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Doc#: 1236208042 Fee: \$54.00
Karen A. Yarbrough RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 12/27/2012 11:06 AM Pg: 1 of 9

Prepared by and after
recording return to:

Eugene S. Kraus, Esq.
Scott & Kraus, LLC
150 S. Wacker, Suite 2900
Chicago, Illinois 60606

PIN(s):

20-29-204-003-0000

Property Common Address:

953 W. 71st Street, Chicago, IL
60636

ASSUMPTION, AMENDMENT AND REAFFIRMATION AGREEMENT

THIS ASSUMPTION, AMENDMENT AND REAFFIRMATION AGREEMENT (this "Agreement") dated as of November 5, 2012 and effective as of December 31, 2008, is by and among Jonathon Marchetti (the "Assignor"), having an address at 70 Lawton Road, Riverside, IL 60546, The Marchetti Company, an Illinois corporation (the "Assignee"), having its principal place of business at 70 Lawton Road, Riverside, IL 60546, and Inland Bank and Trust, an Illinois state chartered banking institution ("Lender"), having its principal place of business at 2805 Butterfield Road, Oak Brook, Illinois 60523.

RECITALS

A. Lender made a loan (the "Loan") to the Assignor and Kathryn Marchetti in the original principal amount of One Hundred Fifteen Thousand and 00/100 Dollars (\$115,000.00) as evidenced by that certain promissory note dated August 1, 2007, as amended by that certain Change in Terms Agreement dated August 1, 2009, and as further amended from time to time (the "Note"). As additional security for the Note, Assignor and Kathryn Marchetti granted that certain (i) Mortgage in favor of Lender dated as of August 1, 2007 (the "Mortgage") which was recorded in the Cook County Recorder's Office on August 6, 2007, as Document No. 0721802300 against the real property legally described on EXHIBIT A attached hereto and commonly known as 953 W. 71st Street, Chicago, IL 60636 (the "Mortgaged Property") and (ii) Assignment of Rents in favor of Lender dated as of August 1, 2007 (the "Assignment of Rents") which was recorded in the Cook County Recorder's Office on August 6, 2007 as Document No. 0721802301 against the Mortgaged Property.

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B. Pursuant to a Quit Claim Deed dated as of December 31, 2008 and recorded in the Cook County Recorder's Office on January 21, 2009 as Document No. 0902139000, Assignor conveyed the Mortgaged Property to Assignee (the "Transfer").

C. Each of the Note, Mortgage, Assignment of Rents and any other documents executed by either the Assignee, Assignor or Kathryn Marchetti in connection therewith are referred to herein as the "Loan Documents."

D. Lender is willing to consent to the Transfer, provided that: (i) Assignee executes that certain Change in Terms Agreement of even date herewith; (ii) Assignee assumes all of Assignor's obligations under the Mortgage and Assignment of Rents; (iii) Assignee confirms and reaffirms the security interest granted by the Mortgage and Assignment of Rents; and (iv) Assignor and Assignee otherwise comply with the terms, conditions and requirements of this Agreement.

E. Assignee is owned and controlled by Assignor and Assignor and Assignee will derive substantial direct and indirect benefit from Lender's consent to the Transfer of the Mortgaged Property and Lender's willingness to continue to make the Loan secured by, among other things, the Mortgaged Property.

F. Assignor, Assignee and Lender desire to set forth in writing the terms and conditions of Assignee's assumption of the Mortgaged Property and the reaffirmation of the security interest granted by the Mortgage and Assignment of Rents and any other agreements relating thereto.

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

1. Assignment, Assumption and Reaffirmation of Mortgage and Assignment of Rents. Assignor hereby assigns to Assignee (and Assignee hereby accepts) all of Assignor's right, title and interest in and to the Mortgage and Assignment of Rents. Assignee hereby unconditionally and irrevocably assumes all of Assignor's obligations under the Mortgage and Assignment of Rents and shall hereby immediately become directly liable for all of Assignor's agreements, obligations, representations, warranties and covenants contained in the Mortgage and Assignment of Rents. The assumption contained above shall make Assignee directly responsible for the performance of all such obligations to the extent as if Assignee had executed the Mortgage and Assignment of Rents in conjunction with the Assignor. By executing this Agreement, Assignee hereby affirms and reaffirms and makes each of the agreements, obligations, representations, warranties and covenants of the Assignor contained in the Mortgage and Assignment of Rents as of the date of the Transfer and the date hereof. This provision shall not be construed as releasing Assignor from any of his or her (as applicable) respective obligations under any of the other Loan Documents, and Assignor shall continue to be liable under the other Loan Documents to the same degree as existing prior to the execution of this Agreement.

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2. References to the Note in the Loan Documents. As the date hereof, each reference to the word "Note" or "Promissory Note" in the Loan Documents shall mean and be the Promissory Note dated August 1, 2007, in the principal amount of \$115,000.00, together with all renewals of, extensions of, modifications of, refinancing of, consolidations of, and substitutions of the Note.

