25, 2005, made by Borrower in favor of Lender;
8. Borrower's Assignment of Architect's Agreement, Plans, Drawings and Specifications, dates as of February 25, 2005, made by Borrower in favor of Lender;
9. Borrower's Assignment of Contractor's Agreement, Plans, Drawings and Specifications, dates as of February 25, 2005, made by Borrower in favor of Lender;
10. Environmental Indemnification Agreement, dated as of February 25, 2005, made by Indemnitors in favor of Indemnitee;

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11. General Guaranty Agreement (“Guaranty”), dated as of February 25, 2005 and executed by Earle Esdelle, Albert Russell, and Byron Braizer (individually “Guarantor” and collectively “Guarantors”);

12. Completion Guaranty Agreement, dated as of February 25, 2005, made by Borrowers, as Guarantors, in favor of Lender; and

13. Various other Loan Documents.

D. The Note and the Security Documents are herein together sometimes called the “Loan Documents.”

E. The Loan evidenced and secured by the Note and the Loan Documents is herein sometimes called the “Loan.”

F. The current outstanding principal balance of the Note is Two Million Six Hundred Two Thousand Nine Hundred Seventy One and 63/100 Dollars (\$2,602,971.63).

G. Borrower and Lender desire to modify the terms of the Loan Documents, upon the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Recitals. The foregoing recitals are hereby incorporated into and made a part of this Agreement.

2. Change in Principal Loan Amount. Notwithstanding anything to the contrary contained in the Note or in the Security Documents as amended, the Note and Mortgage are hereby modified and amended:

a) The Variable Rate Note in the original principal amount of Two Million Six Hundred Thirty Five Thousand Five Hundred and 00/100 Dollars (\$2,635,500.00) will be increased to Three Million Eighty Thousand Five Hundred and 00/100 Dollars (\$3,080,500.00).

3. Interest Rate. Interest shall accrue on the outstanding principal under this Agreement at the rate (“Applicable Interest Rate”), which is the HERITAGE COMMUNITY BANK Base Rate plus 2.00% with a Floor of 6.50%. Adjustments to the Applicable Interest Rate in connection with changes in the HERITAGE COMMUNITY BANK Base Rate shall adjust immediately, except that the initial Base Rate shall be determined by Lender two business days before the date of this Agreement. The Base Rate is determined by Lender based upon its judgment of the appropriate prime rate for its customers. If the Base Rate ceases to be a viable index, the index used to determine the Prime Rate for this loan will be the Prime Rate reported in the Money Rates section of the Wall Street Journal.

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4. Change in Maturity Date: Notwithstanding anything to the contrary contained in the Note or in the Security Documents as amended, the Note and Mortgage are hereby modified and amended, extending the Maturity Date of this Loan to August 25, 2007.

5. Release Price. In consideration for the agreement of Lender provided in the foregoing paragraph 2 of this Agreement, Borrower agrees to pay to Lender a Release Price (the "Release Price") in the amount of Six Thousand and 00/100 Dollars (\$6,000.00) per unit upon the sale of each Unit, which Release price shall be in addition to all other amounts due and payable under the terms of the Loan Documents, it being understood and agreed that Lender shall have no obligation to release any of the Loan Documents until all payments of the Release Price are made in full.

6. Expenses. Concurrently with the execution of this Agreement by Borrower, and as a condition to the effectiveness of this Agreement, Borrower shall reimburse Lender for all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by Lender in connection with this Agreement and shall pay all title, recording and filing charges.

7. Confirmation of Obligations.

(a) All references in the Security Documents to the Notes shall be deemed to be a reference to the Notes, as modified and amended by this Agreement.

(b) Borrower hereby confirms and reaffirms (i) all of its obligations under the Loan Documents, as modified and amended by this Agreement; (ii) that the Security Documents, as modified and amended by this Agreement, secure the Note, as modified and amended by this Agreement; and (iii) that the Loan Documents, as modified and amended by this Agreement, are and shall remain in full force and effect.

8. Certifications, Representations and Warranties. In order to induce Lender to enter into this Agreement, Borrower hereby certifies, represents and warrants to Lender that all certifications, representations and warranties contained in the Loan Documents and in all certificates heretofore delivered to Lender are true and correct as of the date hereof, and all such certifications, representations and warranties are hereby remade and made to speak as of the date of this Agreement.

