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Doc#: 1000544060 Fee: \$50.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 01/05/2010 12:54 PM Pg: 1 of 8

THIS DOCUMENT PREPARED BY:

Crowley & Lamb, P.C.
350 North LaSalle Street, Suite 900
Chicago, Illinois 60654

AFTER RECORDING RETURN TO:

Diamond Bank, FSB
1051 Perimeter Drive
Schaumburg, Illinois 60173
Attn: Senior Vice President

This space reserved for Recorder's use only

FIFTH MODIFICATION OF LOAN DOCUMENTS

THIS FIFTH MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is made effective as of the 1st day of December, 2009, by and among **JOSE A. PULIDO and MARIA PULIDO**, having an address at 2711 N. Kedzie, Chicago, Illinois 60647 (together, "Borrower") and **DIAMOND BANK, FSB**, its successors and assigns, having an address as set forth above ("Lender").

RECITALS:

A. Lender has heretofore made a construction loan ("Loan") to Borrower in the principal amount of Five Hundred Thousand and 00/100ths Dollars U.S. (\$500,000.00), as evidenced by a certain Promissory Note ("Original Note") dated May 24, 2007, in the original principal amount of \$500,000.00, made payable by Borrower to the order of Lender. The obligations of Borrower to Lender in connection with the Loan is further evidenced by that certain Construction Loan and Security Agreement ("Loan Agreement") dated May 24, 2007 between Borrower and Lender. The Loan Agreement and the other Loan Documents (as defined below) were modified by that certain First Modification of Loan Documents ("First Modification") dated June 1, 2008 pursuant to which the maturity date of the Loan was extended until September 1, 2008 and the Original Note was replaced by that certain Amended and Restated Promissory Note dated June 1, 2008 in the principal amount of \$500,000 executed by Borrower in favor of Lender. The Loan Agreement and the other Loan Documents were further modified by that certain Second Modification of Loan Documents ("Second Modification") dated September 1, 2008 pursuant to which the maturity date of the Loan was extended until March 1, 2009 and the Original Note was further replaced by that certain Second Amended and Restated Promissory Note dated September 1, 2008 in the principal amount of \$500,000.00 executed by Borrower in favor of Lender. The Loan Agreement and the other Loan Documents were further modified by that certain Third Modification of Loan Documents ("Third Modification") dated March 1, 2009 pursuant to which the maturity date of the Loan was extended until September 1, 2009 and the Original Note was further replaced by that certain Third Amended and Restated Promissory Note dated March 1, 2009 in the principal amount of \$500,000.00 executed by Borrower in favor of Lender. The Loan Agreement and

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the other Loan Documents were further modified by that certain Fourth Modification of Loan Documents ("Fourth Modification") dated September 1, 2009 pursuant to which the maturity date of the Loan was extended until December 1, 2009 and the Original Note was further replaced by that certain Fourth Amended and Restated Promissory Note dated September 1, 2009 in the principal amount of \$500,000.00 executed by Borrower in favor of Lender ("Prior Note").

B. The Prior Note is secured by, among other things, that certain Mortgage and Security Agreement and UCC Fixture Filing (the "Mortgage") dated May 24, 2007, from Borrower to Lender and recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder") on June 4, 2007, as Document No. 0715555002, which Mortgage encumbers the real estate legally described on Exhibit "A" attached hereto, and all improvements thereon (the "Property"). The Note is further secured by an Assignment of Rents (the "Assignment") dated May 24, 2007, from Borrower to Lender and recorded with the Recorder on June 4, 2007, as Document No. 0715555003 which Assignment encumbers the Property.

C. The Prior Note, the Loan Agreement, the Mortgage, the Assignment, the First Modification, the Second Modification, Third Modification, Fourth Modification and any other document evidencing, securing and guaranteeing the Loan, in their original form and as amended or replaced, are sometimes collectively referred to herein as the "Loan Documents".

D. Whereas, Borrower has requested that Lender to extend the maturity date of the Loan from December 1, 2009 until March 1, 2010 and Lender is willing to extend the maturity date of the Loan from December 1, 2009 until March 1, 2010, subject to the terms and conditions more fully set forth hereinafter and in the Amended Note (defined below).