3. Consent to Transfer. Lender hereby consents to the transfer of the Mortgaged Property to Assignee from Assignor. No further transfers of the Mortgaged Property shall be permitted without Lender's prior written consent.

4. Representations, Warranties and Covenants. Assignee and Assignor each hereby represent and warrant to, and covenant with, Lender as follows:

(a) The transfer of the Mortgaged Property to Assignee from Assignor shall be subject to the lien of Lender under the Note, Mortgage and Assignment of Rents.

(b) The recitals set forth at the beginning of this Agreement are factually true and correct in all respects and Lender has relied on such and form a material part of this Agreement.

(c) Except as modified by or as otherwise expressly provided for in this Agreement: (i) the Mortgage, Assignment of Rents and other Loan Documents shall be unaffected and in no way be released, mitigated, or discharged as a result of this Agreement; and (ii) the Mortgage, Assignment of Rents, and other Loan Documents are in full force and effect and is binding and enforceable, and will remain binding and enforceable in accordance with their terms.

(d) Assignor and Assignee do not possess any claims, defenses, offsets or counterclaims against the Lender relating to the Mortgage, Assignment of Rents, the Note or other Loan Documents and Assignor and Assignee do not have any knowledge of any facts that would give rise to any claims, defenses, offsets or counterclaims against the Lender relating to the enforceability of the Mortgage, Assignment of Rents, Note or other Loan Documents.

(e) In the event there exists any facts that would give rise to any claim, defense, offset or counterclaim against or with respect to the enforcement of Mortgage, Assignment of Rents, the Note, or other Loan Documents, Assignor and Assignee hereby unconditionally, irrevocably, and unequivocally waive and fully release Lender of any such claim, defense, offset or counterclaim to the same extent as if such claims were the subject of a lawsuit adjudicated to conclusion and dismissed therein with prejudice.

(f) Prior to the date hereof, Lender has fully performed its obligations under the Note.

(g) Aside from the Transfer, no other Event of Default has occurred under any of the Loan Documents and no circumstances exist which would constitute an Event of Default if proper notice were given or if a grace period elapsed.

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(h) Both at the time of the Transfer and now, Assignee has been, and continues to be, duly formed and in good standing under the laws of the State of Illinois. This Agreement and the Transfer have been duly authorized by all necessary corporate or organizational action required under Assignee's organizational documents and the execution thereof shall not violate any of Assignee's organizational documents or any other contracts or agreements to which Assignee or Assignor is bound.

5. Conditions to Closing. Lender's agreement to consent to the assumption contained herein shall be subject to the satisfaction of the following conditions precedent by Assignor and Assignee:

(a) Insurance. Lender shall have received proof from Assignee and Assignor that the Mortgaged Property is properly insured as required under the Mortgage and Loan Documents.

(b) Legal Fees. Either the Assignor or Assignee shall have paid all of Lender's legal fees and costs incurred in connection with the assumption of the Mortgage and Assignment of Rents by Assignee, plus all recording fees related to the recording of this Agreement and any other instrument or document executed in conjunction herewith.

6. Acknowledgment of Consideration. Assignor and Assignee hereby agree and acknowledge as follows:

(a) this Agreement has been entered into in consideration of Lender's agreement to consent to the Transfer;

(b) Lender's consent to the Transfer constitutes valuable and adequate consideration for the granting of this Agreement; and

(c) Assignor and Assignee each hereby waive any and all defenses relating to or arising out of the existence, failure or adequacy of the consideration given for the execution of this Agreement.

7. Acknowledgement of Security for Note. Assignor and Assignee hereby agree that all mortgages, security interests, assignments, liens and pledges in favor of Lender as evidenced or created by the Mortgage and Assignment of Rents shall continue in full force and effect and shall secure the repayment of all amounts due to Lender under the Note. It is the intention of the parties that this Agreement shall not result in an amendment or modification of the Mortgage or Assignment of Rents, except as expressly provided for herein.

8. Acknowledgment of Mortgage and Assignment of Rents. Each of the Assignee and Assignor hereby represents, warrants and agrees that: (a) it has read and reviewed the terms of the Mortgage and Assignment of Rents prior to executing this Agreement; (b) it has had the opportunity to consult with Lender and legal counsel of its own choosing concerning the contents of this Agreement and the Mortgage and Assignment of Rents, as well as the status of the Note; (c) it consents to, approves of and accepts the terms of the Mortgage and Assignment of Rents, as amended hereby; (d) it

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waives any defense to the enforcement of the Mortgage and Assignment of Rents based upon: (i) Lender's failure to provide Assignee or Assignor any information relating to Assignor or the administration of the Note prior to the date hereof; or (ii) its failure to fully read, review or understand the Mortgage or the Assignment of Rents or the status of Note administration; and (e) the principal balance of the Note as of the date hereof is \$108,128.39

9. Omnibus Amendment. The terms "Grantor" or "Mortgagor" used throughout the Mortgage, Assignment of Rents or other Loan Documents (as applicable) shall be deemed to hereafter refer to Assignee.

