

**UNOFFICIAL COPY**



Doc#: 1103231106 Fee: \$58.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 02/01/2011 03:47 PM Pg: 1 of 12

Property of Cook County Clerk's Office

---

RECORDING COVER PAGE

---

**LOAN MODIFICATION AGREEMENT**

**Borrowers:** Ramon Key, Sr.  
Jonathan A. Key

**Lender:** Emigrant Mortgage Company, Inc.

**Property:** 1042 Forest Hill Street, Calumet City, Illinois 60409

**L.D.:** LOT 17 AND THAT PART OF LOT 16 BEGINNING AT THE NORTH EAST CORNER THEREOF AND RUNNING THENCE WEST 19.28 FEET, THENCE SOUTH 154.9 FEET TO A POINT ON THE NORTH LINE OF MICHIGAN CITY ROAD 21.28 FEET WEST OF THE EAST LINE OF SAID LOT, THENCE SOUTH EAST ALONG THE NORTH LINE OF MICHIGAN CITY ROAD TO THE EAST LINE OF SAID LOT, THENCE NORTH TO THE NORTH EAST CORNER OF SAID LOT IN FORREST HILLS, A SUBDIVISION OF THAT PART OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTH WEST 1/4 OF SECTION 17, TOWNSHIP 36 NORTH, RANGE 15, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**PIN:** 30-17-317-011-0000

# UNOFFICIAL COPY

## LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement (the "**Agreement**") is dated this 29<sup>th</sup> day of DECEMBER, 2010, and is made between Emigrant Mortgage Company, Inc. ("**Emigrant**") and Ramon Key, Sr. and Jonathan A. Key ("**Borrowers**"), whose current address and principal place of residence is 1042 Forest Hill Street, Calumet City, Illinois 60409.

### BACKGROUND

- A. On or about February 7, 2003, Emigrant made a loan to Borrower in the original principal amount of \$200,450.00 (the "**Loan**").
- B. The Loan is evidenced by, among other things, a certain promissory note of the same date in the original principal amount of \$200,450.00 (the "**Note**").
- C. As further inducement for the Loan, and as further security therefore, Borrower executed and delivered to Emigrant that certain Mortgage, dated February 7, 2003 (the "**Mortgage**"), granting Emigrant a first-lien mortgage on those certain premises commonly known as 1042 Forest Hill Street, Calumet City, Illinois 60409 (the "**Property**"). The Mortgage was recorded in the Office of the Clerk of Cook County on February 26, 2003 as document no. 0030267245.
- D. The Note, Mortgage, any amendments or modifications thereto, and all documents executed in connection with or pursuant to any of the foregoing are referred to collectively hereinafter as the "**Loan Documents**."
- E. The Borrowers are in default of their obligations under the Loan Documents (collectively, the "**Existing Default**"). The Existing Default includes, without limitation, failure to make various payments due under the Loan Documents totaling \$42,134.66 (the "**Arrearage Amount**").
- F. Borrowers have asked that Emigrant modify certain aspects of the Loan Documents.
- G. Emigrant has agreed, in consideration for the mutual covenants set forth herein, and for other good and valuable consideration, to modify the terms of the Loan Documents as expressly set forth below.
- H. Unless otherwise noted in this Agreement, all capitalized terms shall have the respective meanings provided therefore herein or, in absence of such provision, the respective

# UNOFFICIAL COPY

meanings provided therefore in the Loan Documents.

## AGREEMENT

NOW THEREFORE, with the foregoing Background deemed incorporated herein by reference as though set forth fully and at length, the parties hereto, intending to be bound legally by this Agreement, and in consideration of the mutual covenants and terms contained herein, agree as follows:

### SECTION 1. CONFIRMATION OF EXISTING INDEBTEDNESS AND RATIFICATION OF JUDGMENTS

**1.01 Confirmation of Existing Indebtedness.** Borrowers ratify and confirm that, as of August 1, 2010, (i) this Loan is past due with payments due starting on June 1, 2009 and continuing each month thereafter to the present and (ii) the amounts due and owing pursuant to the terms of the Loan Documents are as follows:

Principal:	\$186,874.45
Interest Arrearage (as of 12/1/2010):	\$ 20,449.10
Per diem of \$35.34	
<u>Other Expenses:</u>	<u>\$ 10,164.41</u>
<b>TOTAL:</b>	<b>\$217,487.96</b>

Further, interest continues to accrue in connection with the Loan Documents from and after December 1, 2010, at the per diem rate of \$35.34. Additionally, Borrowers remain liable for, and the Loan Documents secure, payment of all Emigrant's attorneys' fees and costs of collection and other charges and expenses recoverable under the Loan Documents. The term "Indebtedness" as used herein shall include all amounts due in connection with the Loan as set forth in this section of the Agreement and any other amounts due and owing by operation of the terms and conditions of this Agreement.

**1.02 Ratification of Loan Documents and Liens.** Borrowers hereby acknowledge the validity and enforceability of the Loan Documents, and that they have no defenses, affirmative defenses, set-offs or counterclaims relating to the Existing Default, the Loan Documents, this Agreement, and/or the Indebtedness. To the extent that Borrowers have, at the time of this Agreement, any defenses, affirmative defenses, set-offs or counterclaims relating to the Existing Default, the Loan Documents, this Agreement, and/or the Indebtedness, whether asserted by the Borrowers or not, **Borrowers unconditionally, knowingly, voluntarily, intelligently, and after having obtained the advice of counsel or having given ample opportunity to obtain the advise of counsel and declined to do so, waives any claim, counterclaim, right of recoupment, defenses, affirmative defenses or set-off of any kind or nature whatsoever with respect to the Existing Default, the Loan Documents, this Agreement, and/or the Indebtedness.**

# UNOFFICIAL COPY

Borrowers hereby unconditionally ratify and confirm in all respects and without condition that the Loan Documents and all liens created pursuant thereto, including but not limited to those created pursuant to the various Loan Documents, continue unimpaired, are in full force and effect, and secure and shall continue to secure all of the Indebtedness of the Borrowers to Emigrant, including, without limitation, the Indebtedness evidenced by the Loan Documents and this Agreement.

## SECTION 2. FORBEARANCE

*R.W.K.*  
*2011*  
*BMC*

**2.01 Temporary Forbearance Period.** Emigrant agrees to forbear from further exercising its remedies against Borrowers under the Loan Documents during the period (the "**Temporary Forbearance Period**") commencing on the date of this Agreement and ending on the "**Forbearance Termination Date**," which is defined as the earlier of (i) one (1) year from the date hereof (January 1, ~~2010~~), or (ii) the date on which an Event of Default occurs. Any foreclosure proceedings initiated by Emigrant against the Borrowers shall remain pending during the Temporary Forbearance Period. **Borrowers submit to the jurisdiction of the Court and confirm that all contractual and statutory conditions precedent to such foreclosure proceedings have been satisfied. BORROWERS ACKNOWLEDGE THAT ALL PAYMENTS MADE UNDER THIS AGREEMENT ARE MADE WITHOUT PREJUDICE TO THE LOAN ACCELERATION OR THE PENDING FORECLOSURE PROCEEDINGS AND SHALL NOT CONSTITUTE A WAIVER OF ANY LENDER'S RIGHTS TO FORECLOSE.**

**2.02 Timely Payments during Temporary Forbearance Period.** Emigrant's agreement to enter into this Agreement is expressly conditioned upon the Borrowers making twelve (12) consecutive, timely monthly payments in accordance with the terms and provisions of this Agreement and compliance with all other terms and conditions of the Loan Documents. For purposes of this Agreement, a payment shall be deemed timely made if received by Emigrant on or before the fifteenth (15<sup>th</sup>) day in the month for which the payment is due. A failure to make a timely payment during the Temporary Forbearance Period or Event of Default under the Loan Documents shall constitute an Event of Default under this Agreement and the Loan Documents. Upon the occurrence of an Event of Default under this section, Emigrant shall, among other things, be immediately entitled to exercise any and all remedies available to it under the Loan Documents as if this Agreement had not been made **EXCEPT** that Emigrant shall provide Borrower with written notice of any default under this Agreement and Borrowers shall have the right to cure said default within ten (10) days thereof. If Borrowers fail to cure the default within this time period, Emigrant will be free to pursue all of its rights and remedies under the Loan Documents and this Agreement, at law and at equity.

