



Doc#: 0511244030  
Eugene "Gene" Moore Fee: \$84.50  
Cook County Recorder of Deeds  
Date: 04/22/2005 04:00 PM Pg: 1 of 31

*JL*  
*(10)*

*WARRANT 01050252 Ord B, J.*

**SUBORDINATION OF MORTGAGE AND INTERCREDITOR AGREEMENT**

THIS SUBORDINATION OF MORTGAGE AND INTERCREDITOR AGREEMENT ("Intercreditor Agreement") is dated as of the 19th day of April, 2005, by and among **400 NORTH LASALLE STREET LLC**, a Delaware limited liability company ("Borrower"), **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association ("First Mortgagee"), **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association ("Second Mortgagee"), and **NORTH LASALLE FUNDING COMPANY**, a Delaware corporation ("Third Mortgagee").

**RECITALS:**

A. Borrower is the owner of certain real property legally described on Exhibit "A" attached hereto located in Cook County, Illinois and all improvements thereon (the "Property").

B. First Mortgagee has agreed to make a loan in the principal amount of \$97,500,000.00 (the "First Loan") to Borrower pursuant to a Loan Agreement dated as of even date herewith between Borrower and First Mortgagee (the "First Loan Agreement"), which First Loan is evidenced by a Promissory Note from Borrower to First Mortgagee dated as of even date herewith (the "First Note") in the original principal amount of \$97,500,000.00 and is secured by, among other things, a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement executed by Borrower and encumbering the Property (the "First Mortgage") and by certain other documents and instruments (collectively, with the First Note and the First Mortgage, the "First Loan Documents").

**This Instrument Prepared By and After Recording Return to:**

Deather K. Aeschleman  
Schwartz, Cooper, Greenberger & Krauss,  
Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601

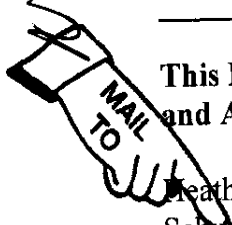
**Permanent Index Numbers:**

See Exhibit "A"

**Address of Property:**

400 N. LaSalle Street  
Chicago, Illinois

**Near North National Title**  
222 N. LaSalle  
Chicago, IL 60601



*30*

# UNOFFICIAL COPY

C. Second Mortgagee has agreed to make a mezzanine loan in the principal amount of \$5,300,000.00 (the "Second Loan") to Borrower pursuant to a Mezzanine Loan Agreement dated as of even date herewith between Borrower and Second Mortgagee (the "Second Loan Agreement"), which Second Loan is evidenced by a Promissory Note from Borrower to Second Mortgagee of even date herewith (the "Second Note") in the original principal amount of \$5,300,000.00 and is secured by, among other things, a Junior Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing executed by Borrower and encumbering the Property (the "Second Mortgage") and by certain other documents and instruments (collectively, with the Second Note and the Second Mortgage, the "Second Loan Documents").

D. Third Mortgagee has agreed to make a loan in the principal amount of \$17,350,000.00 (the "Third Loan") to Borrower pursuant to a Loan Agreement dated as of even date herewith between Borrower and Third Mortgagee (the "Third Loan Agreement"), which Third Loan is evidenced by a Promissory Note from Borrower to Third Mortgagee dated as of even date herewith (the "Third Note") in the original principal amount of \$17,350,000.00 and is secured by, among other things, a Mortgage and Security Agreement and Assignment of Leases and Rents executed by Borrower and encumbering the Property (the "Third Mortgage") and by certain other documents and instruments (collectively, with the Third Note and the Third Mortgage, the "Third Loan Documents").

E. It is a condition precedent to First Mortgagee making the First Loan and Second Mortgagee making the Second Loan that, subject to the terms of this Agreement (i) the First Loan remain at all times prior and superior to the Third Loan, (ii) the First Loan Documents remain at all times a lien or charge upon the Property prior and superior to the lien or charge of the Third Loan Documents in accordance with the terms of this Agreement, (iii) the Second Loan remain at all times prior and superior to the Third Loan, and (iv) the Second Loan Documents remain at all times a lien or charge upon the Property prior and superior to the lien or charge of the Third Loan Documents in accordance with the terms of this Agreement.

NOW, THEREFORE, in order to induce First Mortgagee to enter into the First Loan and Second Mortgagee to enter into the Second Loan, and in consideration of the mutual agreements and acknowledgements contained herein, the parties hereto agree as follows.

1. The recitals to this Agreement are incorporated herein and made a part hereof by this reference thereto.

2. Third Mortgagee hereby acknowledges and agrees that until the entire First Loan and Second Loan shall have been repaid in full, (a) all of the liens, security interests, terms, covenants and conditions of the Third Loan are and shall at all times be wholly subordinate to all of the liens, security interests, terms, covenants and conditions of the First Loan and Second Loan, and any and all obligatory advances and "Protective Advances" (as hereinafter defined) advanced or incurred in accordance therewith, and (b) all amounts due to Third Mortgagee under the Third Loan (including interest and/or principal payments or prepayments, assignments of

# UNOFFICIAL COPY

leases and rents, rights with respect to insurance proceeds and condemnation awards, advances and expenses with interest), are and shall at all times continue to be expressly subject and subordinate in right of payment to the indebtedness of the Borrower evidenced by the First Loan Documents and the Second Loan Documents, and any and all obligatory advances and Protective Advances advanced or incurred in accordance therewith. The term "Protective Advances" means any advances necessary to protect the security of a mortgagee or holder of a loan in the Property and other collateral therein described such as, by way of example and not limitation, advances to pay real estate taxes, insurance premiums or required repair or required maintenance costs.

3. Third Mortgagee covenants and agrees to execute and deliver to Near North Title Insurance Corporation, or such other title company as the parties may agree to use for closing condominium unit sales (the "Title Company"), an escrow agreement in the form attached hereto as Exhibit "B" (the "Escrow Agreement") within ten days after delivery of such agreement to Third Mortgagee for execution. Third Mortgagee covenants and agrees to execute and deliver to the Title Company, on or prior to 45 days after the date the Escrow Agreement is fully executed, each of the partial releases to be delivered to the Title Company by Third Mortgagee pursuant to the terms of the Escrow Agreement. The failure of Third Mortgagee to execute and deliver to the Title Company, within the time periods established herein, the Escrow Agreement or the partial releases required pursuant to the terms of the Escrow Agreement, shall constitute an Event of Default under each of the First Note, the First Mortgage, the other First Loan Documents, the Second Note, the Second Mortgage, and the other Second Loan Documents.

4. Third Mortgagee shall not acquire by subrogation, contract or otherwise any lien upon any other estate, right or interest in the Property (including without limitation any which may arise in respect to real estate taxes, assessments of other governmental charges) which is or may be prior in right to the First Mortgage, the other First Loan Documents, the Second Mortgage, or the other Second Loan Documents.

