



Doc#: 0531422079 Fee: \$78.00  
Eugene "Gene" Moore RHSP Fee:\$10.00  
Cook County Recorder of Deeds  
Date: 11/10/2005 04:59 PM Pg: 1 of 28

**SUBORDINATION OF MORTGAGE AND INTERCREDITOR AGREEMENT**

THIS SUBORDINATION OF MORTGAGE AND INTERCREDITOR AGREEMENT ("Intercreditor Agreement") is dated as of the 4 day of November, 2005, by and among **474 LAKE SHORE DRIVE ASSOCIATES, LLC**, an Illinois limited liability company ("Borrower"), **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association ("First Mortgagee"), as agent for the Banks (as hereinafter defined) and **BRICK VENTURE**, an Illinois general partnership ("Second 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. Certain financial institutions (collectively, the "Banks") have agreed to make a loan in the principal amount of \$85,500,000.00 (the "First Loan") to Borrower pursuant to a Loan Agreement dated as of even date herewith between Borrower and the Banks (the "First Loan Agreement"), which First Loan is evidenced by certain Promissory Notes from Borrower to the Banks dated as of even date herewith (collectively, the "First Notes") in the aggregate principal amount of \$85,500,000.00 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 Notes and the First Mortgage, the "First Loan Documents").

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

Michael D. Rothstein  
Schwartz, Cooper, Greenberger & Krauss,  
Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601

**Permanent Index Numbers:**

See Exhibit "A"

**Address of Property:**

474 N. Lake Shore Drive  
Chicago, Illinois

1st AMERICAN TITLE order # 130612

889

17

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C. Second Mortgagee has agreed to make a mezzanine loan in the principal amount of \$16,000,000.00 (the "Second Loan"), 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 \$16,000,000.00 and is secured by, among other things, a Junior 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. It is a condition precedent to the Banks making the First Loan that, subject to the terms of this Agreement (i) the First Loan remain at all times prior and superior to the Second Loan and (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 Second Loan Documents in accordance with the terms of this Agreement.

NOW, THEREFORE, in order to induce the Banks to enter into the First 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. Each of the parties hereto hereby acknowledges and agrees that until the entire First Loan shall have been repaid in full, (a) all of the liens, security interests, terms, covenants and conditions of the Second 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 any and all obligatory advances and "Protective Advances" (as hereinafter defined) advanced or incurred in accordance therewith, and (b) all amounts due to Second Mortgagee under the Second Loan (including interest and/or principal payments or prepayments, assignments of 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 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. Second Mortgagee covenants and agrees to concurrently herewith execute and deliver to First American 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"). Second Mortgagee covenants and agrees to execute and deliver to the Title Company, on or prior to 10 days after the date the Escrow Agreement is fully executed, each of the partial releases to be

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delivered to the Title Company by Second Mortgagee pursuant to the terms of the Escrow Agreement. The parties hereto agree that the failure of Second 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 and the other First Loan Documents.

4. Second 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 or the other First Loan Documents.

5. First Mortgagee may, without affecting the subordination of the Second Loan, in its sole and absolute discretion and without the approval of Second Mortgagee, and without regard to any effect upon the Second Loan or the interest of Second Mortgagee in the Property or the value of Second Mortgagee's interests in the Property: (a) release or compromise any obligation in the First Note or First Loan Documents, (b) 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 (c) retain or obtain a lien in any property to further secure payment of the First Note.

6. Second Mortgagee shall give First Mortgagee notice of any default by Borrower under any of the 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 and copies of any foreclosure proceedings involving Borrower. First Mortgagee shall give Second Mortgagee notice of any Event of Default by Borrower under any of the First Loan Documents at the time such notice is given to the Borrower and copies of all further notices to Borrower relating to such Event of Default and copies of any foreclosure proceedings involving Borrower. First Mortgagee shall provide to Second Mortgagee (x) a copy of any written "deed-in-lieu of foreclosure" agreement between Borrower and First Mortgagee at least thirty (30) days prior to the date of closing thereunder and (y) five (5) days' prior written notice before making any Protective Advance.

