

# UNOFFICIAL COPY

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Cook County Recorder

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**SECOND MODIFICATION OF  
CONSTRUCTION AND  
PERMANENT LOAN  
AGREEMENT,  
INSTALLMENT NOTE,  
CONSTRUCTION AND  
PERMANENT  
MORTGAGE,  
ASSIGNMENT OF  
LEASES,  
RENTS AND INCOME,  
FIXTURE FINANCING  
STATEMENT  
AND SECURITY AGREEMENT, AND  
RELATED LOAN DOCUMENTS**

KL 76-70-840 DI

*LSJ*

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This Second Modification of Construction and Permanent Loan Agreement, Installment Note, Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement, and Related Loan Documents (hereinafter referred to as this "Agreement") is made as of September 24, 2002, by and among North Star Trust Company, as Successor Trustee to Banco Popular North America, not personally but solely as Trustee under Trust Agreement dated December 15, 1997 and known as Trust Number 26577 ("Trustee"), THE HOME OF THE CHILD/CUIDAR a/k/a EL HOGAR DEL NINO, an Illinois corporation ("Home of the Child")(Trustee and Home of the Child being hereinafter collectively referred to as "Borrowers"), and BANCO POPULAR NORTH AMERICA (hereinafter referred to as "Lender").

BOX 333-CTJ

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## WITNESSETH:

WHEREAS, Borrowers and Lender have previously entered into a certain Construction and Permanent Loan Agreement dated March 18, 1998, (hereinafter referred to as the "Loan Agreement"); and

WHEREAS, pursuant to the Loan Agreement (i) Borrower executed and delivered to Lender a certain Installment Note dated March 18, 1998 payable to the order of Lender in the principal amount of Nine Hundred Sixty Six Thousand Three Hundred Thirty Four and No/100 Dollars (\$966,334.00), (hereinafter referred to as the "Existing Note"); and

WHEREAS, the Existing Note is secured, inter alia, by (i) that certain Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement dated March 18, 1998, made by Trustee, as mortgagor, to Lender, as mortgagee, recorded in the Office of the Recorder of Deeds of Cook County, Illinois on March 19, 1998 as Document No. 98217181 (hereinafter referred to as the "Mortgage") and encumbering the property (hereinafter referred to as the "Construction Property") commonly known as 1631, 1708, 1710, and 1712 South Loomis, Chicago, Illinois and legally described on Exhibit A to the Mortgage, (ii) that certain Collateral Assignment and Security Agreement as to Beneficial Interest in Land Trust, Personal Property and Intangibles (hereinafter referred to as the "ABI") executed by Home of the Child and granting to Lender a first lien security interest in the Beneficial Interest in the Banco Popular North America Land Trust 26577; (iii) that certain Collateral Assignment of Construction Contract, Architect's Agreement, Plans, Specifications, Tests, and Permits (the "Contract Assignment") dated March 18, 1998 made by Borrowers and assigning to Lender all such contracts, agreements, plans, specifications and permits relating to construction on the Construction Property; (vii) and that certain Second Mortgage dated March 18, 1998, made by Trustee, as mortgagor, to Lender, as mortgagee, recorded in the Office

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of the Recorder of Deeds of Cook County, Illinois on March 19, 1998 as Document No. 98217213 (hereinafter referred to as the "Second Mortgage") and encumbering the property (hereinafter referred to as the "Secured Property")(the Construction Property and the Secured Property being hereinafter collectively referred to as the "Mortgaged Property") commonly known as 1714 and 1718 S. Loomis, Chicago, Illinois and 2325 S. California, Chicago, Illinois and legally described on Exhibit A to the Second Mortgage, and (vii) various other loan and security documents, (the Loan Agreement, Existing Note, Mortgage, ABI, Contract Assignment, and any and all other loan and/or security documents executed in connection therewith or herewith are hereinafter referred to as the "Loan Documents"); and