5. First Mortgagee may, without affecting the subordination of the Third Loan, in its sole and absolute discretion and without the approval of Third Mortgagee, and without regard to any effect upon the Third Loan or the interest, if any, of Third Mortgagee in the Property or the value of Third Mortgagee's interests, if any, in the Property: (1) release or compromise any obligation in the First Note or First Loan Documents, (2) release its liens in, or surrender, release or permit any substitution or exchange of all or any part of any properties securing repayment of the First Note or (3) retain or obtain a lien in any property to further secure payment of the First Note.

6. Second Mortgagee may, without affecting the subordination of the Third Loan, in its sole and absolute discretion and without the approval of Third Mortgagee, and without regard to any effect upon the Third Loan or the interest, if any, of Third Mortgagee in the Property or the value of Third Mortgagee's interests, if any, in the Property: (1) release or compromise any obligation in the Second Note or Second Loan Documents, (2) release its liens in, or surrender, release or permit any substitution or exchange of all or any part of any properties securing

# UNOFFICIAL COPY

(k) Third Mortgagee agrees not to oppose any plan of reorganization or rehabilitation proposed or approved by the holder or holders of the First Loan or the Second Loan in any Bankruptcy Proceeding on the basis that Third Mortgagee is entitled to any payments until the First Loan and Second Loan have been paid in full.

(l) The foregoing provisions are solely for the purpose of defining the relative rights of the holder or holders of the First Loan and Second Loan and the holder or holders of the Third Loan, and nothing herein shall impair, as between the Borrower and First Mortgagee and Second Mortgagee, the obligation of the Borrower, which is unconditional and absolute, to pay the First Loan and Second Loan in accordance with their terms, nor shall anything herein prevent First Mortgagee or Second Mortgagee from exercising all remedies otherwise permitted by applicable law or under the First Note, First Mortgage, First Loan Documents, Second Note, Second Mortgage, and Second Loan Documents.

12. In the event of any proceedings to liquidate, dissolve or wind up the Borrower, or of any execution, sale, receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization, or other similar proceedings relative to the Borrower or its property (a "Bankruptcy Proceeding"), the First Loan and Second Loan shall be preferred in payment over the Third Loan, and the First Loan and Second Loan shall first be paid in full before any payment is made upon the Third Loan; and in any such event any payment or distribution of any kind or character, whether in cash, property or securities (other than in securities or other evidences of indebtedness, the payment of which is subordinated to the First Loan and Second Loan to the same extent as herein provided), which shall be made upon or in respect of the Third Loan as a result of any such proceeding, shall be paid over first to the holder or holders of the First Loan and Second Loan for application in payment thereof unless and until the First Loan and Second Loan shall have been paid or satisfied in full.

13. Third Mortgagee, as the holder of the Third Loan, undertakes and agrees for the benefit of each holder of the First Loan and Second Loan to execute, verify, deliver and file any proofs of claim, consents, assignments or other instruments in form and content reasonably satisfactory to Third Mortgagee which any holder of the First Loan or Second Loan may at any time reasonably require in connection with any Bankruptcy Proceeding in order to effectuate the agreements contained herein.

14. Third Mortgagee shall have the right to purchase the First Loan and Second Loan and all rights, interests, documents, instruments, insurance policies, and accounts in connection therewith (without recourse), from First Mortgagee and Second Mortgagee:

(a) At any time prior to the occurrence of an Event of Default under the First Loan Documents (but only if Third Mortgagee also purchases the Second Loan at such time), for a purchase price (the "Purchase Price") equal to the sum of (i) 100% of the outstanding principal indebtedness evidenced and secured by the First Loan Documents, (ii) all accrued, unpaid interest due on the First Loan to and including the date on which



# UNOFFICIAL COPY

repayment of the Second Note or (3) retain or obtain a lien in any property to further secure payment of the Second Note.

7. Third Mortgagee shall give First Mortgagee and Second Mortgagee notice of any default by Borrower under any of the Third Loan Documents at the time such notice is given to the Borrower and copies of all further notices to Borrower relating to such default and copies of any foreclosure proceedings involving Borrower. First Mortgagee and Second Mortgagee shall give Third Mortgagee notice of any Default or Event of Default by Borrower under any of the First Loan Documents or Second Loan Documents at the time such notice is given to the Borrower and copies of all further notices to Borrower relating to such Default or Event of Default and copies of any foreclosure proceedings involving Borrower. First Mortgagee and Second Mortgagee shall provide to Third Mortgagee (x) a copy of any written "deed-in-lieu of foreclosure" agreement between Borrower and First Mortgagee or Borrower and Second Mortgagee at least forty five (45) days prior to the date of closing thereunder and (y) fifteen (15) days' prior written notice before making any Protective Advance.

8. The commencement of foreclosure proceedings, appointment of a receiver, or any other remedial action under the Third Loan, without the prior, written consent of the holder or holders of the First Loan and Second Loan, shall constitute an Event of Default under the First Loan and the First Loan Documents and the Second Loan and the Second Loan Documents at the time such enforcement or remedial action is initiated. Notwithstanding the foregoing, First Mortgagee and Second Mortgagee hereby agree that they shall consent to the delivery of a deed in lieu of foreclosure to the Third Mortgagee upon an Event of Default under the Third Loan Documents, provided that: (i) no Default or Event of Default shall have occurred and be continuing under any of the First Loan Documents or the Second Loan Documents, and (ii) Third Mortgagee shall execute an agreement, in form and content acceptable to First Mortgagee and Second Mortgagee, (A) assuming all obligations of the Borrower under each of the First Loan Documents and the Second Loan Documents, and (B) providing for the prior written consent of First Mortgagee and Second Mortgagee to all future development or sales of the Property, including but not limited to all sales, marketing and condominium conversion activities.

9. The payment of any amounts due under the Third Loan Documents is subordinated to the prior payment of amounts then due under the First Note, First Mortgage, the other First Loan Documents, the Second Note, Second Mortgage, and the other Second Loan Documents. Following the occurrence of a default or an Event of Default under any of the First Loan Documents or the Second Loan Documents and the giving of written notice of same to Third Mortgagee, then, so long as First Mortgagee and Second Mortgagee shall not be receiving all payments of principal and interest, and any other payments required to be made, under the First Loan Documents and the Second Loan Documents in the full amount owed as and when due, no payment shall be made to Third Mortgagee by or on behalf of Borrower for or on account of the amount due under the Third Loan Documents. So long as no default or Event of Default under the First Note, the First Loan Documents, the Second Note or the Second Loan Documents shall have occurred, Third Mortgagee shall be entitled to receive interest and principal payments and other charges pursuant to the terms of the Third Loan Documents. The

# UNOFFICIAL COPY

First Loan and Second Loan shall not be deemed paid or satisfied in full until First Mortgagee and Second Mortgagee have received full payment of all amounts due First Mortgagee and Second Mortgagee. In the event payment of amounts due under the Third Loan Documents that are subordinated and prohibited as set forth above, is made, whether in cash, rent, profits, property or securities, Third Mortgagee shall promptly pay to First Mortgagee an amount equal to such payment so long as the First Loan is outstanding and shall pay such amounts to the Second Mortgagee if the First Loan has been repaid in full.