7. The commencement of foreclosure proceedings, appointment of a receiver, or any other remedial action under the Second Loan, without the prior, written consent of the First Mortgagee, shall constitute an Event of Default under the First Loan and the First Loan Documents at the time such enforcement or remedial action is initiated.

8. The payment of any amounts due under the Second Loan Documents is subordinated to the prior payment of amounts then due under the First Note, First Mortgage and the other First Loan Documents. Except as otherwise specifically permitted pursuant to the terms of the First Loan Agreement, no payment shall be made to Second Mortgagee by or on behalf of Borrower for or on account of the amount due under the Second Loan Documents. In the event payment of amounts due under the Second Loan Documents that are subordinated and prohibited as set forth above, is made, whether in cash, rent, profits, property or securities,

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Second Mortgagee shall promptly pay to First Mortgagee an amount equal to such payment so long as the First Loan is outstanding.

9. So long as the First Mortgage shall remain a prior lien upon the Property or any part thereof, Second Mortgagee shall execute, acknowledge and deliver, promptly following First 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 may reasonably require for carrying out the purpose and intent of the covenants contained herein.

10. Second Mortgagee, as of the date hereof, hereby represents and warrants to and covenants and agrees with First Mortgagee as follows:

(a) Second Mortgagee has delivered to First 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 First Loan Agreement, First Note, First Mortgage and the other First Loan Documents delivered to Second Mortgagee.

(c) Without First Mortgagee's prior, written consent, which may be denied in the First 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 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 First Loan. No other modifications will be made to the Second Loan Documents, without the First 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.

(e) Notwithstanding any other provisions in the Second Loan Documents to the contrary, Second Mortgagee agrees to assign and release unto the holder or holders of the First Loan, as long as the First Loan is outstanding 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 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, as applicable.

(f) If Second Mortgagee obtains any assets of the Borrower and is not entitled to apply such assets to the Second Loan in accordance with the provisions of this Agreement, Second Mortgagee will hold such assets in trust for, and immediately pay,

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deliver and assign to the holders of the First Loan such assets for application to the First Loan.

(g) Subject to the restrictions set forth in the First Mortgage Documents, other than payments of principal and interest and other charges expressly permitted by the Second Mortgage Documents, Second Mortgagee, as the holder of the Second Loan, shall not at any time demand or retain any voluntary or optional payment, prepayment, redemption or repurchase of any portion of the Second Loan from the Borrower, which optional or voluntary payments, repayments, redemptions or repurchases are expressly prohibited hereby.

(h) 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, Second 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 or the Escrow Agreement by First Mortgagee or the holder of the First Loan or First Mortgagee's or such holder's bad faith or willful misconduct.

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

(j) Notwithstanding anything to the contrary in the Second Loan Documents, Second Mortgagee agrees that the Cash Management Agreement (as defined in the Second Note) shall not be effective until such time as the First Loan and all amounts owed the Banks under the First Loan Documents are paid in full.

11. 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 shall be preferred in payment over the Second Loan, and the First Loan shall first be paid in full before any payment is made upon the Second 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 to the same extent as herein provided), which shall be made upon or in respect of the Second Loan as a result of any such proceeding, shall be paid over first to the holder or holders of the First Loan for application in payment thereof unless and until the First Loan shall have been paid or satisfied in full.

12. Second Mortgagee, as the holder of the Second Loan, undertakes and agrees for the benefit of each holder of the First Loan to execute, verify, deliver and file any proofs of

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claim, consents, assignments or other instruments in form and content reasonably satisfactory to First Mortgagee which any holder of the First Loan may at any time reasonably require in connection with any Bankruptcy Proceeding in order to effectuate the agreements contained herein.