9. Additional Certifications, Representations and Warranties. In addition to the certifications, representations and warranties set forth in the Loan Documents, Borrower hereby certifies, represents and warrants to Lender as follows:

(a) Borrower has full right, power and authority to enter into and execute and deliver this Agreement and to otherwise perform and consummate the transactions contemplated by this Agreement.

(b) The execution, delivery and performance of the terms of this Agreement by Borrower has been duly authorized and approved by the members of Borrowers.

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(c) This Agreement has been duly executed and delivered by Borrower, and constitutes the valid and legally binding obligation of Borrower, enforceable in accordance with its terms.

(d) The execution and delivery of this Agreement and compliance with the provisions of this Agreement do not and will not conflict with or constitute a breach or violation of or default under any agreement or other instrument to which Borrower is a party, or by which Borrower is bound, or any existing law, administrative regulation, court order or consent decree to which Borrower is subject.

(e) There is no litigation or administrative proceeding pending or threatened to restrain or enjoin the transactions contemplated by this Agreement or questioning the validity hereof, or in any way contesting the powers of Borrower, or in which an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement.

(f) Borrower is in full compliance with all of the terms and conditions of this Agreement and of the Loan Documents, as modified and amended by this Agreement, and no event of default has occurred and is continuing with respect thereto, and no event has occurred and is continuing that, with the lapse of time or the giving of notice or both would constitute such an event of default; and Borrower does hereby release and waive any and all (i) defenses to payment of obligations under the Loan Documents, as modified and amended by this Agreement; and (ii) claims or causes of action which Borrower may have against Lender or its agents.

(g) Borrower does not now have or hold any defense to the performance of any of its obligations under the Loan Documents, as modified and amended by this Agreement, and does not have any claim against Lender which might be set off or credited against any payments due under the Loan Documents, as modified and amended by this Agreement.

(h) There are no actions at law, suits in equity or proceedings, pending or threatened, before any court, governmental agency, commission, bureau or tribunal, or any arbitration proceedings, involving Borrower that, if adversely determined, would materially affect the present condition, financial or otherwise, of Borrower.

(i) There are no pending or threatened bankruptcy or like proceedings against or involving Borrower under the Bankruptcy Code of the United States or any chapter thereof or any like statute, state or federal.

10. Reaffirmation of General Guaranty and Completion Guaranty. The Guarantors of the General Guaranty and the Completion Guaranty ("Guaranty Agreements"), EARLE ESDALLE, ALBERT RUSSELL, and BYRON BRAZIER hereby reaffirm each and every obligation for payment and performance set forth in the General Guaranty and Completion Guaranty, and hereby acknowledge and agree that Guarantors remain unconditionally, absolutely and irrevocably liable for all the obligations specified in the Guaranty Agreements and all new obligations as amended by this Agreement and the Modification Of Mortgage and Security Agreement.

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11. Not a Novation. Borrower and Lender expressly state, declare and acknowledge that this Agreement is intended only to modify Borrower's continuing obligations under the Loan Documents in the manner set forth herein, and is not intended as a novation.

12. Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns.

13. Construction.

(a) The words "hereof", "herein", and "hereunder", and other words of similar import refer to this Agreement as a whole and not to the individual sections in which such terms are used.

(b) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(c) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

14. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Illinois and the applicable laws of the United States of America.

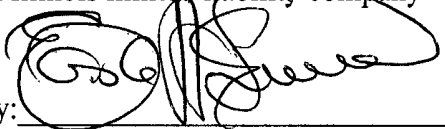
SIGNATURES FOLLOW ON NEXT PAGE

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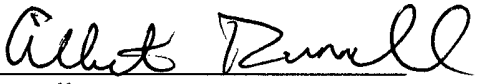
IN WITNESS WHEREOF, the Borrower has executed this Agreement the day and year first above written, the execution hereof by the Borrower constituting a certification by the Manager executing on its behalf that the representations and warranties made are true and correct as of the date hereof and that the Managers are the duly appointed Managers.