10. So long as the First Mortgage or Second Mortgage shall remain prior liens upon the Property or any part thereof, Third Mortgagee shall execute, acknowledge and deliver, promptly following First Mortgagee's or Second Mortgagee's demand, from time to time, any and all further subordinations, agreements or other instruments consistent with the terms of this Agreement in recordable form and otherwise in form and content satisfactory as First Mortgagee or Second Mortgagee may reasonably require for carrying out the purpose and intent of the covenants contained herein.

11. Third Mortgagee hereby represents and warrants to and covenants and agrees with First Mortgagee and Second Mortgagee as follows:

(a) Third Mortgagee has delivered to First Mortgagee and Second Mortgagee true and complete fully executed copies of the Third Loan Documents, and such documents have not been amended, modified or supplemented in any way.

(b) Third Mortgagee hereby consents to the provisions of the First Loan Agreement, First Note, First Mortgage and the other First Loan Documents delivered to Third Mortgagee.

(c) Third Mortgagee hereby consents to the provisions of the Second Loan Agreement, Second Note, Second Mortgage and the other Second Loan Documents delivered to Third Mortgagee.

(d) Without First Mortgagee's and Second Mortgagee's prior, written consent, which may be denied in the First Mortgagee's and Second Mortgagee's sole and absolute discretion, the Third Loan Documents will not be amended to (i) except for Protective Advances, increase the principal amount of the indebtedness evidenced or secured thereby, (ii) modify the terms of payment, interest rates or maturity date thereof, or (iii) or (iv) grant the holders thereof any other security in the Property or in any other property that secures the First Loan or the Second Loan. No other modifications will be made to the Third Loan Documents, without the First Mortgagee's and Second Mortgagee's prior, written consent, which consent shall not be unreasonably withheld or delayed.

(e) No additional advances will be made under the Third Loan Documents other than Protective Advances as permitted by such documents.

# UNOFFICIAL COPY

(f) Notwithstanding any other provisions in the Third Loan Documents to the contrary, Third Mortgagee agrees to assign and release unto the holder or holders of the First Loan, as long as the First Loan is outstanding and, thereafter to the holder or holders of the Second Loan, all of its right, title and interest or claim in and to (i) all insurance policies and insurance proceeds in respect to the Property for application pursuant to the provisions of the First Loan Documents and Second Loan Documents, as applicable, and (ii) all condemnation awards made for any taking of any part of the Property for application pursuant to the provisions of the First Loan Documents or Second Loan Documents, as applicable.

(g) If Third Mortgagee obtains any assets of the Borrower and is not entitled to apply such assets to the Third Loan in accordance with the provisions of this Agreement, Third Mortgagee will hold such assets in trust for, and immediately pay, deliver and assign to the holders of the First Loan (or the Second Loan if the First Loan has been repaid) such assets for application to the First Loan (or Second Loan if the first Loan has been repaid).

(h) Other than payments of principal and interest and other charges expressly permitted by the Third Mortgage Documents, Third Mortgagee, as the holder of the Third Loan, shall not at any time demand or retain any voluntary or optional payment, prepayment, redemption or repurchase of any portion of the Third Loan from the Borrower, which optional or voluntary payments, repayments, redemptions or repurchases are expressly prohibited hereby. First Mortgagee and Second Mortgagee acknowledge that the Second Loan is a "cash flow mortgage" and, as such, principal and interest (including, without limitation, supplemental interest) are paid to Third Mortgagee, from time to time, out of available cash flow of the Premises.

(i) If the holder or holders of the First Loan or their agents exercise any right or take any remedial action pursuant to the terms and provisions of the First Mortgage or the First Loan Documents, Third Mortgagee expressly waives any defenses or claims it may have as a junior mortgagee or otherwise against the First Mortgagee or holder of the First Loan, in connection with such act by the holder or holders of the First Loan or their agents, other than defenses or claims predicated on a breach of this Agreement by First Mortgagee or the holder of the First Loan or First Mortgagee's or such holder's bad faith or willful misconduct.

(j) If the holder or holders of the Second Loan or their agents exercise any right or take any remedial action pursuant to the terms and provisions of the Second Mortgage or the Second Loan Documents, Third Mortgagee expressly waives any defenses or claims it may have as a junior mortgagee or otherwise against the Second Mortgagee or holder of the Second Loan, in connection with such act by the holder or holders of the Second Loan or their agents, other than defenses or claims predicated on a breach of this Agreement by Second Mortgagee or the holder of the Second Loan or Second Mortgagee's or such holder's bad faith or willful misconduct.

# UNOFFICIAL COPY

the sale is closed, (iii) all amounts of any kind owed First Mortgagee pursuant to the terms of the First Loan Documents and (iv) any unpaid balance of the "Release Price" (as defined in the First Loan Agreement);

(b) Following an Event of Default under the First Loan Documents (but only if Third Mortgagee also purchases the Second Loan at such time), for a Purchase Price equal to the sum of the items described in Subsections (a)(i), (ii), (iii) and (iv) above (other than late fees and interest at the Default Interest Rate). If the purchase is not closed on or before the ninety (90) days from the date First Mortgagee notifies Third Mortgagee of an Event of Default under the First Mortgage Documents for any reason other than the delay, adjournment or default of First Mortgagee, the purchase price shall be increased by the amount of any late fees and interest at the Default Interest Rate otherwise due and payable on the First Loan to the date of closing.

(c) At any time prior to the occurrence of an Event of Default under the Second Loan Documents, for a purchase price (the "Purchase Price") equal to the sum of (i) 100% of the outstanding principal indebtedness evidenced and secured by the Second Loan Documents, (ii) all accrued, unpaid interest due on the Second Loan to and including the date on which the sale is closed, (iii) all amounts of any kind owed Second Mortgagee pursuant to the terms of the Second Loan Documents and (iv) any unpaid balance of the "Release Price" (as defined in the Second Loan Agreement);

(d) Following an Event of Default under the Second Loan Documents, for a Purchase Price equal to the sum of the items described in Subsections (a)(i), (ii), (iii) and (iv) above (other than late fees and interest at the Default Interest Rate). If the purchase is not closed on or before the ninety (90) days from the date Second Mortgagee notifies Third Mortgagee of an Event of Default under the Second Mortgage Documents for any reason other than the delay, adjournment or default of Second Mortgagee, the purchase price shall be increased by the amount of any late fees and interest at the Default Interest Rate otherwise due and payable on the Second Loan to the date of closing.

(e) Third Mortgagee may only purchase the First Loan if Third Mortgagee purchases the Second Loan concurrently. Third Mortgagee may, however, purchase the Second Loan without purchasing the First Loan.

Third Mortgagee's election to purchase the First Loan and the Second Loan must be exercised by written notice to First Mortgagee and Second Mortgagee which notice shall designate a date for the closing of the purchase (which date may not be less than ten (10) nor more than thirty (30) days from the date of the notice).

