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RECORDATION REQUESTED BY:

Crowley Barrett & Karaba, Ltd.
20 S. Clark Street, Suite 2310
Chicago, IL 60603-1806
Attention: Tonya M. Parravano, Esq.

Doc#: 1321313050 Fee: \$56.00
RHSP Fee:\$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 08/01/2013 01:23 PM Pg: 1 of 10

**THIS INSTRUMENT PREPARED BY
AND WHEN RECORDED RETURN
TO:**

Crowley Barrett & Karaba, Ltd.
20 S. Clark Street, Suite 2310
Chicago, IL 60603-1806
Attention: Tonya M. Parravano, Esq.

THIRD MODIFICATION AND EXTENSION AGREEMENT

Loan No. 0960763939-26

THIS SECOND MODIFICATION AND EXTENSION AGREEMENT is made as of July 23, 2013, with an effective date of July 15, 2013, by and between JOVITA MONTOYA ("**Borrower**"), and FIFTH THIRD BANK, an Ohio banking corporation, successor by merger with FIFTH THIRD BANK, a Michigan banking corporation ("**Lender**").

WITNESSETH:

WHEREAS, on or about October 15, 2004, Lender made a loan (the "**Loan**") to Borrower and Ignacio Montoya in the amount of \$245,000.00, which Loan is secured by certain real property commonly known as 4755 South Wolcott Avenue, Chicago, Illinois, as legally described in Exhibit A hereto (the "**Real Property**");

WHEREAS, the Loan is evidenced and secured by the following instruments (collectively, together with this Agreement and any documents executed in connection herewith, and all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for such documents, the "**Loan Documents**");

1. Term Note made by Borrower dated January 27, 2012, with an effective date of July 15, 2011, payable to Lender in the principal amount of Two Hundred Thousand Seven Hundred Sixty-Three and 01/100 Dollars (\$200,763.01) (the "**Note**");

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2. Mortgage, Security Agreement and Financing Statement dated October 15, 2004, executed by Borrower and Ignacio Montoya affecting the Real Property, recorded with the Cook County Recorder of Deeds on October 22, 2004, as document number 0429649047 (the "**Mortgage**");
3. Assignment of Rents and Leases dated October 15, 2004, executed by Borrower affecting the Real Property, recorded with the Cook County Recorder of Deeds on October 22, 2004, as document number 0429649048;
4. First Modification and Extension Agreement dated as of December 8, 2009, recorded with the Cook County Recorder of Deeds on December 22, 2009, as document number 0935631057;
5. Second Modification and Extension Agreement dated as of July 15, 2012;
6. Assignment of Deposit Account dated as of July 15, 2012, with respect to Fifth Third Bank Savings Account No. 9235363034;
7. any and all other documents or instruments given at any time to evidence and/or secure the Loan.

WHEREAS, as of the date hereof, there is an outstanding principal balance on the Loan in the amount of \$188,773.10;

WHEREAS, Borrower has requested that Lender modify and amend certain terms and provisions of the Loan Documents in order to, among other things, extend the Maturity Date of the Loan; and

WHEREAS, Lender is willing to grant Borrower's requests on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed as follows:

1. **Modification of Loan Documents**. Subject to the terms and provisions herein contained, the Loan Documents shall be modified and amended, effective as of the date hereof, so as to provide as follows:

(a) **Modification of Loan Documents – Maturity Date**. The Maturity Date (as such term is defined in the Loan Documents) is hereby extended to July 15, 2015.

(b) **Modification of Note – Payments**. The third paragraph on the first page of the Note is hereby modified and amended in its entirety so as to provide as follows:

Payments of principal shall be due and payable in 23 installments, each in the amount of **\$820.33** on the **25th** day of each calendar month beginning on August 25, 2013; provided that the entire principal balance, together

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with all accrued and unpaid interest and any other charges, advances and fees, if any, outstanding hereunder shall be due and payable in full on the earlier of the Maturity Date or upon acceleration of the Note.

(c) **Modification of Note – Definitions.** Section 8 of the Note and all corresponding sections of the other Loan Documents are hereby modified and amended so as to add definitions for the terms “Commodity Exchange Act,” “Excluded Swap Obligation,” and “Swap Obligation,” and so as to replace the definition of the term “Obligations” with the following definitions for such terms:

“**Commodity Exchange Act**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**Excluded Swap Obligation**” means, with respect to any guarantor of a Swap Obligation, including the grant of a security interest to secure the guaranty of such Swap Obligation, any Swap Obligation if, and to the extent that, such Swap Obligation is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the guaranty or grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Swap Obligation or security interest is or becomes illegal.

“**Obligation(s)**” means all loans, advances, indebtedness and each and every other obligation or liability of Borrower owed to each Lender and/or any affiliate of Fifth Third Bankcorp, however created, of every kind and description whether now existing or hereafter arising and whether direct or indirect, primary or as guarantor or surety, absolute or contingent, liquidated or unliquidated, matured or unmatured, participated in whole or in part, created by trust agreement, lease overdraft, agreement or otherwise, whether or not secured by additional collateral, whether originated with Lender or owed to others and acquired by Lender by purchase, assignment or otherwise, and including, without limitation, all loans, advances, indebtedness and each and every obligation or liability arising under the loan document, any and all Rate Management Obligations (as defined in the Loan Documents), letters of credit now or hereafter issued by Lender or any affiliate of Fifth Third Bancorp for the benefit of or at the request of Borrower, all obligations to perform or forbear from performing acts, and agreements, instruments and documents evidencing, guarantying securing or otherwise executed in connection

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with any of the foregoing, together with any amendments, modifications and restatements thereof, and all expenses and attorneys' fees incurred by Lender hereunder or under any other document, instrument or agreement related to any of the foregoing. Notwithstanding the foregoing, the term "Obligations" shall not include any Excluded Swap Obligations.