13. Following an Event of Default under the First Loan Documents, Second Mortgagee shall have the right to purchase the First Loan and all rights, interests, documents, instruments, insurance policies, and accounts in connection therewith (without recourse), from First Mortgagee upon the following terms and conditions:

(a) 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 the sale is closed, (iii) all amounts of any kind owed the Banks pursuant to the terms of the First Loan Documents and (iv) any unpaid balance of the "release fee" as described in that certain side letter of even date herewith between First Mortgagee and Borrower.

(b) Second Mortgagee's election to purchase the First Loan must be exercised by written notice to First 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).

(c) On the date of the closing, First Mortgagee shall deliver to Second Mortgagee the following documents:

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

(ii) An assignment, without recourse, and without representation or warranty of any kind, other than that First Mortgagee is the holder of the First Loan and the First Loan Documents and has not executed any prior assignment thereof, of the First Loan Documents and all rights, interests, documents, instruments, insurance policies (including title insurance policies), accounts, escrows, moneys and deposits held by First Mortgagee pursuant to the terms of the First Loan Documents in form reasonably satisfactory to First Mortgagee and Second Mortgagee in their reasonable discretion;

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

If for any reason whatsoever, other than the default of First Mortgagee or other failure of First Mortgagee to deliver the documents described in Subsections (i) and (ii), the sale is not consummated and First Mortgagee does not receive the Purchase Price in its account by 2:00 p.m., Central Time, on the date of closing, Second Mortgagee's right to purchase the First Loan

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and First 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, Second 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 Second Mortgagee in this Section 13, nor Second Mortgagee's election to purchase the First Loan Documents, shall nullify, impair, diminish or in any way affect any of the rights or remedies granted to or available to First Mortgagee pursuant to the First Mortgage Documents or available to First Mortgagee at law or in equity, or the exercise of any such rights or remedies by First Mortgagee; provided, however, that if First Mortgagee is notified of the exercise of Second Mortgagee's right to purchase the First Loan prior to the filing of a foreclosure action or seeking the appointment of a receiver, First 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 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 to protect the Banks' interests or security in the Property, irrespective of receipt of notice of the exercise of Second Mortgagee's right to purchase the First Loan.

14. First Mortgagee, as of the date hereof, hereby represents and warrants and covenants and agrees with Second Mortgagee as follows:

(a) First Mortgagee has delivered to Second 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 Second Note, Second Mortgage and the other Second Loan Documents

(c) Without Second Mortgagee's prior, written consent, which may be denied in the Second 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 or (ii) modify the interest rates or maturity date thereof. Furthermore, First Mortgagee agrees that it shall not amend (i) the Project Budget with respect to fees to be paid to Borrower or any Affiliate (as each term is defined in the First Loan Agreement) of Borrower nor (ii) Sections 8.10 and 8.15 of the First Loan Agreement without Second Mortgagee's prior written consent, which may be denied in the Second Mortgagee's sole and absolute discretion

(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 five (5) days prior written notice to Second 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.

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(e) First Mortgagee shall make distributions from the Working Capital Money Market Account (as defined in the First Loan Agreement) to Second Mortgagee strictly in accordance with Section 8.10 of the First Loan Agreement upon (i) a joint direction by Borrower and Second Mortgagee and (ii) satisfaction of the conditions set forth in Section 8.10 of the First Loan Agreement.

15. No right of the holder or holders of the First Loan to enforce the subordination of the Second Loan Documents, or the Second 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 Second Loan or the Second Loan Documents, regardless of any knowledge thereof that the holder or holders of the First Loan may have or be otherwise charged with.

16. 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.

17. 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

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:                    Brick Venture  
c/o The Broadacre Management Company  
505 East Illinois Street, Suite 1900  
Chicago, Illinois 60601  
Attn: Francis F. Freeman, Vice President



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With copy to: DLA Piper Rudnick Gray Cary US LLP  
203 North LaSalle Street, Suite 1900  
Chicago, Illinois 60601  
Attn: Dennis M. Wilson, Esq.