On the date of the Closing, First Mortgagee and Second Mortgagee shall deliver to Third Mortgagee the following documents:



# UNOFFICIAL COPY

(i) Original, signed copies of all of the First Loan Documents (except for UCC Financing Statements of which copies shall be delivered); and

(ii) Original, signed copies of all of the Second Loan Documents (except for UCC Financing Statements of which copies shall be delivered); and

(iii) An assignment, without recourse, and without representation or warranty of any kind (other than a representation as to authority, delivery, execution, and delivery of the outstanding principal balance of the First Loan and Second Loan, accrued and unpaid interest and other amounts due, and that First Mortgagee and Second Mortgagee are the owner and holder of the entire First Loan and Second Loan, respectively, and have not assigned, pledged or hypothecated all or any interest therein), of the First Loan Documents and Second Loan Documents and all rights, interests, documents, instruments, insurance policies (including title insurance policies), accounts, escrows, moneys and deposits held by First Mortgagee and Second Mortgagee pursuant to the terms of the First Loan Documents and Second Loan Documents in form reasonably satisfactory to First Mortgagee, Second Mortgagee and Third Mortgagee in their reasonable discretion;

and Second Mortgagee shall wire transfer into accounts designated by First Mortgagee and Second Mortgagee the Purchase Price.

If for any reason whatsoever, other than the default of First Mortgagee or Second Mortgagee or other failure of First Mortgagee or Second Mortgagee to deliver the documents described in Subsections (i) and (ii), the sale is not consummated and First Mortgagee and Second Mortgagee do not receive the Purchase Price in their accounts by 2:00 p.m., Central Time, on the date of closing, Third Mortgagee's right to purchase the First Loan Documents and Second Loan Documents shall be null and void; provided, that if the designated closing date is less than thirty (30) days from the date of notice from First Mortgagee and Second Mortgagee, Third Mortgagee shall have the right to extend the closing date to any date up to and including the last day of such thirty (30) day period.

Neither any of the rights granted Third Mortgagee in this Section 14, nor Third Mortgagee's election to purchase the First Loan Documents and Second Loan Documents, shall nullify, impair, diminish or in any way affect any of the rights or remedies granted to or available to First Mortgagee and Second Mortgagee pursuant to the First Mortgage Documents and Second Loan Documents or available to First Mortgagee and Second Mortgagee at law or in equity, or the exercise of any such rights or remedies by First Mortgagee and Second Mortgagee; provided, however, that if First Mortgagee and Second Mortgagee are notified of the exercise of Third Mortgagee's right to purchase the First Loan and Second Loan prior to the filing of a foreclosure action or seeking the appointment of a receiver, First Mortgagee and Second Mortgagee shall defer filing such action or actions to have a receiver appointed, until the thirty first (31<sup>st</sup>) day after the date of such notice. Notwithstanding the foregoing, First Mortgagee and

# UNOFFICIAL COPY

Second Mortgagee shall not be precluded from exercising their rights in rents or other cash collateral or their rights to take any action deemed reasonably necessary or reasonably desirable by First Mortgagee and Second Mortgagee to protect their interests or security in the Property, irrespective of receipt of notice of the exercise of Third Mortgagee's right to purchase the First Loan and Second Loan.

15. First Mortgagee hereby represents and warrants and covenants and agrees with Third Mortgagee as follows:

(a) First Mortgagee has delivered to Third Mortgagee true and complete fully executed copies of the First Loan Documents, and such documents have not been amended, modified or supplemented in any way.

(b) First Mortgagee hereby consents to the provisions of the Third Loan Agreement, Third Note, Third Mortgage and the other Third Loan Documents.

(c) Without Third Mortgagee's prior, written consent, which may be denied in the Third Mortgagee's sole and absolute discretion, the First Loan Documents will not be amended to (i) except for Protective Advances, increase the principal amount of the indebtedness evidenced or secured thereby, (ii) modify the terms of payment, interest rates or maturity date thereof, or (iii) grant the holders thereof any other security in the Property or in any other property that secures the Third Loan. No other modifications will be made to the First Loan Documents without the Third Mortgagee's prior written consent, which consent shall not be unreasonably withheld or delayed.

(d) No additional advances will be made under the First Loan Documents other than Protective Advances as permitted by such documents. First Mortgagee shall provide fifteen (15) days prior written notice to Third Mortgagee of all Protective Advances intended to be made by First Mortgagee under the First Loan Documents prior to the making of any such Protective Advance.

16. Second Mortgagee hereby represents and warrants and covenants and agrees with Third Mortgagee as follows:

(a) Second Mortgagee has delivered to Third Mortgagee true and complete fully executed copies of the Second Loan Documents, and such documents have not been amended, modified or supplemented in any way.

(b) Second Mortgagee hereby consents to the provisions of the Third Loan Agreement, Third Note, Third Mortgage and the other Third Loan Documents.

(c) Without Third Mortgagee's prior, written consent, which may be denied in the Third Mortgagee's sole and absolute discretion, the Second Loan Documents will not be amended to (i) except for Protective Advances, increase the principal amount of the indebtedness evidenced or secured thereby, (ii) modify the terms of payment, interest

# UNOFFICIAL COPY

rates or maturity date thereof, or (iii) grant the holders thereof any other security in the Property or in any other property that secures the Third Loan. No other modifications will be made to the Second Loan Documents without the Third Mortgagee's prior written consent, which consent shall not be unreasonably withheld or delayed.

(d) No additional advances will be made under the Second Loan Documents other than Protective Advances as permitted by such documents. Second Mortgagee shall provide fifteen (15) days prior written notice to Second Mortgagee of all Protective Advances intended to be made by Second Mortgagee under the Second Loan Documents prior to the making of any such Protective Advance.

17. No right of the holder or holders of the First Loan or Second Loan to enforce the subordination of the Third Loan Documents, or the Third Loan, as herein provided shall at any time or in any way be affected or impaired by any failure to act on the part of the Borrower, or by any noncompliance by the Borrower with any of the terms, provisions and covenants of the Third Loan or the Third Loan Documents, regardless of any knowledge thereof that the holder or holders of the First Loan or Second Loan may have or be otherwise charged with.

18. Each party hereby represents and warrants to the other that the party making such representation has full power and authority to enter into and perform its obligations hereunder, that this Agreement has been duly authorized, executed and delivered and constitutes the legal, valid and binding obligations of such party enforceable in accordance with its terms.

19. Third Mortgagee will indemnify, defend and hold First Mortgagee and Second Mortgagee harmless from and against any damages, loss, claims, liabilities and expenses (including reasonable attorneys' fees) arising from or out of the direction given by Third Mortgagee to the Title Company pursuant to Section 3(b) of the Escrow Agreement to refrain from recording partial releases of the Third Loan following Third Mortgagee's exercise of its rights to purchase the First Loan and Second Loan.

20. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service or by facsimile transmission, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

To First Mortgagee:

LaSalle Bank National Association  
Suite 1225  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attn: National Condominium Division

**UNOFFICIAL COPY**

With copy to: Schwartz, Cooper, Greenberger & Krauss, Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
Attn: Michael S. Kurtzon, Esq.