WHEREAS, the parties hereto entered into a Modification of Construction and Permanent Loan Agreement, Installment Note, Construction and Permanent Mortgage, Assignment of Lease, Rents and Income, Fixture Financing Statement and Security Agreement, and Related Loan Documents dated as of December 6, 1999 and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on December 9, 1999, as Document No. 09149223 (the "First Modification"), wherein the Loan Documents were amended to, among other things, (1) extend the end of the Construction Period, as that term is defined in the Existing Note; (2) decrease the interest rate in the Existing Note during the remaining duration of the Construction Period from 5.51 % to 4.89%; (3) increase the maximum principal Loan Amount (as that term is defined in the Loan Agreement) of the Loan (as that term is defined in the Loan Agreement) from \$966,334.00 to \$1,971,974. 00 with the additional funds for said increase being reflected and set forth in a Second Installment Note dated December 6, 1999 payable to the order of Lender in the principal amount of One Million Five Thousand Six Hundred Forty and No/100 Dollars (\$1,005,640.00) (the "Second Installment Note") with interest and terms as set forth

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therein; (4) modify specified terms and conditions of the Loan Agreement; and (5) to reflect the change of the name of Lender from Banco Popular, Illinois to Banco Popular North America.

WHEREAS, the parties hereto desire to amend the Loan Documents to (1) change the Maturity Date of the Existing Note and the Second Installment Note to not later than December 31, 2003; (2) increase the maximum principal Loan Amount of the Loan from \$1,971,974.00 to \$2,171,974.00 with the additional funds for said increase being reflected and set forth herein as an amendment of the original principal amount of the Second Installment Note; and (3) to modify the definition of Loan Documents herein to include the Modification to Financing Documents and Subordination Agreement dated September 24, 2002, by and among the City of Chicago, an Illinois municipal corporation, by and through its Department of Human Services, the Trustee, Home of the Child, and the Lender (the "Subordination Agreement").

NOW, THEREFORE, for and in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Borrowers and Lender do hereby agree as follows:

1. **AFFIRMATION OF RECITALS.** The recitals set forth above are true and correct and are incorporated herein by this reference.

2. **CURRENT BALANCE OF EXISTING NOTE AND SECOND INSTALLMENT NOTE.** The parties hereto agree and acknowledge that the current outstanding principal balance of the Existing Note, as of the date hereof, is \$966,334.00, and the current outstanding principal balance of the Second Installment Note is \$1,005,640.00.

3. **AMENDMENT OF EXISTING NOTE AND SECOND INSTALLMENT NOTE.** The Existing Note and the Second Installment Note are hereby amended as follows:

3.1 The first paragraph of the Second Installment Note is hereby amended by deleting same in its entirety and substituting in lieu therefore the following:

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FOR VALUE RECEIVED, North Star Trust Company, as Successor Trustee to Banco Popular North American, f/k/a Banco Popular, Illinois, not personally but as Trustee under Trust Agreement dated December 15, 1997 and known as Trust No. 26577 ("Trustee"), with a mailing address at 8383 West Belmont, River Grove, Illinois 60171-1093 and THE HOME OF THE CHILD/CUIDAR a/k/a EL HOGAR DEL NINO, an Illinois corporation ("Home of the Child"), whose address is 2325 S. California, Chicago, Illinois 60608, (Trustee and Home of the Child are hereinafter collectively referred to as "Borrower") agrees to pay to the order of Banco Popular North America f/k/a Banco Popular, Illinois ("Lender"), whose address is 4801 West Fullerton Avenue, Chicago, Illinois 60639, the principal sum of One Million Two Hundred Five Thousand Six Hundred Forty and No/100 Dollars (\$1,205,640.00) or so much thereof as may now or hereafter be disbursed by Lender to or for the benefit of Borrower, together with interest in the manner hereinafter set forth (such amounts and such other amounts evidenced by this Note being hereinafter referred to as the "Loan").

3.2 Paragraph (b)(i) on the first page of both the Existing Note and the Second Installment Note are hereby amended by deleting same in their entirety and substituting in lieu therefore the following:

(i) This Loan is extended by Lender in connection with and pursuant to the terms of that certain Construction and Permanent Loan Agreement (the "Loan Agreement") executed by Borrower and Lender as that Loan Agreement is amended pursuant to the terms of that certain Modification of Construction and Permanent Loan Agreement, Installment Note, Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement, and Related Loan Documents (the "First Modification") dated as of December 6, 1999, and that certain Second Modification of Construction and Permanent Loan Agreement, Installment Note, Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture

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Financing Statement and Security Agreement, and Related Loan Documents (the "Second Modification") dated September 24, 2002.

