

UNOFFICIAL COPY

THIS DOCUMENT PREPARED BY:

Crowley & Lamb, P.C.
221 North LaSalle Street, Suite 1550
Chicago, Illinois 60601

AFTER RECORDING RETURN TO:

Diamond Bank, FSB
1051 Perimeter Drive
Schaumburg, IL 60173
Attn: Vice President – Loan Operations



Doc#: 1131844149 Fee: \$54.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 11/14/2011 04:38 PM Pg: 1 of 10

This space reserved for Recorder's use only

THIRD MODIFICATION OF LOAN DOCUMENTS

** as successor trustee to MB Financial Bank*
THIS THIRD MODIFICATION OF LOAN DOCUMENTS (this "Agreement") is dated September 1, 2011, by and among **NORTH STAR TRUST COMPANY** *** successor to OAK BROOK BANK, as Trustee under Trust Agreement dated May 6, 1986 and known as Trust No. 8-1984 ("Borrower"), having an address of c/o Katina Potakis, 96 Doolin, Lemont, Illinois 60439, **ESTATE OF STEVE (EFSTATE05) POTAKIS** successor to **STEVE POTAKIS and KATINA POTAKIS** (jointly and severally, "Guarantor") and **DIAMOND BANK, FSB**, its successors and assigns, having an address as set forth above ("Lender").

RECITALS:

A. Lender made a loan (the "Loan") to Borrower in the principal amount of \$350,000.00, as evidenced by a Promissory Note dated February 8, 2006, in the principal amount of the Loan made payable by Borrower to the order of Lender ("Original Note"). The Original Note was replaced by that certain Amended and Restated Promissory Note dated March 1, 2011 in the original principal amount of \$329,906.66 under the terms of that certain Modification of Loan Documents ("Modification") dated March 1, 2011 among the parties hereto. The Original Note was further replaced by that certain Second Amended and Restated Promissory Note ("Note") effective June 1, 2011 in the original principal amount of \$327,899.18 under the terms of that certain Second Modification of Loan Documents ("Second Modification") effective June 1, 2011 among the parties hereto. Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Note.

B. The Note is secured by, among other things, (i) that certain Mortgage dated February 8, 2006, from Borrower to Lender recorded with the Recorder of Deeds in Cook County, Illinois (the "Recorder's Office") on February 23, 2006 as Document No. 0605402020 (the "Mortgage"), which Mortgage encumbers the real property and all, improvements thereon legally described on

UNOFFICIAL COPY

Exhibit A hereto ("Property"), (ii) that certain Assignment of Rents dated February 8, 2006, from Borrower to Lender and recorded with the Recorder's Office on February 23, 2006 as Document No. 0605402021 (the "Assignment of Rents") which encumbers the Property, (iii) the Collateral Assignment Under Land Trust ("Collateral Assignment") dated February 8, 2006 executed by Guarantor in favor of Lender with respect to 100% of the beneficial interest in Borrower, (iv) the Guaranty Agreement (the "Guaranty") of Guarantor dated February 8, 2006, guaranteeing payment and performance of all obligations of Borrower under the Note and Loan Documents (as hereinafter defined) and (v) certain other loan documents (the Note, the Mortgage, the Guaranty, the Assignment of Rents, the Collateral Assignment, Modification, Second Modification and any and all other documents evidencing, securing and guarantying the Loan, in their original form and as amended from time to time, are sometimes collectively referred to herein as the "Loan Documents").

C. The current outstanding principal balance under the Note is \$327,547.68.

D. Whereas, the Note matures by its terms on September 1, 2011. The Borrower and Guarantor have requested that Lender extend the maturity date of the Note until September 1, 2012 and Lender is willing to extend the maturity date of the Note until September 1, 2012, on the terms and conditions more fully set forth hereinafter and the Amended Note (defined below).

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 and Borrower to modify the Loan Documents, as provided herein, (iii) Borrower's agreement to pay all of Lender's reasonable attorneys fees and costs in connection with this Agreement, (iv) the covenants and agreements contained herein, and (v) for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Extension of the Maturity Date/ Tax Covenant.** (a) Lender and Borrower agree that the Maturity Date for the Loan shall hereby be amended and extended from September 1, 2011 until September 1, 2012. All references in any and all Loan Documents to "Maturity Date" or words of similar import shall now mean September 1, 2012. Borrower agrees that the Loan, together with all obligations under the Loan Documents, shall be due and payable on September 1, 2012, or such earlier date that the Loan and all other obligations under the Loan Documents shall be due and payable by acceleration or otherwise, subject to no extensions