BORROWER:

E & R DEVELOPERS, LLC,
an Illinois limited liability company

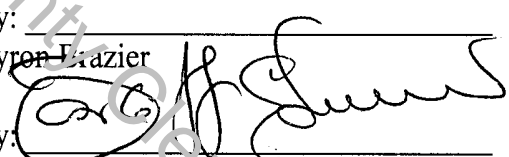
By: 

Earle Esdelle,
Manager

By: 

Albert Russell,
Manager

**GUARANTORS Join in this agreement
solely in respect to Paragraph 9.
Reaffirmation of Guaranty Agreements:**

By: 

Byron Frazier

By: 

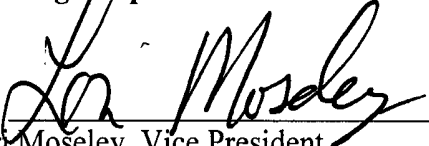
Earle Esdelle

By: 

Albert Russell

LENDER:

**Heritage Community Bank, an Illinois
Banking Corporation**

By: 

Lori Moseley, Vice President

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STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

I, Rhonda B. Anderson Notary Public in and for the County and State aforesaid, do hereby certify that Earle Esdelle who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, the Manager E & R Developers, LLC, an Illinois limited liability company ("Company"), appeared before me in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of the Company for the uses and purposes therein set forth.

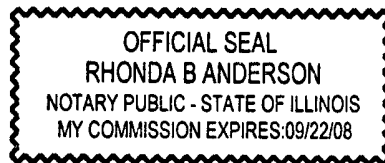
Given under my hand and Notary Seal this 20th day of April, 2007.

Rhonda B. Anderson

Notary Public

My Commission Expires:

09-22-08



STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

I, Rhonda B. Anderson a Notary Public in and for the County and State aforesaid, do hereby certify that Albert Russell who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, the Manager E & R Developers, LLC, an Illinois limited liability company ("Company"), appeared before me in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of the Company for the uses and purposes therein set forth.

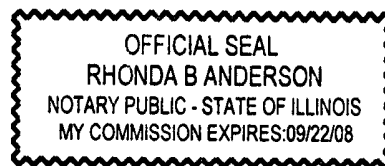
Given under my hand and Notary Seal this 20th day of April, 2007.

Rhonda B. Anderson

Notary Public

My Commission Expires:

09-22-08



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STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that Byron Brazier who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, a Guarantor, appeared before me in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of the Company for the uses and purposes therein set forth.

Given under my hand and Notary Seal this 20th day of April, 2007.

Notary Public

My Commission Expires: _____

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

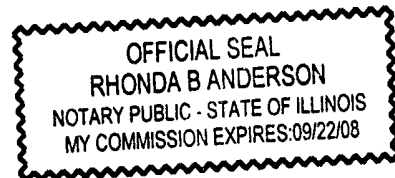
I, Rhonda B. Anderson, a Notary Public in and for the County and State aforesaid, do hereby certify that Albert Russell who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, a Guarantor appeared before me in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of the Company for the uses and purposes therein set forth.

Given under my hand and Notary Seal this 20th day of April, 2007.

Rhonda B. Anderson
Notary Public

My Commission Expires: 09-22-08

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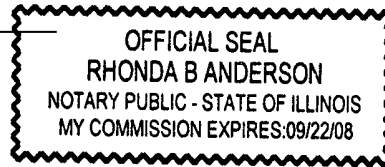
STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

I, Rhonda B. Anderson a Notary Public in and for the County and State aforesaid, do hereby certify that Earle Esdelle who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, a Guarantor, appeared before me in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and as the free and voluntary act of the Company for the uses and purposes therein set forth.

Given under my hand and Notary Seal this 20th day of April, 2007.

Rhonda B. Anderson
Notary Public

My Commission Expires: 09.22.08

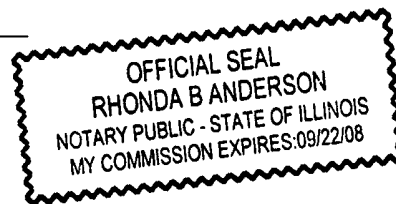


STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

On this 20th day of April, 2007, before me personally came Lori Moseley, to me known, who, being by me duly sworn, did depose and say he/she is the Vice President of Heritage Community Bank, the corporation described in and which executed the foregoing instrument; and that she signed her name thereto by order of the board of directors of said corporation.

Rhonda B. Anderson
Notary Public

My Commission Expires: 09.22.08



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EXHIBIT A

LEGAL DESCRIPTION

LOT 6 AND THE SOUTH ½ OF LOT 5 IN BLOCK 1 IN HARDIN'S SUBDIVISION OF THE SOUTH ½ OF THE NORTH ½ OF THE SOUTH ¼ OF THE NORTHWEST ¼ OF SECTION 10, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Property of Cook County Clerk's Office