

UNOFFICIAL COPY

MEMORANDUM OF CONSULTING AGREEMENT

KNOW ALL MEN BY THESE
PRESENTS:

THAT Real Estate Investment Capital and Resource Group, of Chicago, Illinois, (the "RCR") entered into a consulting agreement (the "Consulting Agreement") with the Owner of Record for RCR to perform services related to the real property (the "Property") commonly known as: 5427 S. Calumet Avenue, Chicago, Illinois, specifically described as:

SEE LEGAL DESCRIPTION
ATTACHED HERETO

P.I.N. 20-10-316-008-006 and:

1. THAT FURTHERMORE, pursuant to the Consulting Agreement, the Owner agreed, for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, to pay RCR a consulting fee (the "Consulting Fee") for said consulting services as set forth in the attached agreement; and
2. THAT the Consulting Fee, unless released by recorded instrument, REMAINS DUE as of the date hereof; and
3. THAT the Consulting Fee, HAS NOT BEEN PAID AS OF THE DATE HEREOF; and
4. THAT upon payment of the Consulting Fee, RCR shall provide a recordable release of all its claims, rights, and interests in each unit in the Property, if not already so provided; and

WHEN RECORDED MAIL TO:

Roy D. Kessel
Law Offices of Roy D. Kessel.
3255 N. Arlington Heights Road
Suite 510
Arlington Heights, Illinois 60004



0617445049

Doc#: 0617945049 Fee: \$34.50
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 08/28/2008 01:52 PM Pg: 1 of 6

UNOFFICIAL COPY

REAL ESTATE INVESTMENT CAPITAL AND RESOURCE GROUP
REAL ESTATE DEVELOPERS, INVESTORS, LENDERS, AND VENTURE CAPITALISTS

OFFICE OF THE GENERAL COUNSEL
1505 E. 53RD ST., SUITE 200
CHICAGO, IL 60615-4509

Direct: (773) 793-4133
Fax: (773) 955-1951

Service Agreement FOR SALE OF DISCOUNT CONDOMINIUMS

This agreement ("Agreement") by and _____ located at _____, personally and as duly authorized principals of 5427 S. Calumet, LLC on behalf of 5427 S. Calumet, LLC located at 5427 S. Calumet, Chicago, Illinois, including his/hers/its/their agents, representatives, successors, associates, affiliates, owners, co-owners, parent companies, subsidiaries, and/or otherwise related parties (either personally or as duly authorized representative, either individually and/or collectively in any combination, the "Client") and Real Estate Investment Capital and Resource Group, LLC of 1505 E. 53rd Street, Chicago, Illinois ("RCR") establishes the terms of a business arrangement by and between the parties hereto (the "Parties"), the consideration for which and the sufficiency thereof is hereby acknowledged.

The herein Agreement relates to the sale of as many as four (4) condominium units in each of one (1) condominium buildings (singly or collectively, whether units or buildings, the "Property") commonly known as:

- BUILDING 1: _____ 5427 S. Calumet _____
- BUILDING 2: _____
- BUILDING 3: _____

Whereas Client desires, for reasons understood by Client, to sell the Property as soon as reasonably possible;

Whereas Client has not, for reasons understood by Client, listed the Property with a real estate agent or broker;

Whereas Client understands and acknowledges that RCR, a real estate investment company, has or has access to, prospective buyers who can potentially purchase the Client's Property;

Whereas Client has asked RCR to procure said buyers to purchase Client's Property in exchange for monetary compensation and/or the opportunity to make a profit;

Whereas Client has proposed, for reasons known to Client, to sell the Property at the price \$200,000 (less than the appraised value) to induce a quick sale;

NOW THEREFORE, in consideration of the foregoing, the understanding and intent of the Parties, and the mutual covenants herein, the Parties hereby agree to the following terms:

1. RCR shall hereby perform the service (the "Service") of procuring proposed buyers (the "Buyer(s)") to buy one or more condominium units (the "Unit(s)") owned by Client at a purchase price of \$200,000 (the "Seller Price"). It is the expectation of the parties that the Property will appraise at approximately \$260,000 (the "Market Price"). The difference between the Seller Price and the Market Price shall be paid to RCR, in exchange for its Services, and Client shall allow RCR to receive all of the gross proceeds of the sale of each unit in excess of the Seller Price (the "Spread"). In the event that the Property does not appraise at a minimum of \$250,000 on the appraisal ordered by Buyer's lender, RCR shall have the right, in its sole discretion, to terminate this Agreement within 3 business days of receiving such appraisal. In the event that RCR exercises its right to terminate this Agreement, the Agreement shall be considered null and void and neither party shall have any liability to the other party. For purposes of this Paragraph, RCR shall provide written notice to counsel for Client to exercise its right to terminate this Agreement. Email or facsimile correspondence shall constitute written notice for purposes of this Paragraph.
2. Client hereby understands, acknowledges, and agrees that RCR's sole incentive for providing Client the service of procuring Buyers for his Property is the \$60,000 discount on each Property, and without said \$60,000 spread, RCR's intent and purpose in the herein business arrangement with Client may be defeated.
3. Client hereby agrees that RCR may structure any legal and ethical deal related to the subject transaction, provided that the gross proceeds to Client is in the amount equal to the Seller Price.
4. Client acknowledges, understands, and agrees that RCR shall structure the subject deal such that RCR's profit shall come from the spread between the Seller Price and the Market Price.
5. RCR shall administer the payment of part or all of the immediate equity ("Buyer's Equity") Buyer will have acquired as a result of Buyer's discount purchase of the Unit, and third party intermediary commissions at closing. Therefore Client hereby acknowledges, understands, and agrees that RCR shall be required to attend any and all closings using RCR procured Buyers, and shall furthermore, provide RCR, upon RCR's request, with the title company, file number, and the location, date and time of each Unit closing.

UNOFFICIAL COPY

6. Client hereby agrees to pay Client's own closing costs, and said costs shall be deducted from the Seller Price.
7. RCR's interest in the sale of each Unit for which RCR procures a Buyer shall be identified in the Buyer's purchase contract, so as to enable the title company to disburse a check directly to RCR in an amount equal to the Spread.
8. Client shall cooperate with RCR in implementing the deal structure desired by RCR, provided said structure is not detrimental to Client, illegal, or unethical. Said implementation shall include without limitation the execution of documents required to secure RCR's interest in the subject transaction. Client acknowledges and understands that RCR's interest in the sale of the Units needs to be secured.

Client has elected to secure RCR's interest as follows:

- a. _____ Client will secure an irrevocable stand-by Letter of Credit from a financial institution reasonably satisfactory to RCR in order to secure Client's performance under this Agreement. Such Letter of Credit shall be in the minimum amount of \$_____. Client understands, acknowledges and agrees that if Client fails to pay RCR's fee at the closing of a Unit from the proceeds from the sale of such Unit, RCR shall be entitled to immediately draw on such Letter of Credit.
 - b. ~~XXXXXX~~ _____ Client will allow RCR to record a lien against each of the Units identified above, equal to the amount of the spread, which lien shall be released upon Client's payment to RCR of the amount of the Spread at the closing for the sale of such Unit. RCR shall prepare and record a lien against each individual unit and PIN to reflect its interest in the Unit and shall prepare a release of such lien in advance for review and approval of Client so that such release is executed and available to be provided to the Title Company at the Closing of each Unit. RCR further agrees that if the Buyer shall not close on the purchase of the Unit for any reason other than the breach of Seller, RCR shall release its lien within 5 business days after receiving written notice from Client that the Buyer has refused or is unwilling or unable to close on the Unit.
 - c. _____ Client has made alternative arrangements satisfactory to RCR to secure RCR's interest in the sale of the Units. The security provided by Client consists of the following: _____