To Second Mortgagee: LaSalle Bank National Association  
Suite 1225  
135 South LaSalle Street  
Chicago, Illinois 60603  
Attn: Real Estate Mezzanine Division

With copy to: Schwartz, Cooper, Greenberger & Krauss, Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601  
Attn: Michael S. Kurtzon, Esq.

If to Third Mortgagee: J.P. Morgan Investment Management Inc.  
522 Fifth Avenue  
New York, New York 10036  
Attn: Yetta Tropper

With copy to: Stroock & Stroock & Lavan LLP  
180 Maiden Lane  
New York, New York 10038  
Attn: Steven Moskowitz, Esq.  
Facsimile: (212) 806-6006

If to Borrower: c/o Draper and Kramer, Incorporated  
33 West Monroe Street  
Chicago, Illinois 60603  
Attn: Forrest D. Bailey  
Facsimile: (312) 346-2177

And to: Equity Marketing Services, Inc.  
211 East Ontario Street  
Suite 500  
Chicago, Illinois 60611  
Attn: Herbert P. Emmerman  
Facsimile: (312) 642-9282



# UNOFFICIAL COPY

With copy to:

Bell, Boyd & Lloyd  
Three First National Plaza  
Suite 3200  
Chicago, Illinois 60602  
Attn: Terrence E. Budny  
Facsimile: (312) 372-2098

or to each such party at such other addresses as such party may designate in a written notice to the other parties.

21. THIS AGREEMENT AND ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED UNDER THE LAWS OF THE STATE OF ILLINOIS. BORROWER, FIRST MORTGAGEE, SECOND MORTGAGEE, AND THIRD MORTGAGEE, IN ORDER TO INDUCE FIRST MORTGAGEE TO ENTER INTO THE FIRST LOAN, AND SECOND MORTGAGEE TO ENTER INTO THE SECOND LOAN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH HEREBY IS ACKNOWLEDGED, AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO OR FROM THIS AGREEMENT SHALL BE LITIGATED ONLY IN COURTS HAVING A SITUS WITHIN THE COUNTY OF COOK, STATE OF ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR SAID COUNTY. BORROWER, FIRST MORTGAGEE, SECOND MORTGAGEE AND THIRD MORTGAGEE EACH HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT ON THIS AGREEMENT IN ACCORDANCE WITH THIS PARAGRAPH. THIS PROVISION IS A MATERIAL INDUCEMENT FOR FIRST MORTGAGEE AND SECOND MORTGAGEE TO ENTER INTO THE FIRST LOAN AND THE SECOND LOAN.

22. EACH OF BORROWER, FIRST MORTGAGEE, SECOND MORTGAGEE, AND THIRD MORTGAGEE, EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY FIRST MORTGAGEE OR SECOND MORTGAGEE ON THIS AGREEMENT, ANY AND EVERY RIGHT IT MAY HAVE TO (I) A TRIAL BY JURY, (II) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS EXPRESSLY PERMITTED HEREUNDER OR SUCH CLAIM IS REQUIRED TO BE SO PLED BY APPLICABLE COURT RULES TO PREVENT SUCH RIGHTS FROM BEING BARRED, AND (III) SEEK TO HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS REQUIRED TO DO SO BY APPLICABLE COURT RULES TO PREVENT SUCH RIGHTS FROM BEING BARRED.

23. Not more often than two times each calendar month, First Mortgagee (or Second Mortgagee, if the First Loan is repaid) shall furnish Third Mortgagee, within three (3) business

# UNOFFICIAL COPY

days of written request, with a statement of the amount on deposit in the "Working Capital Account" (as defined in the First Loan Agreement).

24. First Mortgagee and Second Mortgagee agree that Third Mortgagee may be named in the insurance policies for the Property as its interest may appear pursuant to the Third Loan Documents.

25. The covenants and agreements of Third Mortgagee contained in this Agreement that benefit First Mortgagee or the holder of the First Loan and Second Mortgagee or the holder of the Second Loan, and any restriction on Third Mortgagee shall cease upon repayment of the First Loan and Second Loan in full.

26. No party may sell, assign or transfer its loan to any entity other than an institutional lender.

27. This Agreement may be signed in multiple counterparts with the same effect as if all signatories had executed the same instrument.

28. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Agreement invalid, unenforceable or not entitled to be recorded under any applicable law. If any term of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the other terms of this Agreement shall in no way be affected thereby.

29. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Agreement contained by or on behalf of any party shall bind and inure to the benefit of the respective successors and assigns of such party, whether so expressed or not.

30. This Agreement and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first set forth above.

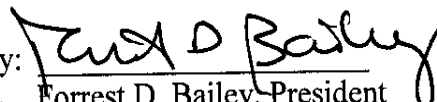
**BORROWER:**

**400 NORTH LASALLE STREET LLC,**  
a Delaware limited liability company

By: 400 CHICAGO GROUP LLC, a  
Delaware limited liability company,  
one of its Managing Members

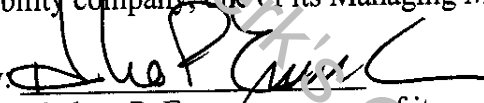
By: DK INVESTORS, LLC, an Illinois  
limited liability company, one of  
its Managing Members

By: Draper and Kramer, Incorporated,  
an Illinois corporation, its sole  
Member and Manager

By:   
Forrest D. Bailey, President

and

By: EMS ASSOCIATES, L.L.C., an Illinois limited  
liability company, one of its Managing Members

By:   
Herbert P. Emmerman, one of its  
Managing Members

# UNOFFICIAL COPY

**FIRST MORTGAGEE:**

**LASALLE BANK NATIONAL ASSOCIATION,**  
a national banking association

By: Kathleen Kuegel  
Its: OFFICER

**SECOND MORTGAGEE:**

**LASALLE BANK NATIONAL ASSOCIATION,**  
a national banking association

By: [Signature]  
Its: VP

**THIRD MORTGAGEE:**

**NORTH LASALLE FUNDING COMPANY,**  
a Delaware corporation

By: \_\_\_\_\_  
Blake R. Berg, Vice President

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

**FIRST MORTGAGEE:**

**LASALLE BANK NATIONAL ASSOCIATION,**  
a national banking association

By: \_\_\_\_\_  
Its: \_\_\_\_\_

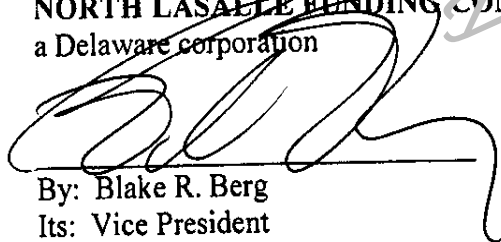
**SECOND MORTGAGEE:**

**LASALLE BANK NATIONAL ASSOCIATION,**  
a national banking association

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**THIRD MORTGAGEE:**

**NORTH LASALLE FUNDING COMPANY,**  
a Delaware corporation

  
By: Blake R. Berg  
Its: Vice President

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF Cook )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **FORREST D. BAILEY**, the President of Draper and Kramer, Incorporated, an Illinois corporation, the sole member and manager of DK INVESTORS, LLC, an Illinois limited liability company, a managing member of 400 CHICAGO GROUP LLC, a Delaware limited liability company, a managing member of 400 NORTH LASALLE STREET LLC, a Delaware limited liability company, who 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18th day of April, 2005.



