



MUTUAL RELEASE & SETTLEMENT

Doc#: 0622716062 Fee: \$78.50
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/15/2008 12:58 PM Pg: 1 of 10

The undersigned, Milos Nikolic ("Nikolic") and Tony Zaya ("Zaya"), each with the authority and legal capacity to act on their own behalf do enter into this Mutual Release and Settlement Agreement

PREAMBLE

WHEREAS, on October 28, 2004, Nikolic entered into what is described as Nikolic/Zaya Partnership Agreement ("Agreement"), a copy of which is attached hereto and made a part hereof as Exhibit "A", and

WHEREAS, Nikolic and Zaya, since the assumption of the Agreement, have had numerous unresolved issues as to the effect and implementation of the Agreement, and

WHEREAS, Nikolic and Zaya have had numerous meetings and discussions all in an effort to resolve their existing and ongoing disputes, and

WHEREAS, Nikolic and Zaya each having consulted with an attorney of their choosing believe it is in their best interest to TERMINATE their Agreement and resolve all disputes which now or may in the future exist between them arising out of and as a result of their Agreement.

NOW THEREFORE, the mutual promises of each other and for other good and valuable consideration, the sufficiency which is acknowledged, Nikolic and Zaya do agree to resolve all disputes between them as follows:

1. The October 28, 2004 Agreement between them and any other written or oral Agreement, none of which exist, relating to without limitation the acquisition, development and intended sale of the real estate located at 716-720 W. 47th Street, Chicago, Illinois "Premises 1", a copy of the legal description is attached hereto and made a part hereof as Exhibit "B", is TERMINATED and of no further force or affect.

2. Zaya on behalf of himself or any party which may claim an interest through him does release and forever discharge Nikolic from any and all claims, disputes or causes of action for whatever reason he may have against Nikolic arising out of their Agreement. Zaya will refrain from any and all activity concerning Premises 1, either at the location or anywhere else and will refrain from discussing this transaction or his dealings with Nikolic with any current or future suppliers or contractors.

3. Nikolic will upon full execution of this Release, will undertake the following actions:

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- A. Convey to Zaya two checks in the aggregate of \$55,000.00, payable as directed to Querrey Harrow, Ltd. in the amount of \$5,000.00 and Zaya in the amount of \$50,000.00, and
- B. Convey to Zaya by "Bill of Sale" free and clear of all liens and encumbrances, the personal property located in the Pizzeria at 704 W. 47th Street, Chicago, Illinois, an itemized list of the personal property is attached hereto and made a part hereof as Exhibit "C", and
- C. Cause to be placed in escrow with Zaya's Attorney, Robert Benjamin a warranty or trustee's deed conveying to Zaya, and not to any nominee, the real estate located at 704 W. 47th Street, Chicago, Illinois, Premises 2, subject only to existing mortgage in the approximate amount of \$360,000.00, real estate taxes and conditions and covenants of record, a copy of the legal description is attached hereto and made a part hereof as Exhibit "D":
1. The Escrowee shall execute a separate escrow agreement acknowledging his undertaking and duty to hold the deed subject to the terms of the escrow agreement and without regard to any other duty he may have to Zaya.
 2. Unless and until the deed is released for recording pursuant to the terms of the escrow agreement, neither Nikolic, Zaya or anyone else acting on their behalf shall have any right to pledge, encumber or otherwise deal with said real estate.
 4. Upon the sale of Premises 1, or the refinancing thereof which ever first occurs Nikolic will first satisfy the construction loan indebtedness and satisfy the existing mortgage indebtedness of Parcel 2 and concurrent therewith pay to Zaya the sum of \$200,000.00, off set by any real estate taxes, property insurance and other costs which Nikolic may have been required to paid for the Premises 2 accruing after the signing of this Release.

In the event Parcel 1 is sold or refinanced, a closing for Premises 2 will take place within 21 days after such event at First American Title Insurance pursuant to an escrow agreement, each party to pay ½ of the costs thereof. At the closing Nikolic will cause to be deposited the funds necessary to satisfy the mortgage indebtedness of Parcel 2 and funds necessary to pay Zaya the \$200,000.00 plus or minor prorations. The Parcel 2 deed held in escrow by Benjamin will be delivered to First American Title Insurance so that they may record the necessary releases and deed of conveyance.

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In the event Parcel 1 is not sold or refinanced by May 30, 2007, so as to provide funds necessary to pay the mortgage balance on Parcel 2 and to pay Zaya, the escrow agent with 15 day notice to Nikolic and his counsel, may record the warranty deed on Parcel 2. Prior to such recording Nikolic will maintain insurance on the building, Zaya to obtain and maintain content insurance and Nikolic will continue to pay the existing mortgage loan indebtedness.

5. Nikolic will release Zaya from any claims, causes of actions or demands which he may now or in the future have, arising out of their Agreement.

