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THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING RETURN TO:



Doc#: 0726033018 Fee: \$42.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 09/17/2007 07:26 AM Pg: 1 of 10

Hinshaw & Culbertson LLP  
222 North LaSalle Street, Suite 300  
Chicago, IL 60601  
Attn: Max J. Kanter, Esq.

## FOURTH MODIFICATION AGREEMENT OF LOAN DOCUMENTS

THIS FOURTH MODIFICATION AGREEMENT OF LOAN DOCUMENTS (this "Agreement") is made as of the 15th day of June, 2007, by and among 2300 W. LAKE ST. L.L.C., a Delaware limited liability company ("Borrower"), STEPHEN J. LIVADITIS ("Guarantor") and LASALLE BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns ("Lender").

### RECITALS:

A. Lender has heretofore made a loan ("Loan") to Borrower in the principal amount of Four Million Five Hundred Twenty Five Thousand and No/100 Dollars (\$4,525,000.00) pursuant to the terms and conditions of a Construction Loan Agreement dated as of May 17, 2005 between Borrower and Lender, as modified by First Modification Agreement of Loan Documents dated September 15, 2006, and by Second Modification Agreement of Loan Documents, dated December 15, 2006, and by Third Modification Agreement of Loan Documents, dated as of April 15, 2007 (collectively, the "Loan Agreement"), all terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement, and as evidenced by a Promissory Note dated May 17, 2005, as modified as aforesaid, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Note").

B. The Note is secured by, among other things, (i) that certain Construction Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Filing dated May 17, 2005 from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on June 3, 2005, as Document No. 0515402144, as modified as aforesaid ("Mortgage"), which Mortgage encumbers the real property and all improvements thereon legally described on Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents and Leases dated May 17, 2005, recorded at the Recorder's Office on June 3, 2005, as Document No. 0515402145, as modified as aforesaid (the "Assignment of Leases"); (iii) certain other loan documents (the Note, the Loan Agreement, the Mortgage, the Assignment of Leases, the other documents evidencing, securing and guarantying the Loan, in their original form and as amended, are sometimes collectively referred to herein as the "Loan Documents").

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C. The Loan is further secured by a Guaranty of Payment and Completion dated May 17, 2005 from Guarantor to Lender, as modified as aforesaid (the "Guaranty").

D. Borrower desires to amend the Loan Documents in order to add the requirement of a mandatory reduction of principal, and also to extend the Maturity Date of the Loan.

## AGREEMENTS:

**NOW, THEREFORE**, in consideration of (i) the facts set forth hereinabove (which are hereby incorporated into and made a part of this Agreement), (ii) the agreements by Lender to modify the Loan Documents, as provided herein, (iii) the covenants and agreements contained herein, and (iv) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Mandatory Payment of Principal.** Borrower shall pay to Lender Two Hundred Thousand and No/100 Dollars (\$200,000.00) on or before October 1, 2007, in the event the Loan has not been paid in full at that time. This payment shall be applied to reduce the principal balance of the Loan. This mandatory principal payment shall be in addition to any amounts received by Lender, directly or indirectly, from Chicago Title Insurance Company in connection with the Closing Holdback Agreements (defined below).

2. **Maturity Date.** The Maturity Date of the Note is extended to October 31, 2007. Any reference in the Note, the Loan Agreement or any other Loan Document to the Maturity Date shall mean October 31, 2007.

3. **Representations and Warranties of Borrower.** Borrower hereby represents, covenants and warrants to Lender as follows:

(a) The representations and warranties in the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.

(b) Except as previously disclosed in writing, there is currently no Event of Default (as defined in the Loan Agreement) under the Note, the Mortgage or the other Loan Documents and Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage or the other Loan Documents.

(c) The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, they continue to be the legal, valid and binding obligations of Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

(d) There has been no material adverse change in the financial condition of Borrower, Guarantor or any other party whose financial statement has been delivered to Lender in connection with the Loan from the date of the most recent financial statement received by Lender.

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(e) As of the date hereof, Borrower has no claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.

(f) Borrower is validly existing under the laws of the State of its formation or organization and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified herein. The execution and delivery of this Agreement and the performance of the Loan Documents as modified herein have been duly authorized by all requisite action by or on behalf of Borrower. This Agreement has been duly executed and delivered on behalf of Borrower.