Maureen E. Reid  
Notary Public

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **HERBERT P. EMMERMAN**, a managing member of EMS ASSOCIATES, L.L.C., an Illinois limited liability company, a managing member of 400 NORTH LASALLE STREET LLC, a Delaware limited liability company, who 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

# UNOFFICIAL COPY

## 5. Miscellaneous.

(a) Opposite each party's signature on this Escrow Agreement is the address to which notices to each such party shall be sent pursuant to or in connection with this Escrow Agreement. Notices hereunder shall be deemed received by the addresses therein upon the earlier of: (i) hand delivery to the addressee, (ii) one business day after deposit with Federal Express or UPS, provided the sender designates next day delivery to the applicable courier service, or (iii) three business days after mailing same, postage prepaid, by certified mail with return receipt requested. A party may hereafter designate a different address for notices to it, and such new designation shall be effective as to each party hereto who receives notice of such change in accordance with the foregoing.

(b) This Escrow Agreement shall be binding upon, and shall inure to the benefit of, the respective successors and assigns of each party hereto.

(c) The Escrowee's fees and costs in connection with this Escrow Agreement shall be paid by Borrower.

(d) This Escrow Agreement may be executed by the parties hereto or their respective counsel.

(e) This Escrow Agreement may be executed in counterparts and all such counterparts, when taken together, shall constitute a complete document.

(f) This Escrow Agreement shall be binding upon a party if executed and transmitted by facsimile; provided that each such party agrees to deliver an original executed copy hereof to the Escrowee within five business days after executing this instrument by facsimile.

# UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first set forth above.

Address: NEAR NORTH NATIONAL TITLE LLC

222 North LaSalle Street  
Chicago, Illinois 60601

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Address: 400 NORTH LASALLE STREET LLC,  
a Delaware limited liability company

c/o Draper and Kramer, Incorporated  
33 West Monroe Street  
Chicago, IL 60603  
Attention: Forrest D. Bailey

By: 400 CHICAGO GROUP LLC, a  
Delaware limited liability company,  
one of its Managing Members

By: DK INVESTORS, LLC, an  
Illinois limited liability company,  
one of its Managing Members

By: Draper and Kramer,  
Incorporated, an Illinois  
corporation, its sole  
Member and Manager

By: \_\_\_\_\_  
Forrest D. Bailey,  
President

And

Equity Marketing Services, Inc.  
211 East Ontario Street  
Suite 500  
Chicago, Illinois 60611  
Attention: Herbert P. Emmerman

By: EMS ASSOCIATES, L.L.C., an Illinois limited  
liability company, one of its Managing  
Members

By: \_\_\_\_\_  
Herbert P. Emmerman, one of its  
Managing Members



# UNOFFICIAL COPY

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **FORREST D. BAILEY**, the President of Draper and Kramer, Incorporated, an Illinois corporation, the sole member and manager of DK INVESTORS, LLC, an Illinois limited liability company, a managing member of 400 CHICAGO GROUP LLC, a Delaware limited liability company, a managing member of 400 NORTH LASALLE STREET LLC, a Delaware limited liability company, who 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Notary Public

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that **HERBERT P. EMMERMAN**, a managing member of EMS ASSOCIATES, L.L.C., an Illinois limited liability company, a managing member of 400 NORTH LASALLE STREET LLC, a Delaware limited liability company, who 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 the said instrument as his own free and voluntary act and as the free and voluntary act of said limited liability company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 18th day of April, 2005.



Maureen E. Reid  
Notary Public

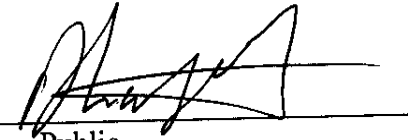
# UNOFFICIAL COPY

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

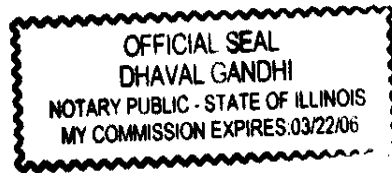
I HEREBY CERTIFY that on this 18 day of April, 2005, before me personally appeared Chris Mangaray, the V.P., of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said association.

WITNESS my signature and official seal at Chicago, in the County of Cook and State of Illinois, the day and year last aforesaid.

(NOTARY SEAL)

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 3/22/06

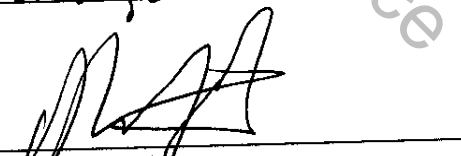


STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

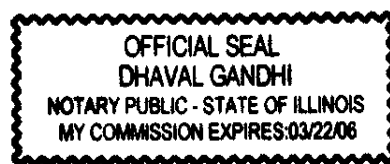
I HEREBY CERTIFY that on this 18 day of April, 2005, before me personally appeared Latie Krueser, the V.P., of LASALLE BANK NATIONAL ASSOCIATION, a national banking association, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said association.

WITNESS my signature and official seal at Chicago, in the County of Cook and State of Illinois, the day and year last aforesaid.

(NOTARY SEAL)

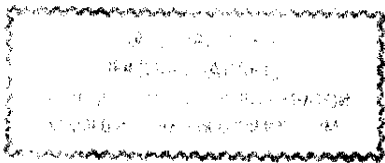
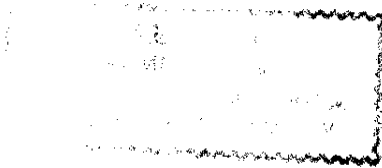
  
\_\_\_\_\_  
Notary Public

My Commission Expires: 3/22/06



# UNOFFICIAL COPY

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

STATE OF NEW YORK    )  
  ) SS.  
COUNTY OF NEW YORK )

I HEREBY CERTIFY that on this 15 day of April, 2005, before me personally appeared Blake R. Berg, the Vice President, of NORTH LASALLE FUNDING COMPANY, a Delaware corporation, to me known to be the same person who signed the foregoing instrument as his free act and deed as such officer for the use and purpose therein mentioned, and that the said instrument is the act and deed of said corporation.

WITNESS my signature and official seal at the City of New York, in the County of New York and State of New York, the day and year last aforesaid.