10. Indemnity and Waivers. To the extent any dispute arises between Assignor or Assignee or with respect to the transactions contemplated hereby and Lender is made a party to such dispute or determines that it must protect its interests in connection with said dispute, then Assignee and Assignor hereby jointly and severally agree to indemnify Lender and to hold Lender harmless from and against all losses, claims, demands, costs, expenses, and liabilities (including settlement amounts and reasonable attorney's fees) suffered by Lender in connection with any such dispute. Further, Assignor and Assignee hereby absolutely and unconditionally waive any and all defenses to the enforcement of the Note, Mortgage, Assignment of Rents and other Loan Documents arising by virtue of the execution of this Agreement.

11. Release of Lender by Assignor. Assignor hereby release and fully discharge Lender from and against any and all claims, causes of actions or damages which Assignor may have as of the date hereof (whether known or unknown to such Assignor).

12. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall be governed by and enforced in accordance with the laws of the State of Illinois. No waiver, modification, estoppel, amendment, discharge or change to the terms of this Agreement shall be valid and binding unless the same is in writing and signed by all parties hereto. The provisions of this Agreement are severable in the instance any provision is unenforceable. Assignee and Assignor (jointly and severally) shall pay, on demand, all of Lender's costs and fees (including reasonable attorney's fees and costs) incurred by Lender in the enforcement of the provisions of this Agreement. The terms and provisions of the Mortgage and Assignment of Rents are incorporated herein by reference as if fully stated herein. To the extent the terms of this Agreement conflict with the terms of the Mortgage and Assignment of Rents, the terms of this Agreement shall control. This Agreement constitutes the entire agreement of the parties with respect to the matters referenced herein. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument. The headings herein are for convenience only and shall in no manner be construed to affect the substantive nature of this Agreement. Any and all notices to be served on Assignee or either Assignor shall be served using the addresses set forth above. **THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN CONNECTION WITH THIS AGREEMENT.**

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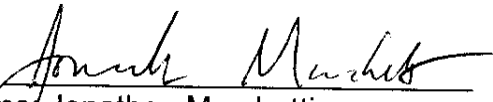
IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first set forth above.

ASSIGNOR:

ASSIGNEE:


JONATHON MARCHETTI

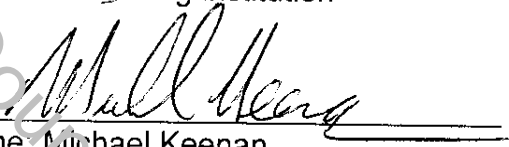
THE MARCHETTI COMPANY,
an Illinois corporation

By: 
Name: Jonathon Marchetti
Title: President

Agreed and accepted:

LENDER:

INLAND BANK AND TRUST, an Illinois state
chartered banking institution

By: 
Name: Michael Keenan
Its: Senior Vice President

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ACKNOWLEDGEMENT

STATE OF ILLINOIS)
COUNTY OF DePue) SS.

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Jonathon Marchetti, the President of The Marchetti Company, an Illinois corporation, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the act of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal November 5, 2012.



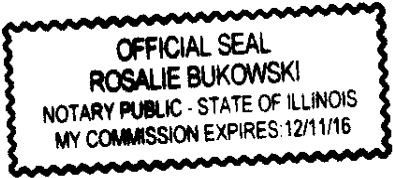
Rosalie Bukowski
Notary Public

My Commission Expires: 12-11-16

STATE OF ILLINOIS)
COUNTY OF DePue) SS.

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Jonathon Marchetti, an individual, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal 11 5, 2012.



Rosalie Bukowski
Notary Public

My Commission Expires: 12-11-16

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STATE OF ILLINOIS)
COUNTY OF Superior SS.

On this 5th day of November 2012, before me, a Notary Public in and for said State, personally appeared Michael Keenan, an individual, to me personally known, who, being by me duly sworn did say that s/he is the Senior Vice President of Inland Bank and Trust, an Illinois state chartered banking institution, and that said instrument was signed on behalf of said company and said individual acknowledged the execution of said instrument to be the free act and deed of said company, and acknowledged to me that s/he executed the same for the purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.



Rosalie Bukowski
Notary Public

My Commission Expires: 12-11-16

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EXHIBIT A

LEGAL DESCRIPTION

LOT 620 IN DOWNING AND PHILLIPS NORMAL PARK ADDITION, A SUBDIVISION EAST HALF OF THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, (EXCEPT THE SOUTH 149 FEET THEREOF), IN COOK COUNTY, ILLINOIS.

COMMON ADDRESS: 953 W. 71ST STREET, CHICAGO, IL 60636

PIN: 20-29-204-003-0000