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Upon Recordation Return To:

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Doc#: 1003616061 Fee: \$58.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 02/05/2010 03:18 PM Pg: 1 of 12

(Space Above For Recorder's Use)

ESTABAN ESPINOZA and ELIZABETH ESPINOZA, his wife, collectively as Borrower,

and

JUAN CARLOS ESPINOZA and HERNAN ESPINOZA, collectively as New Borrower,

and

PARK NATIONAL BANK, n/k/a U.S. Bank National Association, as Lender

**LOAN MODIFICATION, RATIFICATION
AND ASSUMPTION AGREEMENT**

SECURING DEBT IN THE AMOUNT OF \$270,000.00

Dated: As of December 1, 2009

Property Address: 1036 West Cullerton Avenue, Chicago, IL

PIN: 17-20-421-024-0000

County: Cook

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THIS LOAN MODIFICATION, RATIFICATION AND ASSUMPTION AGREEMENT (this "Agreement") is made as of December 1, 2009, between **ESTEBAN ESPINOZA** and **ELIZABETH ESPINOZA**, having an address of 1036 W. Cullerton, Chicago, Illinois (collectively "Borrower"), and **JUAN CARLOS ESPINOZA**, having an address at 3745 N. Whipple, Chicago, Illinois and **HERNAN ESPINOZA**, having an address at 1036 W. Cullerton, Chicago, Illinois (collectively "New Borrower"), and **PARK NATIONAL BANK N/K/A U.S. BANK NA**, having an address at 11 West Madison, Oak Park, Illinois ("Lender"), and is restating, reaffirming and modifying that certain Loan (defined below) known as Loan No. 502026/001, by and between Borrower and Lender, and the instruments which evidence and secure the loan, as follows.

WITNESSETH:

WHEREAS, as of November 24, 2004, Lender extended a loan to Borrower in the original aggregate principal amount of **TWO HUNDRED FORTY FIVE THOUSAND AND 00/100 DOLLARS (\$245,000.00)** (the "Loan");

WHEREAS, the Loan is evidenced by (i) a Business Loan Agreement, dated as of November 24, 2004, executed by Borrowers and Lender, and (ii) a Promissory Note, dated as of November 24, 2004, executed by Borrowers in favor of Lender, in the original principal amount of **TWO HUNDRED FORTY FIVE THOUSAND AND 00/100 DOLLARS (\$245,000.00)** (the "Note");

WHEREAS, the Note is secured by, among other things, (i) a Real Estate Mortgage, dated November 24, 2004, executed by Borrowers and recorded on December 21, 2004 with the Recorder of Deeds of Cook County, Illinois as Doc. No. 0435634148 on the property commonly known as 1036 West Cullerton, Chicago, Illinois ("Mortgaged Property") and (ii) an Assignment of Leases and Rents, dated November 24, 2004, executed by Borrowers and recorded on December 21, 2004 with the Recorder of Deeds of Cook County, Illinois as Doc. No. 0435634149 on the Mortgaged Property (the Business Loan Agreement, the Note, the Real Estate Mortgage and the Assignment of Rents, and all other documents and instruments relating to the Loan, whether now or hereafter existing, as the same from time may to time may be amended, extended, consolidated, renewed or replaced, are collectively, the "Loan Documents");

WHEREAS, the Loan is in default by reason of the fact that the installment payments required by the Note were not paid when due, and the Lender has initiated foreclosure proceedings in the Circuit Court of Cook County, there known as Park National Bank v. Esteban Espinoza, et al, Docket No. 08 CH 32669 (the "Litigation"); and

WHEREAS, Borrower desires to cure the default, extend the loan and to restructure the ownership of the Property; and

WHEREAS, Lender has required, as a condition of the restructuring of the ownership of the Property, that Borrower ratify and confirm their obligations under the Loan Documents, and that the New Borrower assume those obligations.