(NOTARY SEAL)

*Michael A. Hayden*

Notary Public

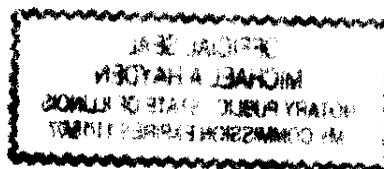
My Commission Expires: \_\_\_\_\_



Property of Cook County Clerk's Office

# UNOFFICIAL COPY

Property of Cook County Clerk's Office





# UNOFFICIAL COPY

## EXHIBIT "A"

### LEGAL DESCRIPTION

#### PARCEL 1:

Lots 1 to 8, inclusive, together with the Private Court South of and adjoining said Lot 2, East of and adjoining said Lots 3 and 4, North of and adjoining said Lots 6 and 7 and West of and adjoining said Lot 8 in the Assessor's Division of Block 9 in Newberry's Addition to Chicago, together with Lots 1 (except that part taken for LaSalle Street) and Lots 2, 3, 4, 5 and 6 (except the East 20 feet of Lot 6) and that part of the East-West 18.00 foot public alley lying North of Lots 1, 2 and 3 (except the East 20 feet of Lot 1 taken for widening LaSalle Street) and lying south of Lots 4, 5 and 6 (except the East 20 feet of Lot 6 taken for widening LaSalle Street) in Block 4 in Wolcott's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, all taken as a tract, lying East of a line described as follows: beginning on the South line of said Lot 8, a distance of 175.12 feet East of the Southwest corner of Lot 5; thence North, perpendicular to said South line, 121.80 feet; thence West, perpendicular to the last described course, 1.46 feet; thence North, perpendicular to the last described course, 9.70 feet; thence West, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course, 20.00 feet; thence East, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course, 2.00 feet; thence West, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course, 20.00 feet; thence East, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course, 2.00 feet; thence West, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course 20.00 feet; thence East, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course, 16.42 feet; thence East, perpendicular to the last described course, 1.46 feet; thence North, perpendicular to the last described course, 8.53 feet to a point on the North line of said Lot 8, a distance of 174.57 feet East of the Northwest corner of said Lot 1, in Cook County, Illinois.

#### PARCEL 2:

Easements for the benefit of Parcel 1 as created by Declaration of Reciprocal Easements and Parking and Development Rights, dated 11-30-01 and recorded March 22, 2002 as document number 20331215, over, upon and across the land described as follows:

Lots 1 to 8, inclusive, together with the Private Court South of and adjoining said Lot 2, East of and adjoining said Lots 3 and 4, North of and adjoining said Lots 6 and 7 and West of and adjoining said Lot 8 in the Assessor's Division of Block 9 in Newberry's Addition to Chicago, together with Lots 1 (except that part taken for LaSalle Street) and Lots 2, 3, 4, 5 and 6 (except the East 20 feet of Lot 6) and that part of the East-West 18.00 foot public alley lying North of Lots 1, 2 and 3 (except the East 20 feet of Lot 1 taken for widening LaSalle Street) and lying south of Lots 4, 5 and 6 (except the East 20 feet of Lot 6 taken for widening LaSalle Street) in Block 4 in Wolcott's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, all taken as a tract, lying West of and adjoining Parcel 1, in Cook County, Illinois.

Address: 400 N. LaSalle Street, Chicago, Illinois PIN: 17-09-259-020, 17-09-259-021

# UNOFFICIAL COPY

## EXHIBIT "B"

### ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Agreement") is dated as of the 19th day of April, 2005, by and among **400 NORTH LASALLE STREET LLC**, a Delaware limited liability company ("Borrower"), **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association ("First Mortgagee"), **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association ("Second Mortgagee"), **NORTH LASALLE FUNDING COMPANY**, a Delaware corporation ("Third Mortgagee"), and **NEAR NORTH NATIONAL TITLE LLC** ("Escrowee").

#### RECITALS:

A. Borrower is the owner of certain real property legally described on Exhibit "A" attached hereto located in Cook County, Illinois and all improvements thereon (the "Property"). The Property is the subject of Proforma No. N01050252 issued by Escrowee.

B. First Mortgagee has agreed to make a loan in the principal amount of \$97,500,000.00 (the "First Loan") to Borrower pursuant to a Loan Agreement dated as of even date herewith between Borrower and First Mortgagee (the "First Loan Agreement"), which First Loan is evidenced by a Promissory Note from Borrower to First Mortgagee dated as of even date herewith (the "First Note") in the original principal amount of \$97,500,000.00 and is secured by, among other things, a Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Financing Statement executed by Borrower and encumbering the Property (the "First Mortgage") and by certain other documents and instruments (collectively, with the First Note and the First Mortgage, the "First Loan Documents").

C. Second Mortgagee has agreed to make a mezzanine loan in the principal amount of \$5,300,000.00 (the "Second Loan") to Borrower pursuant to a Mezzanine Loan Agreement dated as of even date herewith between Borrower and Second Mortgagee (the "Second Loan Agreement"), which Second Loan is evidenced by a Promissory Note from Borrower to Second Mortgagee of even date herewith (the "Second Note") in the original principal amount of \$5,300,000.00 and is secured by, among other things, a Junior Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing executed by Borrower and encumbering the Property (the "Second Mortgage") and by certain other documents and instruments (collectively, with the Second Note and the Second Mortgage, the "Second Loan Documents").

D. Third Mortgagee has agreed to make a loan in the principal amount of \$17,350,000.00 (the "Third Loan") to Borrower pursuant to a Loan Agreement dated as of even date herewith between Borrower and Third Mortgagee (the "Third Loan Agreement"), which Third Loan is evidenced by a Promissory Note from Borrower to Third Mortgagee dated as of

# UNOFFICIAL COPY

even date herewith (the "Third Note") in the original principal amount of \$17,350,000.00 and is secured by, among other things, a Mortgage and Security Agreement and Assignment of Leases and Rents executed by Borrower and encumbering the Property (the "Third Mortgage") and by certain other documents and instruments (collectively, with the Third Note and the Third Mortgage, the "Third Loan Documents").

E. Borrower, First Mortgagee, Second Mortgagee and Third Mortgagee each acknowledge and agree that: (i) the Borrower will be converting the Property to a residential condominium (the "Conversion"); (ii) following the submission of the Property to the Illinois Condominium Property Act, 765 ILCS 605/1 et seq. (the "Act), up to 414 condominium units (individually, a "Unit" and collectively, the "Units") and 101 garage parking spaces (each, a "Parking Space"), to be created thereby will be sold and conveyed by the Borrower over a period of time; (iii) until the First Loan and Second Loan shall have been repaid in full, the proceeds of each Sale shall be paid in the manner herein provided, and (v) the cooperation of each of the parties to this Agreement is necessary in order to effect the orderly and business-like conduct of the Sales.

NOW, THEREFORE, it is agreed as follows:

1. Agency Closings by Escrowee. The parties hereto agree that the closing of each Sale shall be conducted under agency-type closings at the offices of the Escrowee located at 222 N. LaSalle Street, Chicago, Illinois 60601.

2. Deposit of Partial Releases. Notwithstanding anything to the contrary in the Third Loan Documents, within 45 days after the date of this Escrow Agreement, Third Mortgagee shall deposit with the Escrowee 414 partial releases, there being one partial release for each Unit (the "Partial Releases"). The Partial Releases shall be executed and in recordable form, except that the legal description for each Unit shall be attached thereto by the Escrowee at the time of the consummation of the Sale of such Unit. The Escrowee shall retain the Partial Releases and shall withdraw and record them only in accordance with this Escrow Agreement.