(g) Borrower, as seller, has entered into and closed upon a real estate purchase contract for the sale of Unit A (now lot 3) at 2300 W. Lake Street in Chicago, Illinois to J & S Produce, Inc., an Illinois corporation, as purchaser, dated October 14, 2004, and amended April 11, 2005, September 23, 2005 and October 27, 2006 (the "J&S Contract"). In connection with the closing, Borrower entered into a (NFR) Holdback Escrow for \$100,000.00 and a (punchlist) Holdback Escrow for \$50,000.00, both of which were with the nominees of J&S Produce, Inc., Helen Pappas, Nick Pappas, Stevie Stamas and Eve N. Stamas, which were both supplemented by Borrower's letters to Chicago Title Insurance Company, as escrowee, dated January 29, 2007 and January 30, 2007, directing payment to Lender of any proceeds otherwise payable to Borrower, and Borrower further entered into a funded title indemnity in the amount of \$500,000.00, with Chicago Title Insurance Company as supplemented by Borrower's letter to Chicago Title Insurance Company dated January 30, 2007, directing payment to Lender of any proceeds otherwise payable to Borrower (collectively the "Closing Holdback Agreements"). The Closing Holdback Agreements are currently unmodified and in full force and effect, the full amount of the deposits continue to be held by Chicago Title Insurance Company, except that out of the funded title indemnity \$100,000.00 has been released to Lender as of August 31, 2007 to be applied against the principal amount of the Loan, and there is currently no default by either seller or purchaser or escrowee thereunder and Borrower does not know of any event or circumstance which would prevent such Closing Holdback Agreements from being enforced in accordance with their terms.

(h) Borrower, as seller, has entered into a real estate purchase contract for the sale of Unit B (now lot 2) at 2300 W. Lake Street in Chicago, Illinois to John Tsekos, an individual, as purchaser, dated November 8, 2004, and amended April 11, 2005, September 23, 2005 and December 24, 2005 (the "Tsekos Contract"). The Tsekos Contract is currently in full force and effect, and there is currently no default by either seller or purchaser thereunder and Borrower does not know of any event or circumstance which would prevent such contract from being enforced in accordance with its terms.

(i) Borrower, as seller, has entered into a real estate purchase contract for the sale of a parcel described therein (now described as lot 1) at 2300 W. Lake Street to Bright Electrical Supply Company, an Illinois corporation, as purchaser, dated November 23, 2005 (the "Bright Contract"). The Bright Contract is currently in full force and effect, and there is currently no default by either seller or purchaser thereunder and Borrower does not know of any event or circumstance which would prevent such contract from being enforced in accordance with its terms.

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4. **Title Policy.** As a condition precedent to the agreements contained herein, Borrower shall, at its sole cost and expense, cause Chicago Title Insurance Company to issue an endorsement to Lender's title insurance policy insuring Lender with respect to the property described on Exhibit A (the "Title Policy"), as of the date this Agreement is recorded, reflecting the recording of this Agreement and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by Lender.

5. **Reaffirmation of Guaranty.** Guarantor ratifies and affirms the Guaranty and agrees that the Guaranty is in full force and effect following the execution and delivery of this Agreement. The representations and warranties of Guarantor in the Guaranty are, as of the date hereof, true and correct and Guarantor does not know of any default thereunder. The Guaranty continues to be the valid and binding obligation of Guarantor, enforceable in accordance with its terms and Guarantor has no claims or defenses to the enforcement of the rights and remedies of Lender thereunder, except as provided in the Guaranty.

6. **Extension Fee.** Concurrently with execution of this Agreement, Borrower shall pay to Lender an Extension Fee of Eight Thousand Nine Hundred Dollars (\$8,900.00).

7. **Expenses; Attorney's Fees.** As a condition precedent to the agreements contained herein, Borrower shall pay all out-of-pocket costs and expenses incurred by Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees and attorneys' fees and expenses.

8. **Acknowledgement of Defaulted Covenant/Reservation of Rights.** The Borrower has informed Lender of the existence of various mechanic's liens against the Property, including a claim for lien filed by Pantheon Builders, Inc. in the original amount of \$1,154,143.54, less \$519,980.90 released via a partial release recorded August 24, 2007 as document number 0723633077, a mechanics lien foreclosure suit *Quality Saw v. Pantheon Builders et. al*, 2007 CH 17946, filed in the Circuit Court of Cook County, Illinois (the "Advised Default"), and a suit for specific performance *John Tsekos v. 2300 W. Lake St. LLC*, 2007 CH 6554, filed in the Circuit Court of Cook County, Illinois (the "Advised Litigation"). Due to the Advised Default, the Borrower has failed to comply with the certain covenants of the Loan Agreement and other Loan Documents which has resulted in defaulted covenants. Lender is currently reviewing the risk presented by the Advised Default and Advised Litigation, has requested additional information from the Borrower and has made no decision at this time whether to waive the matter or to take any action, which status the Borrower accepts. Lender and Borrower agree and acknowledge that, as a result of the occurrence of such defaulted covenants due to the Advised Default, a default has occurred and is continuing under Article 8 of the Loan Agreement. The parties further agree that the Borrower shall cure in ten (10) days should Lender determine that the Advised Default be cured by a specific additional title indemnity with Chicago Title Insurance Company. Lender hereby reserves any and all its rights and remedies under the Loan Agreement and other Loan Documents with respect to the Advised Default and its rights under the Loan Agreement and other Loan Documents with respect to the Advised Litigation, and does not waive any such rights or remedies. Lender will furnish the Borrower with notice should Lender determine to exercise any rights or remedies with respect to the Advised Default or its rights with respect to the Advised Litigation.