**2.03 Discontinuance of Foreclosure Efforts.** Emigrant will discontinue its foreclosure efforts and the Loan shall be considered "reinstated" if Borrowers comply with the requirements of Section 2.02 of this Agreement.

## SECTION 3. MODIFICATION OF LOAN DOCUMENTS

# UNOFFICIAL COPY

Subject to the terms and conditions of Section 2 of this Agreement and any other provisions of this Agreement, the Loan Documents are hereby modified as follows:

**3.01 Initial Payment.** Upon execution of this Agreement, Borrowers shall pay Emigrant and its Attorneys a total of \$5,684.58. This amount shall be used as follows:

\$5,234.58:	9 Months Escrow
\$ 450.00:	Modification Fee
\$ 220.00:	Title Fee
\$ 70.00:	Recording Fee

A certified check shall be made payable to Emigrant Mortgage Company Inc. in the amount of \$5,234.58; a certified check shall be made payable to Noonan & Lieberman, Ltd. in the amount of \$740.00. Any portion of the initial payment amount set forth not used in connection with the items set forth above shall be applied to reduce the New Principal Balance of the Loan set forth in section 3.02 below.

**3.02 Capitalization of Arrears.** Effective upon execution of this Agreement, the sum of \$217,487.96 shall become the New Principal Balance of the Loan and interest shall accrue on this amount as set forth herein. This amount shall consist of the current unpaid principal balance of \$186,874.45 plus capitalized arrears in the sum of \$30,613.51.

**3.03 Interest Rate.** The adjustable interest rate set forth in the Loan Documents is hereby modified as follows:

(a) Commencing upon execution of this Agreement and continuing for the duration of the Temporary Forbearance Period, interest shall accrue on the New Principal Balance of the Loan at the rate of 6.625% per annum for a period of five (5) years. Upon the expiration of this five year period and on that day every twelfth (12<sup>th</sup>) month thereafter, the interest rate on the Loan may change. The changes, if any, in the interest rate shall be determined in accordance with the terms and provisions of the Note but in no event shall the interest rate be lower than six percent (6%) per annum.

(b) Commencing upon execution of this Agreement and payment of the amounts required in paragraph 3.01 above, the Borrowers shall make monthly payments of \$2,145.74, consisting of principal and interest (\$1,564.12) and escrow reserve (\$581.62). This provision shall not prevent Emigrant from recalculating the monthly payment amount from time-to-time as permitted by the Loan Documents to reflect the required monthly escrow obligation of the Borrower. The first payment due under this Agreement shall be due on or before January 1, 2011.

(c) If this loan included a default rate of interest at the time of origination as established by the original loan documents and Borrowers successfully completes any forbearance period included herein, said default rate of interest shall no longer apply to this loan. If there is a default during the terms of the forbearance period, if any, provided herein, then this provision shall have no force or effect.

**3.04 No Other Changes.** Except as explicitly set forth above, the terms of the Loan Documents shall continue in full force and effect.

# UNOFFICIAL COPY

## **SECTION 4. WARRANTIES AND REPRESENTATIONS**

**4.01 Borrowers' Warranties, Covenants and Representations.** Borrowers covenant, represent and warrant to Emigrant that:

- (a) This Agreement is valid, binding and enforceable against them in accordance with its terms;
- (b) Borrowers agree to co-operate fully with Emigrant in effectuating the terms of this Agreement and recordation thereof. Such cooperation shall include, without limitation, agreement to execute, and execution within five (5) days of delivery to Borrower, any and all documents that are reasonably necessary to effectuate the terms of this Agreement and recordation thereof;
- (c) Borrowers shall, upon five (5) days written request, provide Emigrant and/or its representatives, with such data and information (financial or otherwise) as Emigrant may request, from the date of this Agreement throughout the entire duration of this Agreement;
- (d) Borrowers shall maintain the Property in good condition and repair (normal wear and tear excepted) and, subject to the terms of this Agreement, will pay and discharge, or cause to be paid and discharged, when due, the cost of repairs to or maintenance of the same;
- (e) Borrowers shall, within three (3) days of receipt thereof, provide Emigrant with notice of any judgment of money or foreclosure that is entered against the Borrowers;
- (f) Borrowers shall pay, or cause to be paid, when due, all current taxes, insurance, water bills, assessments and charges or levies imposed upon them or the Property and any expenses, recording fees or mortgage taxes necessary to record this Agreement;
- (g) Without the prior written consent of Emigrant, which may be withheld for any reason in Emigrant's exercise of its sole discretion, Borrowers shall not transfer any right, title or interest in the Property;
- (h) Borrowers hereby affirm, reaffirm, and restate all representations and/or warranties made in connection with the Loan Documents.

## **SECTION 5. CONDITIONS PRECEDENT**

This Agreement is subject to the following conditions precedent (all instruments, agreements and documents to be in form and substance satisfactory to Emigrant and its counsel):

**5.01 Original Executed Documents Required of the Borrower.** Borrowers shall, on or before 3:00 p.m. EST on December 30, 2010, execute and deliver to counsel for Emigrant two (2) counterpart copies of this Agreement.

**5.02 Required Payments.** Borrowers shall deliver all payments due under Section 3.01 above upon execution of this Agreement.

# UNOFFICIAL COPY

## **SECTION 6. DEFAULT AND REMEDIES**

**6.01 Events of Default.** The following shall be Events of Default hereunder (each an "Event of Default"):

- (a) The occurrence of any Event of Default as established by the Loan Documents;
- (b) The failure to comply with any provision hereof; or
- (c) The filing of a petition for relief under Title 11 of the United States Code by Borrowers and their failure to assume the Loan Documents, this Agreement and any other documents executed in connection therewith as an executory contract (if Emigrant claims that they are executory contracts) pursuant to 11 U.S.C. § 365, and to consent to relief from the automatic stay immediately following the filing of the petition for relief.

**6.02 Remedies.** Immediately upon the occurrence of an Event of Default, and without the requirement of providing any notice or opportunity to cure except as expressly set forth herein:

- (a) Emigrant shall have no further obligations under this Agreement;
- (b) Emigrant shall be entitled to take any and all actions to enforce its full claims against Borrower including, without limitation, being entitled:
  - (i) to commence or continue with proceedings to collect the entire balance of the indebtedness from Borrowers including, without limitation, accrued interest, fees and costs, as well as any and all amounts due and owing as a result of a default under this Agreement; and/or
  - (ii) to commence or continue to prosecute to conclusion proceedings to foreclose on the Property owned by Borrowers; and
- (c) Emigrant will be entitled to take any and all actions permitted by law, equity, the Loan Documents, this Agreement and/or any other document executed in connection therewith.

## **SECTION 7. MISCELLANEOUS**

**7.01 Integrated Agreement.** This Agreement and all of the instruments, agreements and documents executed and/or delivered in connection with this Agreement shall be effective as of December 1, 2010. All such instruments, agreements and documents, the Loan Documents, and this Agreement shall be construed as integrated and complementary of each other. In the event of any conflict between the provisions of the Loan Documents and this Agreement, this Agreement shall control.

# UNOFFICIAL COPY

**7.02 Applicable Law.** This Agreement shall be construed and enforced in accordance with the domestic, internal law, but not the law of conflict of laws, of the **State of Illinois**.