If to Borrower: 474 Lake Shore Drive Associates, LLC  
Equity Marketing Services, Inc.  
303 West Madison Street  
Suite 1000  
Chicago, Illinois 60606  
Attn: Todd Bancroft, Esq.

With copy to: Sonnenschein Nath & Rosenthal LLP  
8000 Sears Tower  
Chicago, Illinois 60606  
Attn: Marlene D. Nations, Esq.

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

18. 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 AND SECOND MORTGAGEE, IN ORDER TO INDUCE THE BANKS 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 AND SECOND 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.

19. EACH OF BORROWER, FIRST MORTGAGEE AND SECOND 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

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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.

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

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

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

23. 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.

24. 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.

25. 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.

26. 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 nothing herein shall impair, as between the Borrower and First Mortgagee, the obligation of the Borrower, which is unconditional and absolute, to pay the First Loan in accordance with the terms of the First Loan Documents, nor shall anything herein prevent First Mortgagee from exercising all remedies otherwise permitted by applicable law or under the First Note, First Mortgage or First Loan Documents.

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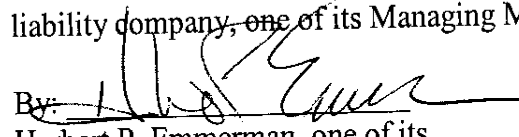
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IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the date first set forth above.

**BORROWER:**

**474 LAKE SHORE DRIVE ASSOCIATES LLC,**  
an Illinois limited liability company

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

**FIRST MORTGAGEE:**

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

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

**SECOND MORTGAGEE:**

**BRICK VENTURE,** an Illinois general partnership  
a national banking association

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

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

**BORROWER:**

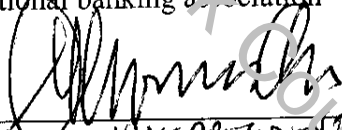
**474 LAKE SHORE DRIVE ASSOCIATES LLC,**  
an Illinois limited liability company

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

**FIRST MORTGAGEE:**

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

By:   
Its: VICE PRESIDENT

**SECOND MORTGAGEE:**

**BRICK VENTURE,** an Illinois general partnership,  
a national banking association

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

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

**BORROWER:**

**474 LAKE SHORE DRIVE ASSOCIATES LLC,**  
an Illinois limited liability company

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

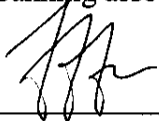
**FIRST MORTGAGEE:**

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

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

**SECOND MORTGAGEE:**

**BRICK VENTURE,** an Illinois general partnership,  
a national banking association

By:  \_\_\_\_\_  
Its: Vice President

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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 474 LAKE SHORE DRIVE, LLC, an Illinois 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 14<sup>th</sup> day of November, 2005.



Talia Lissner  
Notary Public

STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

I HEREBY CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_, 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 \_\_\_\_\_, in the County of Cook and State of Illinois, the day and year last aforesaid.

(NOTARY SEAL)

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

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

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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 474 LAKE SHORE DRIVE, LLC, an Illinois 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         )

I HEREBY CERTIFY that on this 4<sup>th</sup> day of November, 2005, before me personally appeared Thomas Chan, the VP, 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)



Preeti Saini  
Notary Public

My Commission Expires: 5-20-08

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STATE OF ILLINOIS        )  
  ) SS.  
COUNTY OF COOK        )

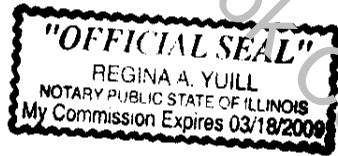
I HEREBY CERTIFY that on this \_\_\_\_\_ day of November, 2005, before me personally appeared Francis F Freeman, the Vice President, of BRICK VENTURE, an Illinois general partnership, to me known to be the same person who signed the foregoing instrument as his/her free act and deed as such officer for 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)