3.3 Paragraph (c) on the first page of the Existing Note and the second page of the Second Installment Note, relating to payment of the final installment equal to the entire outstanding principal balance of the notes if not sooner paid is hereby amended by deleting same in their entirety and substituting in lieu therefore the following:

(c) A final installment equal to the entire outstanding principal balance of this Note if not sooner paid, together with all accrued and unpaid Interest thereon, being due and payable on December 31, 2003, unless earlier due and payable by reason of the acceleration of the maturity of this Note in accordance with the terms contained herein, in the Mortgage or in the other Loan Documents (as those terms are hereinafter defined) (such applicable maturity of the Loan being hereinafter referred to as the "Maturity Date").

3.4 All references in the Existing Note and the Second Installment Note to December 31, 2005 or five years after the end of the Construction Period, as and for the Maturity Date are hereby deleted and substituted in lieu therefore are corresponding references to December 31, 2003, or five (5) years after the end of the Construction Period.

3.5 The sixth full paragraph on page two of the Existing Note, and the fifth full paragraph on page two of the Second Installment Note, each containing a description of the collateral and security for the Loan, are hereby amended by deleting same in their entirety and substituting in lieu therefore the following:

Payment of this Note is secured by, among other things, (i) that certain Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement dated as of the date hereof (the "Mortgage"), from Trustee to Lender, encumbering certain land and improvements located thereon commonly known as 1631, 1708, 1710, and 1712 S. Loomis, Chicago, Illinois (the "Real Property"), and collaterally pledging and assigning certain other property and interests, all as more particularly described in the Mortgage (collectively, the "Mortgaged Property") as said Mortgage is modified pursuant to the terms of that certain Amendment To Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement dated December 6, 1999 and executed by Trustee (the "Mortgage Modification"), and that certain Second Modification of Construction and Permanent Loan Agreement, Installment Note,

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Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement, and Related Loan Documents (the "Second Modification") dated September 24, 2002; (ii) that certain Construction and Permanent Loan Agreement dated as of the date hereof by and between Borrower and Lender (the "Loan Agreement") governing disbursement of the Loan as said Loan Agreement is modified pursuant to the terms of that certain Modification of Construction and Permanent Loan Agreement, Installment Note, Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement, and Related Loan Documents dated December 6, 1999 and executed by Borrower (the "Modification Agreement"), and the Second Modification; (iii) that certain Environmental Indemnity dated of even date herewith, by and between Borrower and Lender (the "Environmental Indemnity"); (iv) that certain Secured Credit Agreement dated of even date herewith, by and between Borrower and Lender (the "Secured Credit Agreement"); (v) that certain Second Mortgage, dated of even date herewith by which Borrower assigns to Lender and grants to Lender a continuing second mortgage lien on the properties commonly known as 1714 and 1718 S. Loomis, Chicago, Illinois as said Second Mortgage is amended pursuant to and in accordance with the terms of that certain Amendment to Second Mortgage dated December 6, 1999, and the Second Modification; (vi) that certain Second Mortgage, dated of even date herewith, by which Borrower assigns to Lender and grants to Lender a continuing second mortgage lien on the property commonly known as 1325 S. California, Chicago, Illinois as said Second Mortgage is amended pursuant to and in accordance with the terms of that certain Amendment to Second Mortgage dated December 6, 1999, and the Second Modification; (this Note, the Mortgage, the Mortgage Modification, the Second Modification, the Loan Agreement, the Modification Agreement, the Amendment to Second Mortgage, the Environmental Indemnity, the Secured Credit Agreement, the Second Mortgages, and any other documents and instruments now or hereafter regulating, evidencing or further securing or guaranteeing the Loan or otherwise related to the Loan are herein referred to collectively as the "Loan Documents"). All of the terms and provisions of the other Loan Documents, specifically including, without limitation, any provisions contained therein making all indebtedness evidenced by this Note immediately due and payable upon certain conditions, are hereby incorporated herein by this reference as though fully set forth herein.

3.6 Except as specifically set forth to the contrary hereinabove, the Existing Note and the Second Installment Note remain unmodified and in full force and effect.

4. **AMENDMENT OF LOAN AGREEMENT.** The Loan Agreement is hereby amended as follows:

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4.1 All references in the Loan Agreement to the Existing Note and Second Installment Note shall be deemed to be references to the Existing Note and Second Installment Note as modified hereby.