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NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby covenant and agree as follows:

1. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with regard to its subject matter. No modification of this Agreement shall be effective against any party who does not sign the modification.
2. **Advice of Counsel.** Each party acknowledges that the party has had ample opportunity to seek the advice of counsel and believes that the execution of this Agreement and the compliance with its terms will be in the respective parties best interest.
3. **Conveyance to New Borrower.** Upon the execution of this Agreement, Borrower shall simultaneously convey to New Borrower by quit claim deed the Mortgaged Property, and shall also execute all other documents necessary to consummate the conveyance and record the deed.
4. **Assumption of Loan.** In consideration of the conveyance of the Mortgaged Property, New Borrower hereby assumes and agrees, for the benefit of Lender and its successors and assigns, to be bound by, observe and perform, all past (to the extent unsatisfied), present and future liabilities, terms, provisions, covenants and obligations of Borrower under the Loan Documents, and New Borrower agrees that it will be bound by all of such terms and provisions, promptly pay all such liabilities and promptly observe and perform all such covenants and obligations, with the same force and effect as if New Borrower had originally executed and delivered the Loan Documents to Lender. Reference in any Loan Document to Borrower, therefore, shall be deemed to be a reference to New Borrower also.
5. **Indebtedness.** The parties hereto agree that the amount owed Park by reason of the loan instruments is as follows:

Principal:	\$232,155.27
Interest:	30,487.80
Late Charges:	6,056.88
Attorney's Fees & Costs:	9,322.50
RE Tax Advances	<u>15,281.87</u>
Total:	\$293,304.32

(the "Indebtedness").
6. **Extension of Note Term.** The term of the Note is hereby extended to January 1, 2013, at which time all amounts due by reason of the Loan Documents not sooner paid will be immediately due and payable.
7. **Allocation of Lump Sum Payment/Loan Balance.** New Borrowers have heretofore paid Park the sum of \$10,000.00, which Park is holding in trust pending execution of this Agreement. At the time this Agreement is executed, New Borrowers shall pay Park an additional \$10,000.00. The aggregate sums so paid by New Borrowers (\$20,000.00) shall be credited against the Indebtedness in the following order: first, to Lender's costs and attorney's

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fees incurred in connection with the Litigation and the enforcement of Lender's rights pursuant to and under the Loan Documents; second, to late fees. Notwithstanding the foregoing, the additional sum of \$3,304.32 shall be credited by Lender against the Indebtedness and third, to accrued interest, leaving a balance of Indebtedness remaining of \$270,000.00 ("Loan Balance"). All amounts comprising the Loan Balance which are not already principal shall be capitalized and thereby made a part of the principal balance of the Loan.

8. **Payment of Principal and Interest.** Commencing with the payment of principal and interest for the month of February, 2010, the monthly principal and interest payment due on the Note shall be in the amount of \$2,050.00. Interest is calculated at the note rate on the basis of a 25 year amortization. In addition to the monthly payments of principal and interest, there shall also be due and payable each month, at the same time that the monthly payment of principal and interest is due and payable, a real estate tax escrow payment in an amount to be determined by Park.

9. **Dismissal of Litigation.** Upon execution of this Agreement, Park shall cause the judgment entered in the Litigation to be vacated, and shall cause the Litigation to be dismissed with prejudice.

10. **Loan Documents.** Each of the Loan Documents is hereby modified to the extent necessary so that the term "Borrower" shall mean and include Esteban Espinoza, Elizabeth Espinoza, Juan Carlos Espinoza and Hernan Espinoza.

11. **Security Instruments.** The Mortgage dated November 24, 2004 and recorded December 21, 2004, as Document Number No. 0435634148, continues to be a valid and existing lien against the Mortgaged Property, and continues to secure the Note. The Assignment of Rents dated November 24, 2004 and recorded December 21, 2004, as Document Number No. 0435634149, continues to be a valid assignment of all the rights to the Mortgaged Property sated in said instrument. The legal description of the Mortgaged Property is set forth in Exhibit A to this agreement.

12. **Borrower's Covenants.** Borrower and New Borrower hereby agree, for the benefit of Lender and its successors and assigns, to be bound by, observe and perform, all past (to the extent unsatisfied), present and future liabilities, terms, provisions, covenants and obligations under the Loan Documents, and Borrower and New Borrower agree that it will be bound by all of such terms and provisions, promptly pay all such liabilities and promptly observe and perform all such covenants and obligations, with the same force and effect.