"**Swap Obligation**" means any Rate Management Obligation that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act, as amended from time to time.

2. **Deposit Account.** Borrower shall continue to deposit all rental payments collected in connection with the Real Property into Fifth Third Bank Savings Account No. 9235363034 held by Lender in the name of Borrower (the "**Deposit Account**"). Borrower hereby irrevocably authorizes and instructs Lender, at its option, to direct debit the Deposit Account or any of Borrower's operating accounts, deposit accounts or other accounts with Lender, for any and all amounts due under the Loan Documents including, without limitation, interest, fees, costs and expenses due hereunder with respect to the Loan, all of the foregoing to be done at Lender's option.

3. **Continuation.** Except as otherwise specifically modified or amended by the terms of this Agreement or other amendments which have been mutually agreed in writing by and between Borrower and Lender, the Loan Documents and all provisions contained therein, respectively, shall continue in full force and effect.

4. **Reaffirmation of Loan Documents.** Except as expressly herein provided, Borrower and Lender hereby reaffirm and incorporate herein by reference each and every term, provision, representation and warranty contained in the Loan Documents, and Borrower and Lender agree that said terms, provisions, representations and warranties shall remain in full force and effect.

5. **Cross-Collateralization.** Borrower hereby acknowledges and agrees that in addition to the Note, the Mortgage secures all obligations, debts and liabilities, plus interest thereon, of Borrower to Lender, as well as all claims by Lender against Borrower, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated whether Borrower may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

6. **Counterparts.** This Agreement may be executed by the parties hereto in any number of counterparts, each of which shall constitute an original document, and all of which when taken together shall constitute one and the same agreement.

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7. **No Defenses.** Borrower represents to Lender that she has no defenses, setoffs, claims or counterclaims of any kind or nature whatsoever against Lender in connection with the Loan Documents or this Agreement, or any amendments to said documents or any action taken or not taken by the Lender with respect thereto or with respect to the collateral. Without limiting the generality of the foregoing, Borrower hereby releases and forever discharges Lender, its affiliates, and each of its officers, agents, employees, attorneys, insurers, successors and assigns, from any and all liabilities, or causes of action, known or unknown, arising out of any action or inaction with respect to the Loan Documents.

8. **Disclaimer.** Borrower expressly disclaims any reliance on any oral representation made by Lender with respect to the subject matter of this Agreement. Borrower acknowledges and agrees that Lender is specifically relying upon the representations, warranties, releases and agreements contained herein, and that this Agreement is executed by Borrower and delivered to Lender as an inducement to extend the Maturity Date of the Loan.

9. **Class Action Waiver.** Each party hereto acknowledges and agrees that (i) notwithstanding anything contained in any applicable Illinois statute to the contrary, interest accruing on obligations owing to Lender is calculated on a period consisting of 360 days for each actual day elapsed, (ii) such method results in an actual effective rate of interest higher than the stated rate, and (iii) it has been advised of this fact and the parties have specifically contracted for such calculation method.

All parties to this instrument agree that EACH PARTY HERETO MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY, and not as a plaintiff or class representative or class member in any purported class or representative proceeding. Further, each party agrees that the court may not consolidate proceedings or more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

10. **Costs.** Borrower agrees to pay upon demand all of Lender's out-of-pocket expenses, including attorneys' fees, incurred in connection with this Agreement. Lender may pay someone else to help collect the loans secured by the Loan Documents and to enforce the Loan Documents and the Borrower will pay that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and legal expenses, whether or not there is a lawsuit, including attorneys' fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also will pay any court costs, in addition to all other sums provided by law.

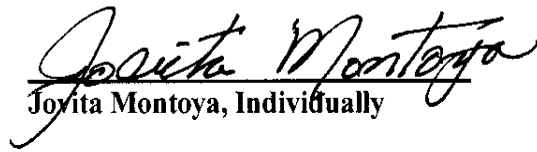
11. **Jurisdiction, Jury Waiver.** This Agreement has been delivered to Lender and accepted by Lender in the State of Illinois. If there is a lawsuit, under the Loan Documents, this Agreement, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Cook County, the State of Illinois. LENDER, BORROWER, AND GUARANTOR HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY LENDER, BORROWER, OR GUARANTOR AGAINST THE OTHERS. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

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12. **Successors and Assigns.** All covenants and agreements contained by or on behalf of Borrower shall bind Borrower's respective successors and assigns and shall inure to the benefit of Lender, its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or the Loan Documents or any interest therein, without the prior written consent of Lender.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed and acknowledged as of the day and year first above written.

BORROWER:


Joyita Montoya, Individually

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IN WITNESS WHEREOF, Lender has caused these presents to be executed the day and year first above written.

FIFTH THIRD BANK, an Ohio banking corporation, successor by merger with **FIFTH THIRD BANK**, a Michigan banking corporation

By: 

Name: Mark E. Beeghly

Its: Vice President

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EXHIBIT A

LEGAL DESCRIPTION

LOT 22 IN B. F. JACOB'S SUB OF THE WEST 1/2 OF THE WEST 1/2 OF BLOCK 11 IN STONE AND WHITNEY'S A SUBDIVISION IN THE NORTH 1/2 OF SECTION 7, TOWNSHIP 38 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

Common Address: 4755 South Wolcott Avenue, Chicago, Illinois

Permanent Index No.: 20-07-202-021

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