4.2 The following definitions in Article 1 of the Agreement are hereby amended by deleting same in their entirety and substituting in lieu therefore the following:

Loan Amount: Not to exceed Two Million One Hundred Seventy One Thousand Nine Hundred Seventy Four and No/100ths Dollars (\$2,171,974. 00). This is not a revolving loan.

Loan Documents: This Agreement, the Disbursement Agreement, the Installment Note, the Second Installment Note, the Mortgage, the Modification of Mortgage, the Modification of Construction and Permanent Loan Agreement, Installment Note, Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement, and Related Loan Documents, the Second Modification, the Subordination Agreement, Collateral Assignment and Security Agreement as to Beneficial Interest in Land Trust, Personal Property and Intangibles, the Title Policy, the Uniform Commercial Code financing statements executed in connection with the Loan, the General Contractor/Borrower Agreement, the General Contractor/Lender Agreement, and all affidavits, certifications, and other documents and instruments delivered to or required to evidence or to secure or otherwise related to the Loan or advances thereunder.

Modification of Construction and Permanent Loan Agreement, Installment Note, Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement, and Related Loan Documents: A Modification of Construction and Permanent Loan Agreement, Installment Note, Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement, and Related Loan Documents (the "Modification Agreement" or "First Modification") duly executed by Borrower.

Second Installment Note: The \$1,005,640.00 originally stated maximum principal amount Installment Note dated December 6, 1999 from Borrower to Lender, which evidences a portion of the Loan, and all renewals and extensions thereof permitted by Lender, evidencing the Loan.

Second Modification: The Second Modification of Construction and Permanent Loan Agreement, Installment Note, Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement and Security Agreement, and Related Loan Documents dated September 24, 2002 duly executed by Borrower and Lender.



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Subordination Agreement: The Modification to Financing Documents and Subordination Agreement dated September 24, 2002, by and among the City of Chicago, an Illinois municipal corporation, by and through its Department of Human Services, Banco Popular North America as Trustee under that certain Trust Agreement dated December 15, 1997 and known as Trust Number 26577, The Home of the Child/Cuidar, an Illinois not for profit corporation, also known as El Hogar del Nino, and Banco Popular North America, as Lender.

4.3 Section 4.2 of the Agreement is hereby amended by deleting same in its entirety and substituting in lieu therefore the following:

4.2 Additional Loan Documents. As a condition precedent to the disbursements of the Loan after the Initial Loan Disbursement, Borrower agrees that it will furnish the following Loan Documents to Lender, executed by all parties other than Lender, at least five (5) days before any such subsequent disbursements, all of which must be satisfactory to Lender and Lender's counsel in form, substance and execution:

- (a) Modification Agreement. The Modification Agreement.
- (b) Second Installment Note. The Second Installment Note.
- (c) Second Modification. The Second Modification.
- (d) Subordination Agreement. The Subordination Agreement
- (e) Financing Statements. Uniform Commercial Code Financing Statements as required in the judgment of Lender to perfect all security interests in personal property and fixtures granted by the Mortgage, the Modification of Mortgage, or the other Loan Documents.
- (f) Other Loan Documents. Such other documents and instruments as additional assurances for, evidence of or with respect to the Loan as Lender may reasonably require.

4.4 Section 6.14 of the Agreement is hereby amended by deleting same in its entirety and substituting in lieu therefore the following:

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6.14 Loan Funding. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Documents, it is expressly understood and agreed that Lender shall fund an amount not to exceed \$2,171,974.00, unless Lender, in its sole discretion, decides otherwise to fund an amount in excess of \$2,171,974.00. This is not a revolving loan.

4.5 Except as specifically set forth to the contrary hereinabove, the Loan Agreement remains unmodified and in full force and effect.

5. AMENDMENT OF MORTGAGE. The Mortgage is hereby amended as follows:

5.1 All references in the Mortgage to the Installment Note or the Second Installment Note shall be deemed to be references to the Existing Note or the Second Installment Note as both are modified hereby.

5.2 Except as specifically set forth to the contrary hereinabove, the Mortgage remains unmodified and in full force and effect.