13. **Agreements of Borrower.** Except as modified herein, Borrower and New Borrower hereby acknowledge and agree that:

- (a) all of the terms, provisions, covenants, representations, warranties, conditions and stipulations contained in the Loan Documents, are hereby ratified and confirmed by Borrower and New Borrower in all respects, and shall continue to apply with full force and effect to Borrower and New Borrower from and after the date hereof;

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- (b) all of the representations and warranties made by Borrower at the time of the Loan shall be deemed to be remade by Borrower and New Borrower as of the date hereof with respect to all matters specified therein and with respect to this Agreement fully as if set forth herein, all of which remain true and correct;
- (c) as of the date hereof, the obligations of Borrower under the Loan, are not subject to any reduction, limitation, impairment or termination for any reason, including, without limitation, any claim of waiver, release, surrender or compromise;
- (d) as of the date hereof, there are no offsets, defenses or counterclaims to the obligations under the Loan;
- (e) the agreement of Lender to amend the Loan Documents shall not be deemed an agreement by Lender to accept additional amendments to the Loan, to waive any future defaults or to waive any of its rights under the Loan Documents.

14. **Priority of Liens Not Affected.** This Agreement does not constitute the extinguishment of the debt evidenced by the Loan Documents, nor will it in any way affect or impair the liens and security interests created by the Loan Documents, which Borrower and New Borrower acknowledge to be valid and existing liens on and security interests in the Mortgaged Property. Borrower and New Borrower agree that the lien and security interests created by the Loan Documents continue to be in full force and effect, unimpaired by this Agreement and that said liens and security interests shall so continue in their perfection and priority until the debt secured by the Loan Documents is fully discharged.

15. **General Provisions.**

- (a) **Definition of Loan Documents.** Each of the Loan Documents is hereby modified to the extent necessary so that the term "Loan Documents," as such term may be used therein, shall be deemed to include this Agreement.
- (b) **Reservation of Rights.** Nothing contained in this Agreement shall prevent or in any way diminish or interfere with any rights or remedies, including, without limitation, the right to contribution, which Lender may have against Borrower or any other party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (codified at Title 42 U.S.C. 9601 et seq.), as it may be amended from time to time, any successor statute thereto or any other applicable federal, state or local laws, all such rights being hereby expressly reserved.
- (c) **Rights Cumulative.** Lender's rights under this Agreement shall be in addition to all of the rights of Lender under the Note and the other Loan Documents.

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- (d) Methods of Enforcement. This Agreement is subject to enforcement by Lender at law or in equity, including, without limitation, actions for damages or specific performance.
- (e) Costs of Enforcement. In the event that Lender shall retain the services of an attorney or any other consultants in order to enforce this Agreement, or any portion hereof, Borrower and New Borrower agree to pay to Lender any and all costs and expenses, including, without limitation, reasonable attorneys' fees, costs and disbursements, incurred by Lender as a result thereof.
- (f) Further Assurances. Borrower and New Borrower agree to execute and deliver all such documents and instruments, and do all such other acts and things, as may be reasonably required by Lender in the future to perfect, assure, confirm or effectuate the extension of the Note contemplated by and set forth in this Agreement.
- (g) Counterparts. This Agreement and any document or instrument executed pursuant thereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (h) Reliance. Borrower and New Borrower agree and acknowledge that Lender would not have consented to the extension and assumption specified herein without Borrower and New Borrower entering into this Agreement. Accordingly, Borrower and New Borrower intentionally and unconditionally enters into the covenants and agreements as set forth above and understands that, in reliance upon and in consideration of such covenants and agreements, Lender has increased the principal amount of the Note.