AGREEMENTS:

NOW, THEREFORE, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender and Borrower to modify the Loan Documents, as provided herein, (iii) Borrower's agreement to pay all of Lender's reasonable attorneys fees and recording costs in connection with this Agreement, (iv) the covenants and agreements contained herein, and (v) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Amendment of Prior Note/Amended and Restated.** The Prior Note shall be amended and restated by that certain Fifth Amended and Restated Promissory Note of even date herewith executed by Borrower (the "Amended Note") in the principal amount of \$500,000.00. As of the date hereof, the Amended Note shall be substituted for and replace in its entirety the Prior Note, as evidence of the amounts due and owing to Lender and the manner of repayment of same, and the Prior Note shall be canceled by Lender. Notwithstanding any other provision of the Loan Documents, the interest rate applicable to the Loan shall be as set forth in the Amended Note.

2. **Continuing Validity.** Except as expressly modified above, the terms of the original Mortgage shall remain unchanged and in full force and effect and are legally valid, binding, and enforceable in accordance with their respective terms. Consent by Lender to this Agreement does not waive Lender's rights to require strict performance of the Mortgage as amended above nor obligate Lender to make any future modifications. Nothing in this Agreement shall constitute a satisfaction of the promissory note or other credit agreement secured by the Mortgage. It is the intention of Lender to retain as liable all parties to the Mortgage and all parties, makers and endorsers to the Amended Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including

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accommodation makers, shall not be released by virtue of this Agreement. If any person who signed the original Mortgage does not sign this Agreement, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing person consents to the changes and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension or modification, but also to all such subsequent actions.

3. **Construction Mortgage.** The Mortgage constitutes a "construction mortgage" for the purposes of Sections 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Illinois.

4. **Construction Loan.** If some or all of the proceeds of the Loan creating the Indebtedness are to be used to construct or complete construction of any Improvements on the Property, the Improvements shall be completed no later than the maturity date of the Amended Note (or such earlier date as Lender may reasonably establish) and Borrower shall pay in full all costs and expenses in connection with the work. Lender will disburse loan proceeds under such terms and conditions as Lender may deem reasonably necessary to insure that the interest created by the Mortgages shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that disbursement requests be supported by receipted bill, expense affidavits, waivers of liens, construction progress reports, and such other documentation as Lender may reasonably request.

5. **Loan Maturity Date.** Borrower and Lender agree that the Maturity Date of the Loan shall hereby be amended and extended from December 1, 2009 until March 1, 2010. All references to the Maturity Date of the Loan, or words of similar import, in any and all of the Loan Documents shall now mean March 1, 2010.

6. **Borrower Representations and Stipulations.** Borrower acknowledges, represents and warrants as follows:

- (a) The Prior Note (as amended) and all other Loan Documents constitute valid and legally binding obligations of Borrower and are enforceable to their full extent against Borrower and the collateral granted therein in accordance with the terms thereof without defense, affirmative defense or counterclaim of any kind.
- (b) Borrower does hereby waive and release any and all claims and defenses, whether legal or equitable, or by way of offset, recoupment or counterclaim that the Borrower hereto has, or may have against Lender, relating in any way to Prior Note, the Loan Agreement, the Mortgage, or any other documents securing or relating to the Loan, by reason of any matter, cause or thing whatsoever occurring, including breach of good faith and fair dealing by Lender.
- (c) The party or parties who execute this Agreement on behalf of the Borrower have the authority to do so and that the same is the legally binding act of the Borrower and each of them.
- (d) There exists no defenses, whether at law or equity to the repayment of the Prior Note, or any of Borrower's obligations under any of the other Loan Documents.

7. **Borrowers' Releases.** Borrower and each of them, in consideration of the execution of this Agreement, and the performance of all terms contained herein to be performed by Lender, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, do hereby remise, release and forever discharge, and by these presents, do for their successors, assigns, heirs, administrators, executors, personal representatives, agents, grantees, and successors in interest, remise, release and forever discharge Lender and its respective successors, assigns, heirs, administrators, officers, personal

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representatives, attorneys, agents and successors in interest, from all actions, suits, causes of action, damages, expenses, liabilities, claims, accounts and demands, whatsoever, whether or not well-founded in fact or in law which they have, have had, or at any time may have, could have, or might have but for the execution of this Agreement, asserted against Lender, for or by reason of or in respect of any matter, cause or thing whatsoever, whether known or unknown, developed or undeveloped, past, present or future or whether permanent, continuing or otherwise, arising out of or connected with the Prior Note, the Mortgage or this Agreement.