**7.03 Waivers and Consent to Jurisdiction.** BORROWERS WAIVE THE RIGHT TO TRIAL BY JURY IN CONNECTION WITH ALL MATTERS ARISING UNDER THIS AGREEMENT OR IN ANY LITIGATION ARISING OUT OF OR RELATING TO THE LOANS OR LOAN DOCUMENTS, OR THIS AGREEMENT. MOREOVER, THE PARTIES HEREBY CONSENT AND AGREE THAT THE COURT WHERE THE PROPERTY IS LOCATED, AND/OR THE UNITED STATES DISTRICT COURT WHERE THE PROPERTY IS LOCATED, SHALL HAVE JURISDICTION TO HEAR ANY AND ALL SUCH DISPUTES.

**7.04 No Modifications or Extensions.** Under no circumstances will there be any extensions or postponements of the Forbearance Termination Date, or any other dates set forth in the Loan Documents, this Agreement, or any other document executed in connection therewith, or modifications of the terms of this Agreement, the Loan Documents, or any other document executed in connection therewith, without the express written consent of the parties hereto.

**7.05 Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, executors, administrators, trustees, successors and assigns.

**7.06 Headings.** The headings to paragraphs of this Agreement are solely for the convenience of the parties hereto, and the same shall not be used or construed to interpret or alter the substantive provisions of the paragraphs to which they pertain.

**7.07 Interpretation and Construction.** This Agreement has been fully and freely negotiated by the parties hereto, shall be construed as having been drafted jointly by the parties hereto, and shall be interpreted and construed as if so drafted, without construction in favor of or against any party on account of its participation in the drafting hereof.

**7.08 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

**7.09 Truth In Lending Act.** The parties agree that this Agreement is not a refinancing and, as provided by 12 C.F.R. § 226.20, this Agreement shall be treated as a subsequent event not requiring Regulation Z disclosures.



# UNOFFICIAL COPY

**7.10 Release in Favor of Emigrant.** Except for the obligations and rights expressly set forth and reserved in this Agreement and those portions of the Loan Documents not modified herein, Borrowers, for themselves and their children, parents, relations, successors, beneficiaries, heirs, next of kin, assigns, executors, administrators, and/or estate, or any and all other persons who could claim through Borrowers (collectively, the "Borrowers Releasers"), hereby unconditionally and irrevocably remise, release and forever discharge Emigrant, and any entities related to it, and its past, present and future directors, officers (whether acting in such capacity or individually), shareholders, owners, partners, joint venturers, principals, trustees, creditors, attorneys, representatives, employees, managers, parents, subsidiaries, divisions, subdivisions, departments, affiliates, predecessors, successors, assigns and assignees, or any agent acting or purporting to act for them or on their behalf (collectively, the "Releasees"), from any and all claims, counterclaims, actions, causes of action, suits, set-offs, costs, losses, expenses, sums of money, accounts, reckonings, debts, charges, complaints, controversies, disputes, damages, judgments, executions, promises, omissions, duties, agreements, rights, and any and all demands, obligations and liabilities, of whatever kind or character, direct or indirect, whether known or unknown or capable of being known up until the date of this Agreement, arising at law or in equity, by right of action or otherwise, which Borrower may have against the Releasees. It is the intention and effect of this release to discharge all claims that the Releasers have against the Releasees through and including the date of this Agreement.

**7.11 Disgorgement.** If Emigrant is, for any reason, compelled to surrender or disgorge any payment, interest or other consideration described hereunder to any person or entity because the same is determined to be void or voidable as a preference, fraudulent conveyance, impermissible set-off or for any other reason, such obligation or part thereof intended to be satisfied by virtue of such payment, interest or other consideration shall be revived and continue as if such payment, interest or other consideration had not been received by Emigrant, and Borrowers shall be liable to, and shall indemnify, defend (engaging counsel acceptable to Emigrant) and hold Emigrant harmless for, the amount of such payment or interest surrendered or disgorged. The provisions of this Section shall survive execution and exchange of this Agreement.