6. AMENDMENT OF SECOND MORTGAGE. The Second Mortgage is hereby amended as follows:

6.1 All references in the Second Mortgage to the Installment Note or the Second Installment Note shall be deemed to be references to the Existing Note or the Second Installment Note in the aggregate amount of \$2,171,974.00, as both are modified hereby.

6.2 Except as specifically set forth to the contrary hereinabove, the Second Mortgage remains unmodified and in full force and effect.

7. AMENDMENT OF ABI. The ABI is hereby amended as follows:

7.1 All references in the ABI to the Installment Note or the Second Installment Note shall be deemed to be references to the Existing Note or the Second Installment Note as both are modified hereby.

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7.2 Except as specifically set forth to the contrary hereinabove, the ABI remains unmodified and in full force and effect.

8. **AMENDMENT OF ADDITIONAL LOAN DOCUMENTS.** All remaining Loan Documents not specifically set forth above are hereby amended as follows:

8.1 All reference herein to the Loan Agreement, Existing Note, Second Installment Note, Mortgage, Modification of Mortgage, Second Mortgage, Modification of Second Mortgage and ABI shall be deemed to be references to the Loan Agreement, Existing Note, Second Installment Note, Mortgage, Modification of Mortgage, Second Mortgage, Modification of Second Mortgage and ABI as modified and described herein.

8.2 All references therein to the Note shall be deemed references collectively to the Existing Note and the Second Installment Note, as both are modified herein.

8.3 All references therein to the Loan shall be deemed references collectively to the loan evidenced by the Existing Note and the loan evidenced by the Second Installment Note, as both are modified herein.

8.4 All references therein to Loan Documents shall include the Subordination Agreement.

8.5 Except as specifically set forth to the contrary hereinabove, said Loan Documents remain unmodified and in full force and effect.

9. **REPRESENTATIONS AND WARRANTIES.** Borrower hereby confirms and remakes all representations and warranties set forth in the Loan Documents.

10. **ADDITIONAL PROVISIONS.** This Agreement shall be effective only upon:

(a) Delivery by Borrower to Lender of satisfactory evidence insuring the continued validity and priority of the Loan Documents, as herein amended, and the continued validity and priority of the Security Interests created thereby including, but not

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limited to delivery by Borrower to Lender of a satisfactory Date Down Endorsement to the existing Mortgagee's title insurance policy issued by Chicago Title Insurance Company with respect to the Mortgage, insuring the continued validity and priority of the Loan Documents, as herein amended, following the recording of this Agreement (subject only to the matters set forth on Schedule B of said policies and such matters as are approved by Lender), confirming all previous endorsements thereto, if any, extending the effective date of the policies through the date of recording of this Agreement and adjusting the amount of the insurance to \$2,171,974.00 and extending the effective date of the policy through the date of recording of this Agreement.

(b) Execution by Borrower of any and all Certificates, Financing Statements, Instruments, Assignments, Notices and documents as may be required or as may be deemed and determined by Lender, in its sole discretion, to be necessary in order to perfect and complete Lender's Security Interest in accordance with the Loan Documents as amended hereby.

(c) Payment by Borrower to Lender, immediately upon the submission of bills and invoices therefore, of all amounts incurred by or on behalf of Lender for reasonable attorneys' fees, recording expenses, filing fees, title expenses, title insurance fees, title insurance endorsement fees, and all other costs incurred or to be incurred by or on behalf of Lender by reason of the matters specified herein and the preparation of this Agreement and all other documents necessary and required to effectuate the provisions hereof, including, without limitation, all costs and expenses with respect to compliance by Borrower with the terms and conditions hereof and Lender's enforcement thereof. The rights and remedies of Lender contained in this Paragraph 10 shall be in addition to, and

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not in lieu of, the rights and remedies contained in the Loan Documents, as herein amended, and as otherwise provided by law.

11. **REMAINING PROVISIONS IN EFFECT.** Except as amended by this Agreement, the terms and conditions of the Loan Documents remain in full force and effect.

12. **EFFECTIVENESS.** This Agreement shall be effective as of the date hereof subject to the provisions of Paragraph 10 hereof.

13. **GOVERNING LAW.** This Agreement shall be construed in accordance with the laws of the State of Illinois, without regard to its conflict of laws principles.