(b) Borrower shall pay to Lender, in addition to the monthly payments under the Note and concurrently therewith in a single payment monthly until the Note is fully paid, a sum equal to annual real estate taxes, general and special assessments on the Property (all as estimated by Lender) less all sums previously paid therefor, divided by the number of full calendar months to elapse before the date which is one (1) month prior to the date when such taxes and assessments will become due. Such sums shall be held by Lender for payment of such taxes and assessments as and when due. Lender shall have the right to commingle and hold such sums with its general funds, and no interest shall accrue thereon in favor of Borrower. In case of a default or at the Maturity Date, Lender may use and apply such sums or any other monies deposited by Borrower

UNOFFICIAL COPY

with Lender, regardless of the purpose for which deposited (i) to cure such default, (ii) as a prepayment of the Loan or (iii) apply on account of the Loan in the sole discretion of the Lender.

(c) The terms "Event of Default" and "Default" under the Loan Documents shall include Borrower or any other party failing to comply with or perform any term, obligation, covenant or condition contained in any Loan Document, including this Agreement, or in any other agreement between Borrower and Lender, and between Guarantor and Lender. A default under any Loan Document, including this Agreement, shall, at the option of Lender, constitute a default under the other Loan Documents.

2. **Amendment of the Note.** The Note shall be amended and restated by that certain Third Amended and Restated Promissory Note of even date herewith executed by Borrower (the "Amended Note") in the principal amount of \$327,547.68. As of the date hereof, the Amended Note restates and replaces the Note and is not a repayment or novation of the Note. All references in any and all Loan Documents to the Note shall now mean the Amended Note. Notwithstanding any other provision contained in the Loan Documents, the interest rate and principal and interest payments applicable to the Loan shall be as set forth in the Amended Note.

3. **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 and the Amended Note and that the Guarantor remains liable to Lender for all amounts due in connection with the Amended Note. 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.

4. **Continuing Validity.** Except as expressly modified above, the terms of the original Mortgage and the other Loan Documents shall remain unchanged and in full force and effect and are legally valid, binding, and enforceable in accordance with their respective terms. Consent by Lender to this Agreement does not waive Lender's rights to require strict performance of the Mortgage (as amended above) nor obligate Lender to make any future modifications. Nothing in this Agreement shall constitute a satisfaction of the promissory notes or other credit agreement secured by the Mortgage. It is the intention of Lender to retain as liable all parties to the Mortgage and all parties, makers and endorsers to the Amended Note, including accommodation parties, unless a party is expressly released by Lender in writing. Any maker or endorser, including accommodation makers, shall not be released by virtue of this Agreement. If any person who signed the original Mortgage does not sign this Agreement, then all persons signing below acknowledge that this Agreement is given conditionally, based on the representation to Lender that the non-signing person consents to the changes and provisions of this Agreement or otherwise will not be released by it. This waiver applies not only to any initial extension or modification, but also to all such subsequent actions.

5. **Borrower's and Guarantor's Releases.** Borrower and Guarantor, in consideration of the execution of this Agreement, and the performance of all terms contained herein to be performed by Lender, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, do hereby remise, release and forever discharge, and

UNOFFICIAL COPY

by these presents, do for their successors, assigns, heirs, administrators, executors, personal representatives, agents, grantees, and successors in interest, remise, release and forever discharge Lender and its respective successors, assigns, heirs, administrators, officers, personal representatives, attorneys, agents and successors in interest, from all actions, suits, causes of action, damages, expenses, liabilities, claims, accounts and demands, whatsoever, whether or not well-founded in fact or in law which they have, have had, or at any time may have, could have, or might have but for the execution of this Agreement, asserted against Lender, for or by reason of or in respect of any matter, cause or thing whatsoever, whether known or unknown, developed or undeveloped, past, present or future or whether permanent, continuing or otherwise, arising out of or connected with the Loan, the Amended Note, the Loan Documents and/or this Agreement.

6. **Representations and Warranties of Borrower and Guarantor.** Borrower and Guarantor hereby represent, covenant and warrant to Lender as follows:

- (a) The representations and warranties in the Amended Note, the Loan Agreement, the Mortgage and the other Loan Documents are true and correct as of the date hereof.
- (b) There is currently no event of Default (as defined in the Loan Documents) under the Amended Note, the Mortgage or the other Loan Documents and none of the Borrower nor Guarantor 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 Amended 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 and Guarantor 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.
- (e) As of the date hereof, neither Borrower nor Guarantor have any claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified herein.
- (f) 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 and Guarantor. This Agreement has been duly executed and delivered on behalf of Borrower and Guarantor and is the legal, valid and binding obligations of Borrower and Guarantor enforceable in accordance with its terms.

7. **Title Policy.** At Lender's request, Borrower shall, at its sole cost and expense, cause the applicable title company ("Title Company") to issue an endorsement to Lender's title insurance policy (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

UNOFFICIAL COPY

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.