**7.12 Automatic Stay.** In the event that Borrowers default under the terms of this Agreement within six (6) months of execution of this Agreement, in consideration of this Agreement, and in recognition of Emigrant's willingness to enter into this Agreement, Borrower hereby agrees that if a petition in Bankruptcy is filed by or against them, as debtors and debtors-in-possession (if applicable), Borrower hereby consents to immediate and unconditional relief from the automatic stay of 11 U.S.C. § 362 (the "**Stay**") in favor of Emigrant, waives their right to oppose a motion for relief from the Stay, waives the benefits of the Stay, and hereby admits and agrees that grounds to vacate the Stay to permit Emigrant to enforce its rights and remedies under this Agreement, the Loan Documents and/or any other documents executed in connection therewith exist and shall continue to exist, which grounds include, without limitation, the fact that Emigrant's interests in the Property cannot be adequately protected.

# UNOFFICIAL COPY

**7.13 Notices.** Notices provided in this Agreement shall be in writing and sent by regular and certified mail, return receipt requested, to the following addresses:

To Borrowers:  
Ramon Key, Sr.  
Jonathan A. Key  
1042 Forest Hill Street  
Calumet City, Illinois 60409

To Emigrant:  
James A. Raborn, Esquire  
First Vice President and Director  
Foreclosures & Real Estate Owned  
Emigrant Mortgage Company, Inc.  
5 East 42nd Street  
New York, NY 10017

Notices shall be deemed given upon deposit in the mails.

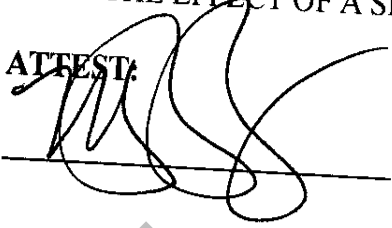
**7.14 Costs and Attorneys' Fees.** In addition to all other liabilities of the Borrowers hereunder, upon the occurrence of an Event of Default, Borrowers also agree to pay to Emigrant, on demand, all costs and expenses (including reasonable attorneys' fees) that may be incurred in the enforcement of Emigrant's rights and remedies under the Loan Documents and this Agreement. All said sums are included within the definition of Indebtedness.

Remainder of page intentionally left blank.

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and exchanged as of the date first above written and, intending to be bound legally hereby, have affixed their respective seals hereto. THIS AGREEMENT IS EXECUTED UNDER SEAL AND IT IS INTENDED THAT THIS AGREEMENT IS AND SHALL CONSTITUTE AND HAVE THE EFFECT OF A SEALED INSTRUMENT ACCORDING TO LAW:

ATTEST:

  
\_\_\_\_\_

EMIGRANT MORTGAGE COMPANY

By:  \_\_\_\_\_ (seal)

Name:

Title:

JAMES A. RABORN  
1ST VICE PRESIDENT  
EMIGRANT MORTGAGE COMPANY, INC.

STATE OF New York \_\_\_\_\_

COUNTY OF New York \_\_\_\_\_

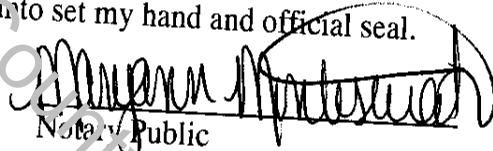
:

: ss:

:

On the 19<sup>th</sup> day of January, 2010, before me, a notary public in and for the State and County aforesaid, the undersigned officer, personally appeared James A. Raborn, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he voluntarily executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

  
Notary Public

My Commission Expires

MARYANN MONTESERRATO  
NOTARY PUBLIC, State of New York  
No. 01MO8071158  
Qualified in Kings County  
Commission Expires March 11, 2014

Remainder of page Intentionally left blank.

# UNOFFICIAL COPY

12-29-2010

Ramon W. Key Sr. (seal)  
Ramon Key, Sr.

12-29-2010

Jonathan A. Key (seal)  
Jonathan A. Key

STATE OF Illinois

COUNTY OF Cook

:  
: ss:  
:

On the 29 day of December, 2010, before me, a notary public in and for the State and County aforesaid, Ramon Key Sr. and Jonathan Key personally appeared and they are known to me or satisfactorily proven to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he voluntarily executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Margaret Engel  
Notary Public

My Commission Expires