14. **CONSTRUCTION.** This Agreement shall not be construed more strictly against Lender merely by virtue of the fact that the same has been prepared by Lender or its counsel, it being recognized the Borrower and Lender have contributed substantially and materially to the preparation of this Agreement

15. **GENDER.** All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders and 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.

16. **ENTIRE AGREEMENT.** Borrower and Lender acknowledge that there are no other agreements or representations, either oral or written, express or implied, that are not embodied in this Agreement and the Loan Documents. This Agreement and the Loan Documents together represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower and Lender.

17. **BENEFIT.** This Agreement shall be binding upon and shall inure to the benefit of Borrower and Lender, and their respective successors, assigns, grantees, heirs, executors, personal representatives and administrators.

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18. **RATIFICATION; AUTHORITY.** Except as herein amended, the Loan Documents shall remain in full force and effect, and all of the terms and provisions of the Loan Documents, as herein amended, are hereby ratified and reaffirmed. Borrower represents to Lender that there is no other ownership interest, lien, or other interest, now outstanding against the Construction Property other than the lien of the Loan Documents and the liens referenced in the Subordination Agreement, and that the lien of Lender on the Construction Property is previously subsisting and, as herein amended, has been, is and shall remain a valid first, prior and paramount lien on said Construction Property, enjoying the same or superior priority with respect to other claims upon said Construction Property as prevailed prior to the execution of this Agreement. Borrower represents to Lender that there is no other ownership interest, lien, or other interest, now outstanding against the Secured Property other than the lien of the Loan Documents and the previously existing first lien; and that the lien of Lender on the Secured Property is previously subsisting and, as herein amended, has been, is and shall remain a valid second lien on said Secured Property, enjoying the same or superior priority with respect to other claims upon said Secured Property as prevailed prior to the execution of this Agreement. Borrower has duly authorized, executed and delivered this Agreement, and acknowledges that the Loan Documents are valid and enforceable in accordance with their term against Borrower.

19. **DEFAULTS.** The occurrence of any one or more of the following shall constitute a Default under this Agreement.

(a) the untruthfulness of any representation or warranty contained in this Agreement, or the existence of any misrepresentation of fact or fraud contained in any document or information heretofore or hereafter submitted or communicated to Lender in support of this Agreement;

(b) the breach or violation of any term, covenant, or condition contained in this Agreement; or

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(c) any other default, not timely cured within any applicable cure or grace period, under any of the Loan Documents. Any Default hereunder shall constitute a default or event of default, as applicable, under each of the Loan Documents.

20. **TERMINATION.** Immediately following the occurrence of any Default under this Agreement, Lender may, at its option (a) exercise any or all of its rights and remedies under the Loan Documents and/or (b) pursue any other remedies available to it, provided, however, Borrowers shall have five (5) days to make any payment after due date before being in default, and fifteen (15) days after written notice to cure a non-monetary default.

21. **CONSENT TO AMENDMENT.** Borrowers acknowledge that they have thoroughly read and reviewed the terms and provisions of this Agreement and are familiar with same, that the terms and provisions contained herein are clearly understood by them and have been fully and unconditionally consented to by them and that they have had full benefit and advice of counsel of their own selection in regard to understanding the terms, meaning and effect of this Agreement, and that this Agreement has been entered into by them, freely, voluntarily, with full knowledge, and without duress, and that in executing this Agreement, they are relying on no other representations, either written or oral, or express or implied, made to them.

22. **NO DEFENSES; RELEASE.** As of the date of this Agreement, Borrowers acknowledge that they have no defense, offset, or counterclaim to any of their obligations under the Loan Documents. In addition to the foregoing (and to the extent of any such defense, offset or counterclaim), and as additional consideration for the amendment of the Loan Documents by Lender as herein set forth, Borrowers hereby release and forever discharge Lender, its agents, servants, consultants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors and assigns and all persons, firms, corporations, and organizations in its behalf of and from all damages, losses, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Borrower may now have or claim to have against Lender, as of the date

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hereof, whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way relating to, concerning, arising out of or founded upon the Loan Documents, as herein amended, including, but not limited to, all such loss or damage of any kind heretofore sustained, or that may arise, as a consequence of the dealings between the parties up to and including the date hereof.