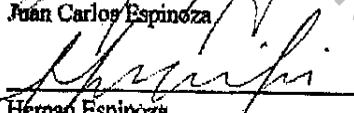
BORROWER:


Esteban Espinoza


Elizabeth Espinoza

NEW BORROWER:


Juan Carlos Espinoza


Hernan Espinoza

LENDER:

U.S. BANK *via* PARK NATIONAL BANK

By: 

Name: David Daniel

Title: Authorized Signatory

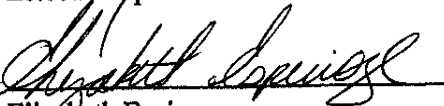
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- (d) Methods of Enforcement. This Agreement is subject to enforcement by Lender at law or in equity, including, without limitation, actions for damages or specific performance.
- (e) Costs of Enforcement. In the event that Lender shall retain the services of an attorney or any other consultants in order to enforce this Agreement, or any portion hereof, Borrower and New Borrower agree to pay to Lender any and all costs and expenses, including, without limitation, reasonable attorneys' fees, costs and disbursements, incurred by Lender as a result thereof.
- (f) Further Assurances. Borrower and New Borrower agree to execute and deliver all such documents and instruments, and do all such other acts and things, as may be reasonably required by Lender in the future to perfect, assure, confirm or effectuate the extension of the Note contemplated by and set forth in this Agreement.
- (g) Counterpart Signatures. This Agreement and any document or instrument executed pursuant thereto may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- (h) Reliance. Borrower and New Borrower agree and acknowledge that Lender would not have consented to the extension and assumption specified herein without Borrower and New Borrower entering into this Agreement. Accordingly, Borrower and New Borrower intentionally and unconditionally enters into the covenants and agreements as set forth above and understands that, in reliance upon and in consideration of such covenants and agreements, Lender has increased the principal amount of the Note.

BORROWER:



Esteban Espinoza



Elizabeth Espinoza

NEW BORROWER:



Juan Carlos Espinoza

Hernan Espinoza

LENDER:

U.S. BANK/aka PARK NATIONAL BANK

By: 

Name: David Daniel

Title: Authorize Signatory

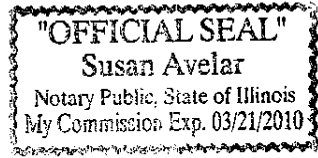
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a notary public, in and for the county and state aforesaid, **DO HEREBY CERTIFY**, that **Esteban Espinoza**, personally known to me to be the same person whose name is subscribed to within the Document, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 29th day of January, 2010.

Susan Avelar
Notary Public

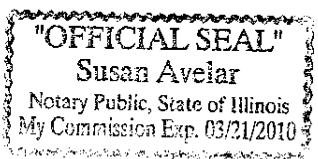


STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a notary public, in and for the county and state aforesaid, **DO HEREBY CERTIFY**, that **Elizabeth Espinoza**, personally known to me to be the same person whose name is subscribed to within the Document, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 29th day of January, 2010.

Susan Avelar
Notary Public



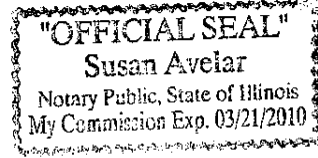
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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a notary public, in and for the county and state aforesaid, **DO HEREBY CERTIFY**, that **Juan Carlos Espinoza**, personally known to me to be the same person whose name is subscribed to within the Document, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 29th day of January, 2010.

Susan Avejar
Notary Public



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a notary public, in and for the county and state aforesaid, **DO HEREBY CERTIFY**, that **Hernan Espinoza**, personally known to me to be the same person whose name is subscribed to within the Document, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this _____ day of _____, 20____.

Notary Public

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STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a notary public, in and for the county and state aforesaid, DO
HEREBY CERTIFY, David Daniel, personally known to me to be
Authorized signer of Park National Bank k/n/a U.S. Bank, NA., and personally known to me to
be the same person whose name is subscribed to within the Document, appeared before me this
day in person and acknowledged that he signed and delivered said instrument as his free and
voluntary act and deed of said Bank, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 29th day of January, 2010.

Susan Avelin

Notary Public

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EXHIBIT A

(Legal Description)

LOT 24 IN HENRY WALKER'S SUBDIVISION OF BLOCK 12 IN WALSH AND MCMULLEN'S SUBDIVISION OF THE SOUTH $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 20, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as 1036 West Cullerton, Chicago, Illinois

PIN: 17-20-421-024-0000

Property of Cook County Clerk's Office