11. Client hereby agrees that Buyer's purchase contract shall be contingent upon Buyer having 15 business days (i.e., not including weekends and federal holidays) from the date of Client's contract acceptance, to obtain a loan commitment for Buyer's financing of the purchase of the Unit.
 12. Client shall allow RCR access to the Property for the purpose of showing the Property to prospective Buyers, or preparing to show the Property to prospective Buyers, or for familiarization, planning or any other purposes reasonably related to the marketing and/or sale of the Property.
 13. RCR is hereby an independent consultant, representing neither Buyer's nor Client's interests. RCR is representing only its own interests, although all parties acknowledge that RCR's interests are mutually beneficial to Buyer and to Client.
 14. Client understands, acknowledges, and agrees that Buyer's obligation to close is hereby expressly contingent upon: 1) Seller's payoff of RCR's interest in the Property, (i.e., the Spread, in the amount of \$60,000) at closing from the Market Price proceeds; 2) the express written consent of RCR to close; and 3) RCR's or its attorney's presence at the closing. Furthermore, said contingencies shall be incorporated into the Buyer's purchase agreement through the use of the attached Rider. Such Rider must be included in all contracts signed by buyers introduced to Client by RCR (or any one of its agents, employees, associates, producers or affiliates). Failure to include such Rider in a contract signed by such a buyer shall constitute a material breach of this Agreement and shall constitute sufficient cause for RCR to disapprove of any contract.
 15. Client understands, acknowledges, and agrees that RCR has or will invest money, time, and effort in finding, identifying, qualifying, and otherwise procuring the Buyers for Client, and as a result, Client shall owe RCR compensation for said investments once RCR has procured a ready, willing, and able Buyer, whether Client actually sells the Property to Buyer or not.
 16. Client understands and acknowledges that RCR is partially comprised of one or more licensed real estate brokers, and as such could be entitled to a real estate sales commission; however, RCR hereby waives said commission provided the Client uses the Spread to be disbursed to RCR at closing. Furthermore Client hereby understands and acknowledges that RCR's net profit, after all costs, under this arrangement will be approximately \$10,000.00 per Unit, which is the equivalent of a 5% sales commission.
 17. Client understands, acknowledges, and agrees that RCR shall in most cases pay all out-of-pocket expenditures on behalf of Buyer, and Client shall therefore be liable to RCR for said expenditures to the extent that Client receives any gross proceeds above the Seller Price from the sale of any Unit, if Client has failed to cooperate with RCR in the implementation of the deal structure desired by RCR.
 18. Client hereby understands and acknowledges that: 1) Buyer shall structure the subject purchases of the Units such that each Buyer shall receive at closing (or shortly thereafter on the same day) a cash disbursement in the amount of \$10,000 to \$25,000 which shall represent part or all of the Buyer's Equity; and 2) in anticipation of receiving the Spread at closing, RCR has furthermore contractually obligated itself to pay said Buyer's Equity, upon Buyer's purchase of the Unit, from the disbursement of the Spread at closing. Therefore Client understands, acknowledges, and agrees that RCR shall expressly rely on Client, to RCR's own detriment, to actively participate in causing the disbursement of the Spread to RCR at closing. Therefore if Client fails to coordinate with the Title Company to make such payment directly to RCR, Client shall be liable to RCR for said detriment suffered, including but not limited to the payment of Buyer's Equity on behalf of RCR and for the payment of all costs, expenses and attorneys fees incurred by RCR in enforcing its rights under this Agreement.
 19. Client hereby understands, acknowledges, and agrees that if for any reason whatsoever, RCR does not receive the Spread at a closing in which a Buyer procured by RCR purchases the Unit, Client shall owe RCR a debt in the amount equal to the Spread in liquidated damages, and hereby agrees to pay it upon RCR's demand at the address herein, or other location from time to time specified by RCR.
 20. Client hereby understands, acknowledges, and agrees that the Buyers are exclusive contacts of RCR, and as such RCR reserves the right to terminate the Buyer's participation in any given transaction in its sole discretion at any time without any further RCR or Buyer obligation to the

UNOFFICIAL COPY

Client, for reasons including but not limited to the following: 1) Buyer's inability to obtain financing; 2) Seller's inability to compensate RCR or ensure RCR's compensation; and 3) the inability of the objectives of the transaction to be accomplished by legal and ethical means.

21. RCR shall not be liable to Client for any act or failure to act by the Buyer before, during, or after the RCR's involvement with the Client, including but not limited to any performance breach by the Buyer.
22. Client hereby acknowledges, understands, and agrees that RCR does not and cannot control whether or not a Buyer will purchase Client's Property or qualify for a loan. Therefore, RCR and/or its principals and/or its agents shall not be liable, under any circumstances, for failing to procure a ready, willing, and able Buyer for the Client for any reason.
23. Client hereby agrees to defend, protect, indemnify and hold harmless RCR from and against any and all claims that may arise directly or indirectly as a result of the business relationship contemplated herein.
24. Buyer understands, acknowledges, and agrees that the herein business arrangement establishes rights in RCR relative to the Property that must be satisfied and released upon sale to any Buyer.
25. **Confidentiality and Non-Circumvention.** This Agreement and the business arrangement contemplated herein is exclusive and strictly confidential. All Client information is proprietary and shall be held in the strictest confidence, and shall not be disclosed to third parties other than the Buyer and RCR affiliates or related parties, without prior consent of the Client. All proprietary information regarding the business arrangement contemplated herein and RCR and the Buyer shall be held in the strictest confidence by the Client.