8. **Conditions Precedent.** As conditions precedent to the agreements contained herein: (i) Borrower shall pay to Lender (A) 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 and (B) a nonrefundable extension fee of \$1,000.00 and (ii) Borrower and Guarantor shall execute and/or deliver to Lender and cause the other necessary parties to execute and/or deliver to Lender this Agreement, the Letter of Direction in the form presented by Lender authorizing trustee of Borrower to execute this Agreement and related documents, and all other documents and instruments reasonably required by Lender in connection with this Agreement, including the Amended Note.

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 acknowledge and waive 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. In the event of any inconsistency or conflict between this Agreement and the Loan Documents, the terms, provisions and conditions contained in this Agreement shall govern and control. Wherever possible, each

UNOFFICIAL COPY

provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, unenforceable or invalid under any jurisdiction, such provision shall as to such jurisdiction, be severable and be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

(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 Amended 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.

(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 Guarantor's and Borrower's obligations under this Agreement.

[SIGNATURE PAGE ATTACHED]

UNOFFICIAL COPY

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

BORROWER:

LENDER:

NORTH STAR TRUST COMPANY
successor to OAK BROOK BANK, as
Trustee under Trust Agreement dated
May 6, 1986 and known as Trust No. 8-1984

DIAMOND BANK, FSB

By: [Signature]
Its: Trust Officers

By: [Signature]
Its: This Document is signed by NORTHSTAR TRUST COMPANY

GUARANTOR:

ESTATE OF STEVE (EFSTATHIOS) POTAKIS

By: [Signature]
Name:
Title:

[Signature]
KATINA POTAKIS, Individually

This Document is signed by NORTHSTAR TRUST COMPANY not individually but solely as Trustee under certain Trust Agreement known as Trust No. 8-1984. Said Trust Agreement is a part hereof and any claims against said Trustee shall be satisfied from the signing of this Document and shall not be satisfied out of any trust property which may be held by said Trustee and said Trustee shall not be personally liable for the performance of any of these terms and conditions hereof and for the validity or condition of the trust or any part hereof or for any Document with respect thereto. Any and all personal liability of NORTH STAR TRUST COMPANY is hereby expressly waived by the parties hereto and their respective successors and assigns.

PROPERTY OF COOK COUNTY CLERK'S OFFICE

UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

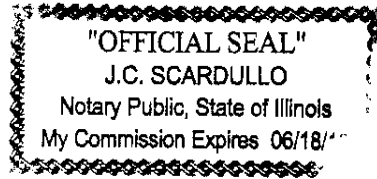
I, John Scardullo, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Lisa Willert, Vice president of Diamond Bank, FSB, known to me to be the same person whose name is subscribed to the foregoing instrument as such Vice President, appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary acts, and as the free and voluntary act of Diamond Bank, FSB, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 31st day of October, 2011.

[Signature]
Notary Public

My Commission Expires:

6/18/13



STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Carol Castillo, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that [Signature] and Juanita Chandler, Trust Officer of North Star Trust Company successor to OAK BROOK BANK, as Trustee under Trust Agreement dated May 6, 1986 and known as Trust No. 8-1984 and 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/she signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of such company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 28th day of October, 2011.

[Signature]
Notary Public

My Commission Expires:



UNOFFICIAL COPY

STATE OF ILLINOIS)
) SS.
COUNTY OF IL)

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Katrina Potakis by Stavroula Gialis as Agent of the ESTATE OF STEVE (EFSTATHIOS) POTAKIS and 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/she signed and delivered the said instrument as their own free and voluntary act, and as the free and voluntary act of such estate, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of October, 2011.

[Signature]
Notary Public

My Commission Expires:
11/18/2012



STATE OF ILLINOIS)
) SS.
COUNTY OF IL)

by Stavroula Gialis as Agent

I, the undersigned, a Notary Public in and for said County in the State aforesaid, DO HEREBY CERTIFY that Katrina Potakis by * of the KATINA POTAKIS and 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/she signed and delivered the said instrument as her own free and voluntary act for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 27th day of October, 2011.

[Signature]
Notary Public

My Commission Expires:
11/18/2012



UNOFFICIAL COPY

EXHIBIT A

LEGAL DESCRIPTION

LOT 54 IN RIDGEMONT SQUARE SUBDIVISION, BEING A SUBDIVISION OF PART OF THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 37 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS

PERMANENT INDEX NO. 24-17-206-015-0000

COMMONLY KNOWN AS: 10501 S. MAJOR AVENUE, CHICAGO RIDGE, ILLINOIS
60415

Property of Cook County Clerk's Office