23. **COUNTERPARTS.** It is understood and agreed that this Agreement may be executed in several counterparts, each of which shall, for all purposes, be deemed an original and all of such counterparts taken together shall constitute one and the same Agreement, even though all of the parties hereto may not have executed the same counterpart of this Agreement

24. **DEFINITION OF TERMS.** All initial-capitalized terms not expressly defined in this Agreement shall bear the same respective definitions herein as they bear in the Loan Documents, as herein amended.

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IN WITNESS WHEREOF, this instrument has been executed by the parties hereto in manner and form sufficient to bind them, as of the day and year first above written.

**NORTH STAR TRUST COMPANY, as  
Successor Trustee to BANCO POPULAR  
NORTH AMERICA, not personally but as  
Trustee as aforesaid**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE HOME OF THE CHILD/CUIDAR a/k/a E  
EL HOGAR DEL NINO**

By: \_\_\_\_\_  
Printed Name \_\_\_\_\_  
Title: \_\_\_\_\_

**BANCO POPULAR NORTH AMERICA**

By: *H Paul Sori*  
Title H Paul Sori  
Assistant Vice President

This Document Prepared By  
and Return To:

David A. Kallick  
Tishler & Wald, Ltd.  
200 S. Wacker Drive, Suite 2600  
Chicago, Illinois 60606

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IN WITNESS WHEREOF, this instrument has been executed by the parties hereto in manner and form sufficient to bind them, as of the day and year first above written.

This Document is signed by NORTHSTAR TRUST COMPANY not individually but solely as Trustee under certain Trust Agreement known as Trust No. 26577. Said Trust Agreement is hereby made a part hereof and any claims against said Trustee which may result from the signing of this Document shall be payable only out of any trust property which may be held thereunder, and said trustee shall not be personally liable for the performance of any of these terms and conditions of this Document or for the validity or condition of the title of said property or for any Document with respect thereto. Any and all personal liability of NORTH STAR TRUST COMPANY is hereby expressly waived by the parties hereto and their respective successors and assigns.

NORTH STAR TRUST COMPANY, as  
Successor Trustee to BANCO POPULAR  
NORTH AMERICA, not personally but as  
Trustee as aforesaid

By: [Signature]  
Title: Sr. Land Trust Officer

THE HOME OF THE CHILD/CUIDAR a/k/a E  
EL HOGAR DEL NINO

By: [Signature]  
Printed Name: Jane M. George  
Title: EXECUTIVE DIRECTOR

BANCO POPULAR NORTH AMERICA

By: \_\_\_\_\_  
Title: \_\_\_\_\_

This Document Prepared By  
and Return To:

David A. Kallick  
Tishler & Wald, Ltd.  
200 S. Wacker Drive, Suite 2600  
Chicago, Illinois 60606

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Property of Cook County Clerk's Office

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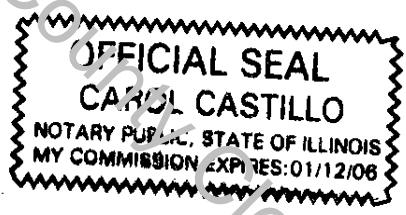
STATE OF ILLINOIS     )  
                                          ) ss.  
COUNTY OF COOK     )

I, the undersigned a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY THAT Maritza Castillo the Sr. Land Trust Officer of North Star Trust Company, as Successor Trustee to Banco Popular North America, not personally but as Trustee under Trust Agreement dated December 15, 1997 and known as Trust No. 26577, who personally known to me to be the same person whose name is subscribed to the foregoing instrument as such appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said Trustee, for the uses and purposes therein set forth

Given under my hand and notarial seal this 26<sup>th</sup> day of September, 2002.

Carol Castillo  
Notary Public

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



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STATE OF ILLINOIS     )  
                                  )     SS.  
COUNTY OF COOK     )

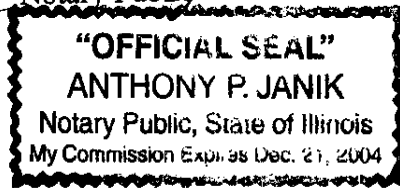
On this 27<sup>th</sup> day of September, 2002, before me, a Notary Public in and for said County and State, appeared JANE M. GARZA <sup>-M.A. NICHOLS</sup> to me personally known, who being by me duly sworn, did say that she/he is the ~~President~~ <sup>\* Executive Director</sup> of HOME OF THE CHILD/CUIDAR a/k/a EL HOGAR DEL NINO and that the foregoing instrument was signed and sealed on behalf of said corporation and that she/he acknowledged the foregoing instrument to be the free act and deed of said corporation.