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## 9. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

(b) This Agreement shall not be construed more strictly against Lender than against Borrower or Guarantor merely by virtue of the fact that the same has been prepared by counsel for Lender, it being recognized that Borrower, Guarantor and Lender have contributed substantially and materially to the preparation of this Agreement, and Borrower, Guarantor and Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending thereby to be legally bound by the terms and provisions thereof, of its own free will, without promises or threats or the exertion of duress upon it. The signatories hereto state that they have read and understand this Agreement, that they intend to be legally bound by it and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

(c) Notwithstanding the execution of this Agreement by Lender, the same shall not be deemed to constitute Lender a venturer or partner of or in any way associated with Borrower or Guarantor nor shall privity of contract be presumed to have been established with any third party.

(d) Borrower, Guarantor and Lender each acknowledges that there are no other understandings, agreements or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of Borrower, Guarantor and Lender; and that all such prior understandings, agreements and representations are hereby modified as set forth in this Agreement. Except as expressly modified hereby, the terms of the Loan Documents are and remain unmodified and in full force and effect.

(e) This Agreement shall bind and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

(f) Any references to the "Note", the "Mortgage" or the "Loan Documents" contained in any of the Loan Documents shall be deemed to refer to the Note, the Mortgage and the other Loan Documents as amended hereby. The paragraph and section headings used herein are for convenience only and shall not limit the substantive provisions hereof. All words herein which are expressed in the neuter gender shall be deemed to include the masculine, feminine and neuter genders. Any word herein which is expressed in the singular or plural shall be deemed, whenever appropriate in the context, to include the plural and the singular.

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(g) This Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one original Agreement.

(h) Time is of the essence of each of Borrower's obligations under this Agreement.

*[Remainder of page left intentionally blank; signature page follows]*

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement dated as of the day and year first above written.

**LENDER:**

**LASALLE BANK NATIONAL ASSOCIATION**


By: 

Name: GREGORY PEARSON

Title: FIRST VP

**BORROWER:**

**2300 W. LAKE ST. L.L.C., a Delaware limited liability company**

By: 

Name: Stephen J. Livaditis

Title: Manager

**GUARANTOR:**

  
STEPHEN J. LIVADITIS

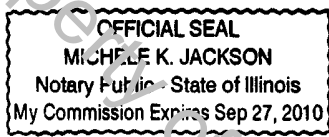
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STATE OF ILLINOIS )  
 ) ss  
COUNTY OF COOK )

I Michelle Jackson, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that Gregg Person, FRP (position) of **LaSalle Bank National Association**, 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 10 day of September, 2007.



Michelle Jackson  
Notary Public

My Commission Expires: \_\_\_\_\_

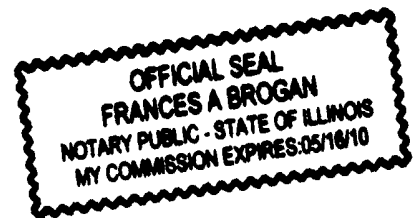
STATE OF ILLINOIS )  
 ) ss  
COUNTY OF Cook )

I Frances A. Brogan, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **STEPHEN J. LIVADITIS, MANAGER OF 2300 W. LAKE ST., L.L.C.**, 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 7th day of September, 2007.

Frances A. Brogan  
Notary Public

My Commission Expires: 5/14/10





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STATE OF ILLINOIS     )  
                                       ) SS  
COUNTY OF Cook     )

I FRANCES A. BROGAN, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY that **STEPHEN J. LIVADITIS**, 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 said instrument as his own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 7<sup>th</sup> day of September, 2007.

Frances A Brogan  
Notary Public

My Commission Expires: 5/16/10



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## EXHIBIT A

### THE PROPERTY

#### New Legal Description:

##### Parcel 1:

Lot 1 in Clearwater Fisheries Plat of Subdivision, being a part of the Southwest  $\frac{1}{4}$  of Section 7, Township 39 North, Range 14, East of the Third Principal Meridian, according to the Plat thereof recorded December 30, 2005 as Document 0536403035, in Cook County, Illinois.

P.I.N.: 17-07-312-040

##### Parcel 2:

Lot 2 in Clearwater Fisheries Plat of Subdivision, being a part of the Southwest  $\frac{1}{4}$  of Section 7, Township 39 North, Range 14, East of the Third Principal Meridian, according to the Plat thereof recorded December 30, 2005 as Document 0536403035, in Cook County, Illinois.

P.I.N.: 17-07-312-041

The foregoing commonly known as a portion of: 2300 W. Lake St., Chicago, IL