The Client understands and hereby acknowledges that RCR spends significant money, time, and effort to: 1) find, design, negotiate, and otherwise develop profitable business opportunities, especially in real estate, 2) establish and compile lists of valuable business contacts and develop business relationships, and 3) find and compile valuable business resources. The Client understands, agrees, and hereby acknowledges that as a result of the investment by RCR of said money, time, and effort, RCR has developed valuable, highly marketable information which RCR can sell for profit, and as such constitutes intellectual property of RCR and are proprietary trade secrets, and are therefore valuable assets owned by RCR. Therefore, the Client understands and agrees that it shall maintain complete confidentiality concerning its business affairs with RCR and all proprietary information which the Client may receive from RCR, said proprietary information meaning ANY information, including but not limited to the information discussed in this paragraph, written or not, which is disclosed to, or discussed with, the Client as a result of, or as a part of, the Client's business relationship, or prospective business relationship, with RCR; and shall mean the same throughout this document (the "PROPRIETARY INFORMATION").

With the exception of the Client's lawyer, accountant, business partners, or other third party acting in the capacity of the Client's agent or advisor in the Client's business affairs with RCR, the Client shall not disclose or disseminate PROPRIETARY INFORMATION to third parties without the express written consent of RCR. Any third party to whom the Client releases PROPRIETARY INFORMATION shall thereby be bound and fully liable under the terms herein as if the Client, and the Client shall be joint and severally liable for any breach by any said third party of the terms herein.

The Client shall not compete with RCR in the use of PROPRIETARY INFORMATION. The Client shall not use PROPRIETARY INFORMATION in any trade or business enterprise unrelated to the Client's business affairs with RCR.

The Client shall not circumvent RCR by communicating, negotiating, or otherwise dealing directly and without RCR express consent, with people or business entities made known to the Client, directly or indirectly, by RCR regarding current or future business opportunities.

In the event the Client breaches the terms herein, regardless of whether RCR's ability to partake in the subject business opportunity, as planned prior to said breach, is prevented or otherwise impaired, the Client shall be liable to RCR for: 1) damages in an amount (the "Debt") equal to the profit, reasonably ascertainable, RCR would have realized from the business opportunity to which the PROPRIETARY INFORMATION is related, if the Client had not breached the terms herein; or 2) should said profit not be reasonably ascertainable as of the date liability accrues, or as of the date judgment is rendered for said damages, an amount (the "Debt") equal to the cost normally billable, for labor and materials, to RCR's clients for RCR to develop the subject PROPRIETARY INFORMATION for the client's own use; said labor cost to be calculated by multiplying the number of man-hours worked by a billing rate of \$200/hour.

Said Debt shall be due and payable immediately upon the earliest of: the time when the Client should reasonably know that the Client has breached any of the terms herein; the time when the Client should reasonably know that the Client's breach will prevent or otherwise impair RCR's ability to partake in the subject business opportunity, as planned prior to said breach; or immediately upon RCR's discovery that said breach or said prevention or impairment has been made, and notice, written or not, is given to the Client that no further Debt has accrued.

29. Client represents that he/she/it is not a consumer but rather a business, and enters into this Agreement strictly for business and commercial purposes.
30. RCR reserves the right to modify this Agreement at any time prior to closing, and any said modifications shall be agreed to by signature by the Client before RCR procures any new Buyers.
31. Notwithstanding anything herein, or in any other related document, to the contrary, this Agreement and the business arrangement contemplated herein does not, and shall not, establish a partnership of any kind between RCR and any other party, nor shall it under any circumstances be interpreted or construed as such.
32. At any time during the effectiveness of this Agreement, the parties hereto may mutually agree in writing to modify the terms herein.
33. Any conflicting terms within this Agreement shall be resolved in a manner most equitable to the Buyer.
34. Any terms in this Agreement which conflict with the terms of any other document relating to the business relationship between the parties hereto shall be resolved in a manner most equitable to the Buyer.
35. Should any part of this Agreement be unlawful, that part shall be stricken or modified under the laws of the State of Illinois. All remaining

UNOFFICIAL COPY

provisions in this Agreement shall continue in full force and effect, and uninterrupted.