*\* Executive Director*

*Anthony P. Janik*

Notary Public

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



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS     )  
                                  )  
COUNTY OF COOK        )     SS.

On this 26<sup>th</sup> day of September, 2002 before me, a Notary Public in and for said County and State, appeared H. Paul Dori, to me known to be the person who subscribed the name of BANCO POPULAR NORTH AMERICA, to the foregoing instrument as his Asst. Vice President who, being by me duly sworn, did state that he is the Asst. Vice President of said financial institution and that said instrument was signed and delivered by him on behalf of said financial institution by authority of its Board of Directors, and said Asst. Vice President acknowledged to me that he executed the same for the uses, purposes, and consideration therein set forth and in the capacity therein stated as the free and voluntary act and deed of said financial institution.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.



Annette Vega  
Notary Public

# UNOFFICIAL COPY

## TRUSTEE'S GENERAL EXCULPATORY EXHIBIT

This Second Modification of Construction and Permanent Loan Agreement, Installment Note, Construction and Permanent Mortgage, Assignment of Leases, Rents and Income, Fixture Financing Statement And Security Agreement, And Related Loan Documents is executed by Banco Popular North America, Trustee under Trust Agreement dated December 15, 1997 and known as Trust No. 26577 and accepted upon the express understanding that North Star Trust Company, Successor Trustee to Banco Popular North America enters into the same not personally, but only as Trustee and that no personal liability is assumed by nor shall be asserted or enforced against North Star Trust Company, as Successor Trustee to Banco Popular North America because of or on account of the making or executing this document or of anything therein contains, all such liability, if any, being expressly waived, nor shall North Star Trust Company, Trustee to Banco Popular North America be held personally liable upon or in consequence of any of the covenants of this document either expressed or implied, trustee being fully exempted, but nothing herein contained shall limit the right of any party to enforce the personal liability of any other party to this instrument.

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**EXHIBIT "A-1"**  
**THE CONSTRUCTION PROPERTY**

**LEGAL DESCRIPTION**

**PARCEL 1:**

LOTS 38, 39, and 40 IN STONES SUBDIVISION OF THE NORTH 1/2 AND SOUTH EAST 1/4 OF BLOCK 3 IN JOHNSTON AND LEE'S SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 14, IN COOK COUNTY, ILLINOIS

COMMONLY KNOWN AS: 1708, 1710 and 1712 SOUTH LOOMIS, CHICAGO, ILLINOIS

PERMANENT INDEX NOS.:      17-20-303-042  
                                         17-20-303-043  
                                         17-20-303-044

**PARCEL 2:**

LOT 30 IN HENRY AND WALKER'S SUBDIVISION OF BLOCK 2 IN JOHNSTON AND LEE'S SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 14 IN COOK COUNTY, ILLINOIS

PERMANENT INDEX NOS:      17-20-304-017

COMMONLY KNOWN AS 1631 SOUTH LOOMIS, CHICAGO, ILLINOIS



# UNOFFICIAL COPY

EXHIBIT "A-2"  
THE SECURED PROPERTY

LEGAL DESCRIPTION

PARCEL 1:

LOTS 36 AND 37, IN STONE'S SUBDIVISION OF THE NORTH 1/2 OF THE SOUTHEAST 1/4 OF BLOCK 3 IN JOHNSTON AND LEE'S SUBDIVISION OF THE SOUTHWEST 1/4 OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PARCEL 2:

LOTS 19 AND 20 IN MC CORMICK ESTATE SUBDIVISION OF BLOCK 5 OF S. J. WALKER'S SUBDIVISION OF THE NORTHEAST 1/4 OF SECTION 25, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, EXCEPT THE NORTH 125 FEET OF THE WEST 250 FEET THEREOF, IN COOK COUNTY, ILLINOIS

Common Address of Property:

Parcel 1: 1714 and 1718 S. Loomis, Chicago, Illinois

Parcel 2: 2325 S. California, Chicago, Illinois

Permanent Tax Identification Number:

Parcel 1: 17-20-303-046  
17-20-303-045

Parcel 2: 16-25-206-020