6. This Mutual Release and Settlement Agreement is not an admission of wrongdoing or liability on the part of the parties hereto but is intended to resolve without further costs, time or legal disputes all issues between Nikolic and Zaya in reference to the Agreement TERMINATED by this Release.

7. By execution of this Agreement, Nikolic creates a covenant running with Premises 1 prohibiting the operation of any fast food, restaurant or business selling alcoholic beverages to operate on the ground floor on such premises.

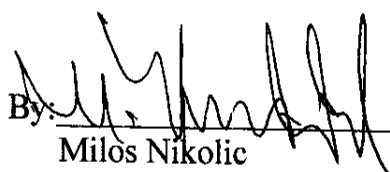
8. In the event that there is a breach of this Agreement requiring resolution by litigation, the prevailing party in any such litigation shall be entitled to recover all of his attorney's fees and costs, including attorney's fees incurred prior to the litigation directly related to the creation or attempted implementation of this Agreement.

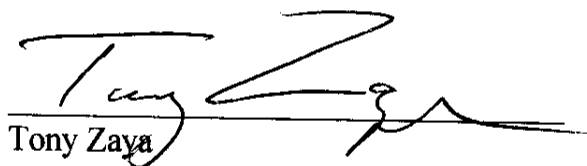
9. This within Agreement supercedes and replaces any and all prior agreements of the parties, written or oral and is intended by the parties to be a fully integrated agreement for all purposes.

10. The Preamble is incorporated herein by reference and made a part hereof.

The undersigned has read the foregoing release and fully understands it.

Signed and sealed this 27 day of July, 2006.

By: 
Milos Nikolic


Tony Zaya

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NIKOLIC / ZAYA PARTNERSHIP AGREEMENT

This Partnership Agreement is made on October 28, 2004 between Milos Nikolic and Tony Zaya.

1. **NIKOLIC / ZAYA PARTNERSHIP AGREEMENT**

The parties hereby form a partnership under the name of **NIKOLIC / ZAYA PARTNERSHIP** to manage the construction and development of a 15 unit condominium development on the property currently located at 716-720 W. 47th Street, Chicago, which includes the following PIN Numbers: 20-04-327-046-0000, 20-04-327-047-0000, 20-04-327-036-0000.

2. **Term**

The partnership shall begin on October 28, 2004, and shall continue until terminated.

3. **Property:** The property that is the subject of this agreement (716-720 W. 47th Street, Chicago, which includes the following PIN Numbers: 20-04-327-046-0000, 20-04-327-047-0000, 20-04-327-036-0000) shall be conveyed into Parkway Bank and Trust, Trust Number 13860, Dated October 28, 2004. Milos Nikolic shall be the sole beneficiary with the sole power of direction.

4. **DUTY TO PURCHASE:** Tony Zaya shall have the duty and obligation to purchase 4 commercial condominium spaces once the development is complete. Tony Zaya agrees to pay a purchase price of \$200,000.00 for each of these four units.

5. **Capital**

The capital of the partnership shall be contributed in cash or check by the partners as follows:

- o A separate capital account shall be maintained for each partner.
- o Milos Nikolic shall raise the capital necessary to complete the condominium development via a construction loan.
- o Neither partner shall withdraw any part of their capital account.
- o Upon the demand of either partner, the capital accounts of the partners shall be maintained at all times in the proportions in which the partners share in the profits and losses of the partnership.
- o

Exhibit A

6. Profit and Loss

The net profits of the partnership shall be divided equally between the partners upon completion of the project and after all obligations have been satisfied and capital contributions have been repaid. Net losses shall be borne equally by partners. A separate income account shall be maintained for each partner. Partnership profits and losses shall be charged or credited to the separate income account of each partner. If a partner has no credit balance in their income account, losses shall be charged to their capital account.

7. Salaries and Withdrawals

Neither partner shall receive any salary for services rendered to the partnership. Each partner may, from time to time, withdraw the credit balance in their income account.

8. Interest

No interest shall be paid on the initial contributions to the capital of the partnership or on any subsequent contributions of capital.

9. Management Duties and Restrictions

The partners shall have equal rights in the management of the partnership business, and each partner shall devote their entire time to the conduct of the business. Without the consent of the other partner neither partner shall on behalf of the partnership borrow or lend money, or make, deliver, or accept any commercial paper, or execute any mortgage, security agreement, bond, or lease, or purchase or contract to purchase, or sell or contract to sell any property for or of the partnership other than the type of property bought and sold in the regular course of its business.

10. Banking

All funds of the partnership shall be deposited in its name in such checking account or accounts as shall be designated by the partners. All withdrawals therefrom are to be made upon checks signed by either partner.

11. Books

The partnership books shall be maintained at the principal office of the partnership, and each partner shall at all times have access thereto. The books shall be kept on a fiscal year basis, and shall be closed and balanced at the end of each fiscal year. An audit shall be made as of the closing date.