- 36. This Agreement shall inure to the benefit of, and be binding upon, the Parties' heirs, successors, legal representatives, and assignees.
- 37. This Agreement constitutes the entire agreement between RCR and Client with respect to the subject matter hereof and supersedes all prior negotiations, agreements, understandings and arrangements, both oral and written, between RCR and Client with respect to such subject matter. This Agreement may not be modified in any way, except by a written instrument executed by each of the parties.
- 38. This Agreement may be executed in any number of counterparts, each of which shall be deemed to constitute an original and all of which shall be deemed to be the one and the same instrument.
- 39. This Agreement may be signed by facsimile signatures with such signatures having the force and effect of the original.
- 40. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.
- 41. THIS AGREEMENT HAS BEEN EXECUTED, DELIVERED AND ACCEPTED AT AND SHALL BE DEEMED TO BE MADE AT CHICAGO, ILLINOIS AND SHALL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO, WHETHER IN CONTRACT OR TORT, SHALL BE DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS (AS OPPOSED TO CONFLICTS OF LAW PROVISION) OF THE STATE OF ILLINOIS. ALL PARTIES TO THIS AGREEMENT HEREBY CONSENT TO JURISDICTION IN ANY STATE OR FEDERAL COURT LOCATED IN COOK COUNTY, ILLINOIS AND EXPRESSLY WAIVE ANY RIGHT TO CONTEST SUCH JURISDICTION.
- 42. RCR AND CLIENT ACKNOWLEDGE THAT THEY HAVE BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL IN CONNECTION WITH THIS AGREEMENT TO THE EXTENT THEY DEEM NECESSARY OR DESIRABLE, OR THAT THEY WERE GIVEN THE OPPORTUNITY TO DO SO AND THAT THEY FREELY AND VOLUNTARILY CHOSE NOT TO; THAT TO THE EXTENT THEY HAVE RETAINED LEGAL COUNSEL, THEY HAVE RELIED UPON THE ADVICE OF THEIR INDEPENDENT LEGAL COUNSEL IN AGREEING TO THE TERMS AND CONDITIONS SET FORTH HEREIN AND IN EXECUTING THIS AGREEMENT; THAT THEY HAVE FREELY AND VOLUNTARILY ENTERED INTO AND EXECUTED THIS AGREEMENT; AND THAT THE SIGNATORIES HERE TO HAVE BEEN FULLY AUTHORIZED TO EXECUTE THIS AGREEMENT AND TO TAKE ALL NECESSARY ACTIONS REQUIRED HEREUNDER.

By signing below the parties hereto certify that they have read the herein Agreement and that they acknowledge, understand, and consent to its terms, and this Agreement shall thereby be in full force and effect as of the first date below written.

Real Estate Investment Capital and Resource Group, LLC

Signature: *Justin Williams* Date: 5/6/06
 Name: Justin Williams
 Title: Authorized Agent/Principal

Signed and sworn to before me this ___ day of ___, 2006
Notary: _____

5427 S. CALUMET, LLC

Signature: *Walter N. Levin* Date: 5/3/06
 Name: Walter N. Levin
 Title: Member

Signed and sworn to before me this ___ day of ___, 2006
Notary: _____

*(312) 640-1244 FAX
(312) 925-0800*

UNOFFICIAL COPY

LEGAL DESCRIPTION

PARCEL 1:

UNIT NUMBER 3N
UNIT NUMBER 2N
UNIT NUMBER 2S
UNIT NUMBER 1S

IN THE 5427 S. CALUMET CONDOMINIUM AS DELINEATED
ON A SURVEY OF THE FOLLOWING DESCRIBED REAL ESTATE.

LOT 2 IN THE SUBDIVISION BY SAMUEL D. TIPPETT AND SHERMAN T. COOPER OF
PART OF THE NORTH 1/2 OF BLOCK 7 IN JENNINGS AND MOFFETS SUBDIVISION
OF THE SOUTH 60 ACRES OF THE EAST 1/2 OF THE SOUTHWEST QUARTER OF
SECTION 10, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL
MERIDIAN, IN COOK COUNTY, ILLINOIS.

WHICH SURVEY IS ATTACHED AS EXHIBIT "D" TO THE DECLARATION OF
CONDOMINIUM RECORDED AS DOCUMENT NUMBER 0613510021 TOGETHER WITH
ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, ALL IN
COOK COUNTY, ILLINOIS.

PARCEL 2:

THE (EXCLUSIVE) RIGHT OF THE USE OF P-1, P-2, P-3, P-4, P-5, P-6 AND P-7, AND
S-1, S-2, S-3, S-4, S-5, S-6 AND S-7 AS DELINEATED ON THE SURVEY ATTACHED TO
THE DECLARATION AFORESAID RECORDED AS DOCUMENT NUMBER 0613510021.