8. **Waiver.** Nothing in this Agreement shall be construed as a waiver of or acquiescence to any Existing Defaults or any future Events of Default (as defined in the Loan Documents), which shall continue in existence subject only to Lender's agreement, as set forth herein, not to enforce its remedies for a limited period of time. Except as expressly provided herein, the execution and delivery of this Agreement shall not: (a) constitute an extension, modification, or waiver of any other aspect of the Prior Note (as amended and restated) or the Loan Documents; (b) extend the terms of the Prior Note or the Loan Documents or the due date of any of the Prior Note, except as set forth in the Amended Note; (c) give rise to any obligation on the part of Lender to extend, modify or waive any term or condition of the Loan Documents; or (d) give rise to any defenses or counterclaims to Lender's right to compel payment of the Loan or to otherwise enforce its rights and remedies under the Amended Note, and any other Loan Documents. Except as expressly limited herein, Lender hereby expressly reserves all of its rights and remedies under the Prior Note, as amended and the Loan Documents and under applicable law with respect to such defaults.

9. **Expenses/Fee.** As condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket recording 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 and pay to Lender an extension fee in the amount of \$500.00.

10. **Title Policy.** Upon Lender's request, Borrower shall, at its sole cost and expense, cause the applicable Title Insurance Company to issue an endorsement to Lender's title insurance policy (the "Title Policy") for the Mortgage, as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

11. **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 merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower and Lender each acknowledge and waive any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

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(c) Borrower 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 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.

(d) This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives, except to the extent of any contrary provision in this Agreement. Each party intends that this Agreement, in all respects, shall be deemed and construed to have been prepared mutually by all parties, and it is expressly agreed that any uncertainty and ambiguity existing herein shall not be construed more strictly against one party or the other against the other party. If any part or any provision of this Agreement shall be determined to be invalid under any applicable law or the regulation, the remaining part of this Agreement, that can be separated from the invalid, unenforceable provisions, shall be in full force and effect.

(e) Borrower shall mean all of the undersigned and as used herein, Borrower shall be deemed, whenever appropriate in the context, to include the singular and plural. If this Agreement is executed by more than one party as Borrower, the liability of such parties shall be joint and several.

(f) Each party to this Agreement agrees to perform any further acts and execute any documents that may be reasonably necessary to effect the purposes of this Agreement.

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

12. **Binding Effect.** This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives, except to the extent of any contrary provision in this Agreement. Each party intends that this Agreement, in all respects, shall be deemed and construed to have been prepared mutually by all parties, and it is expressly agreed that any uncertainty and ambiguity existing herein shall not be construed more strictly against one party or the other against the other party. If any part or any provision of this Agreement shall be determined to be invalid under any applicable law or the regulation, the remaining part of this Agreement, that can be separated from the invalid, unenforceable provisions, shall be in full force and effect.

13. **No Novation.** This Agreement shall not be deemed or construed to be a satisfaction, reinstatement, novation, or release of the Prior Note or of any of the other Loan Documents or, except as expressly provided herein, nor shall it be deemed a waiver by Lender of any of the rights of Lender under the Prior Note or any of the other Loan Documents, or at law or in equity, and shall not be construed as a repayment or novation of the Prior Note amended and replaced by the Amended Note.

14. **Counterparts.** This Agreement may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so executed and delivered (whether by facsimile transmission or otherwise) shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

[signature page attached]

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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:

BORROWER:

DIAMOND BANK, FSB

By: Felisa McElroy
Its: Commercial Loan Officer

Jose A Pulido
JOSE A. PULIDO
Maria Pulido
MARIA PULIDO

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Diana Farlinger, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Felicia Manullang, _____ Vice President of DIAMOND BANK, FSB, known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he/she signed and delivered the said instrument as his/her own free and voluntary act, and as the free and voluntary act of DIAMOND BANK, FSB, for the uses and purposes therein set forth.

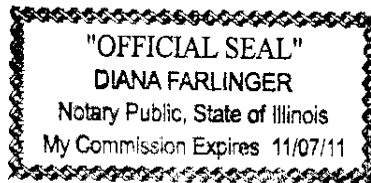
GIVEN under my hand and notarial seal this 23 day of December, 2009.

Diana Farlinger

Notary Public

My Commission Expires:

11/07/11



STATE OF ILLINOIS)
) SS.
COUNTY OF Cook)

I, Diana Farlinger, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that JOSE A. PULIDO AND MARIA PULIDO, known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 23 day of December, 2009.

Diana Farlinger

Notary Public

My Commission Expires:

11/07/11



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EXHIBIT A

LEGAL DESCRIPTION

LOT 23 IN BLOCK 2 IN E.B. MC CAGG'S SUBDIVISION OF OUTLOT 19 IN CANAL TRUSTEES' SUBDIVISION OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

P.I.N. 17-05-309-036

COMMONLY KNOWN AS: 1455 W. CORTEZ, CHICAGO, IL 60622

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