3. First Mortgage Pay-Down Period. Until such time as the First Loan and Second Loan shall have been repaid in full, upon the delivery to Escrowee of a partial release of the First Loan and Second Loan as to a Unit (each a "Lender's Partial Release"), the Escrowee shall attach a legal description of such Unit or Parking Space to the Lender's Partial Release and the Partial Release and shall record the Lender's Partial Release and the Partial Release for such Unit with the Cook County Recorder of Deeds.

(a) Concurrently with such recording, Escrowee shall pay to First Mortgagee and Second Mortgagee (in the aggregate) an amount equal to 75% of the gross base sales price for such Unit and Parking Space (if any) (as shown as Exhibit "B" attached hereto) in partial repayment of the First Loan and Second Loan.

# UNOFFICIAL COPY

(b) If First Mortgagee or Second Mortgagee notifies Escrowee that a default or Event of Default has occurred and is continuing under the First Loan Documents or the Second Loan Documents, at each closing Escrowee shall pay to First Mortgagee 100% of the total gross sales proceeds from the Sale.

(c) Escrowee next shall pay First Mortgagee for deposit by First Mortgagee in the "Working Capital Account" (as defined in the Loan Agreement) the amount specified by First Mortgagee as necessary to provide \$200,000.00 in the Working Capital Account.

(d) Until such time as the Third Loan shall have been repaid in full, and provided First Mortgagee or Second Mortgagee has not served Escrowee with a written notice that a default or Event of Default exists and is continuing under the First Loan or the First Loan Documents or the Second Loan or the Second Loan Documents, Escrowee shall then pay the balance of such proceeds of a Sale to a lock box or other account designated by Third Mortgagee. First Mortgagee and Second Mortgagee shall promptly notify Escrowee upon the cure of any default or Event of Default.

(e) After the First Loan and Second Loan have been repaid in full, until such time as the Third Loan has been repaid in full, all proceeds of sale shall be paid to Third Mortgagee.

(f) If Third Mortgagee exercises its election to purchase the First Loan and Second Loan from First Mortgagee and Second Mortgagee as provided in the Subordination of Mortgage and Intercreditor Agreement of even date herewith (the "Intercreditor Agreement"), Third Mortgagee shall have the right to direct Escrowee not to record further Partial Releases during the thirty (30) day period from the date Third Mortgagee delivers to Escrowee, and the other parties hereto, written notice that Third Mortgagee has elected to purchase the First Loan and Second Loan, and Escrowee agrees, following receipt of such notice, not to record further Partial Releases during such period; provided, however, that if, after such notice is delivered, First Mortgagee or Second Mortgagee notifies Escrowee and the other parties hereto that the sale of the First Loan and Second Loan has not been closed for reasons other than First Mortgagee's or Second Mortgagee's delays or First Mortgagee's or Second Mortgagee's default within the time periods provided in the Intercreditor Agreement, then Escrowee shall continue to record Partial Releases in accordance with Section 3 hereof.

4. First Mortgage Final Release. Upon repayment in full of the First Loan or the Second Loan, the First Mortgagee or Second Mortgagee, as applicable, shall deliver to Escrowee a release of all remaining Units subject to the First Mortgage and Second Mortgage, as applicable (the "Mortgage Final Release"). Upon delivery of the Mortgage Final Release to Escrowee, this Escrow Agreement shall terminate and all remaining Partial Releases executed by Third Mortgagee and held by Escrowee shall be promptly returned by Escrowee to Third Mortgagee.

# UNOFFICIAL COPY

## EXHIBIT "B"

### GROSS BASE SALES PRICE

The minimum sales price for each Unit shall be determined by Borrower not later than April 28, 2005, and approved by Lender, in Lender's sole discretion; provided that the aggregate sales prices for all Units shall not be less than \$150,000,000.00.

Property of Cook County Clerk's Office



# UNOFFICIAL COPY

## EXHIBIT "A"

### PARCEL 1:

### LEGAL DESCRIPTION

Lots 1 to 8, inclusive, together with the Private Court South of and adjoining said Lot 2, East of and adjoining said Lots 3 and 4, North of and adjoining said Lots 6 and 7 and West of and adjoining said Lot 8 in the Assessor's Division of Block 9 in Newberry's Addition to Chicago, together with Lots 1 (except that part taken for LaSalle Street) and Lots 2, 3, 4, 5 and 6 (except the East 20 feet of Lot 6) and that part of the East-West 18.00 foot public alley lying North of Lots 1, 2 and 3 (except the East 20 feet of Lot 1 taken for widening LaSalle Street) and lying south of Lots 4, 5 and 6 (except the East 20 feet of Lot 6 taken for widening LaSalle Street) in Block 4 in Wolcott's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, all taken as a tract, lying East of a line described as follows: beginning on the South line of said Lot 8, a distance of 175.12 feet East of the Southwest corner of Lot 5; thence North, perpendicular to said South line, 121.80 feet; thence West, perpendicular to the last described course, 1.46 feet; thence North, perpendicular to the last described course, 9.70 feet; thence West, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course, 20.00 feet; thence East, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course, 2.00 feet; thence West, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course, 20.00 feet; thence East, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course, 2.00 feet; thence West, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course, 20.00 feet; thence East, perpendicular to the last described course, 1.00 foot; thence North, perpendicular to the last described course, 16.42 feet; thence East, perpendicular to the last described course, 1.46 feet; thence North, perpendicular to the last described course, 8.53 feet to a point on the North line of said Lot 8, a distance of 174.57 feet East of the Northwest corner of said Lot 1, in Cook County, Illinois

### PARCEL 2:

Easements for the benefit of Parcel 1 as created by Declaration of Reciprocal Easements and Parking and Development Rights, dated 11-30-01 and recorded March 22, 2002 as document number 20331215, over, upon and across the land described as follows:

Lots 1 to 8, inclusive, together with the Private Court South of and adjoining said Lot 2, East of and adjoining said Lots 3 and 4, North of and adjoining said Lots 6 and 7 and West of and adjoining said Lot 8 in the Assessor's Division of Block 9 in Newberry's Addition to Chicago, together with Lots 1 (except that part taken for LaSalle Street) and Lots 2, 3, 4, 5 and 6 (except the East 20 feet of Lot 6) and that part of the East-West 18.00 foot public alley lying North of Lots 1, 2 and 3 (except the East 20 feet of Lot 1 taken for widening LaSalle Street) and lying south of Lots 4, 5 and 6 (except the East 20 feet of Lot 6 taken for widening LaSalle Street) in Block 4 in Wolcott's Addition to Chicago in Section 9, Township 39 North, Range 14, East of the Third Principal Meridian, all taken as a tract, lying West of and adjoining Parcel 1, in Cook County, Illinois.

Address: 400 N. LaSalle Street, Chicago, Illinois PIN: 17-09-259-020, 17-09-259-021