12. Voluntary Termination

The partnership may be dissolved at any time by agreement of the partners, in which event the partners shall proceed with reasonable promptness to liquidate the business of the partnership. The partnership name shall be sold with the other assets of the business. The assets of

the partnership business shall be used and distributed in the following order:

(a) to pay or provide for the payment of all partnership liabilities and liquidating expenses and obligations;

(b) to equalize the income accounts of the partners;

(c) to discharge the balance of the income accounts of the partners;

(d) to equalize the capital accounts of the partners; and

(e) to discharge the balance of the capital accounts of the partners.

13. Death

Upon the death of either partner, the surviving partner shall have the right either to purchase the interest of the decedent in the partnership or to terminate and liquidate the partnership business. If the surviving partner elects to purchase the decedent's interest, he shall serve notice in writing of such election, within three months after the death of the decedent, upon the executor or administrator of the decedent, or, if at the time of such election no legal representative has been appointed, upon any one of the known legal heirs of the decedent at the last-known address of such heir.

(a) If the surviving partner elects to purchase the interest of the decedent in the partnership, the purchase price shall be equal to the decedent's capital account as at the date of their death plus the decedent's income account as at the end of the prior fiscal year, increased by their share of partnership profits or decreased by their share of partnership losses for the period from the beginning of the fiscal year in which their death occurred until the end of the calendar month in which their death occurred, and decreased by withdrawals charged to their income account during such period. No allowance shall be made for goodwill, trade name, patents, or other intangible assets, except as those assets have been reflected on the partnership books immediately prior to the decedent's death; but the survivor shall nevertheless be entitled to use the trade name of the partnership.

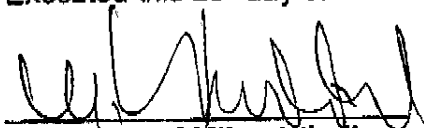
(b) Except as herein otherwise stated, the procedure as to liquidation and distribution of the assets of the partnership business shall be the same as stated in paragraph 10 with reference to voluntary termination.

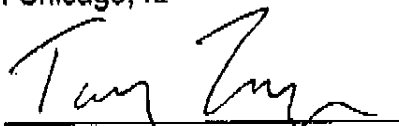
14. Arbitration

Any controversy or claim arising out of or relating to this Agreement, or the

breach hereof, shall be settled by arbitration in accordance with the rules, then obtaining, of the American Arbitration Association, and judgment upon the award rendered may be entered in any court having jurisdiction thereof. In witness whereof the parties have signed this Agreement.

Executed this 28^h day of October 2004 in Chicago, IL


Signature of Milos Nikolic


Signature of Tony Zaya

Property of Cook County Clerk's Office

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PROPERTY ADDRESS: 716-720 WEST 47TH STREET CHICAGO, IL

LEGAL DESCRIPTION:

PARCEL 1: LOT 12 AND THE EAST 4.50 FEET OF LOT 13 IN BLOCK 1 IN MARIA LAMB'S SUBDIVISION OF LOT 12 AND THE EAST 8.0 FEET OF LOT 14 IN ASSESSOR'S DIVISION OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2: LOT 13 (EXCEPT THE EAST 4.50 FEET THEREOF) IN BLOCK 1 IN MARIA LAMB'S SUBDIVISION OF LOT 12 AND THE EAST OF 8.0 FEET OF LOT 14 IN ASSESSOR'S DIVISION OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 3: LOT 11 IN BLOCK 1 IN MARIA LAMB'S SUBDIVISION OF LOT 12 AND THE EAST 8.0 FEET OF LOT 14 IN ASSESSOR'S DIVISION OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN#s 20-04-327-046-0000
20-04-327-047-0000
20-04-327-036-0000

Exhibit B

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DAISAN PIZZA ACRIMPTON

MAGIC CHEF
MICROWAVE 40305880
AUTO ROASTER
GYRO VERTICAL GRILLER 15310

IMPERIAL FLAT GRILL 05021004
STAR MAX GRILL 6L363759

FRYERS 01446905
01447005

STEAM TABLE 546-1037

BLACK DINNER OVEN SMALL NO SERIAL# Double Deck 841 model

SOME SET DORCH ROLLER 0506#344

PIZZA TABLE COOLER 37753

PIZZA OVEN (ROTATOR) NO SERIAL#

BEVERAGE AIR COOLER SP48-08 MODEL#


FLAVOR SAUCER
PIZZA SPINNER 9588370526

3-DEEP FREEZER WHIRLPOOL 4528.393
EMP 1563521
EVS 1764227

WALK-IN COOLER D03C0755

ROYAL CASH REGISTER 6015C

2- ADVANCE TABCO SMALL SINK 7-PS-20

Exhibit 

PROPERTY OF
County Clerk's Office

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LOT 9 IN COBB'S SUBDIVISION OF BLOCK 11 IN THE ASSESSOR'S DIVISION OF THE SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Number(s): 20-04-327-040-0000
Address(es) of Real Estate: 704 W. 47th Street, Chicago, Illinois 60609

Property of Cook County Clerk's Office

Exhibit D