Regina A. Yuill  
Notary Public

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

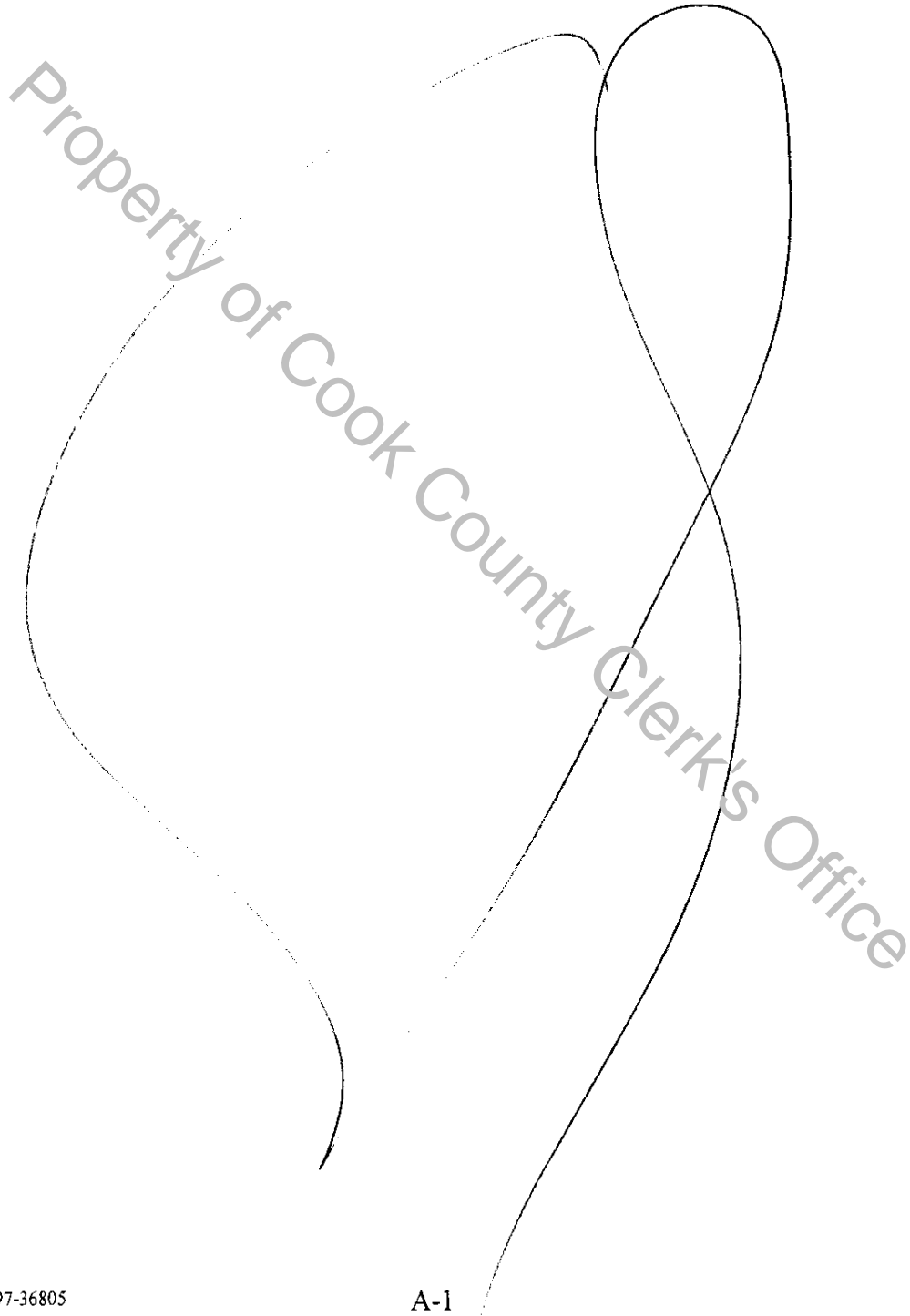




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EXHIBIT "A"

LEGAL DESCRIPTION



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## SCHEDULE A

## LEGAL DESCRIPTION

## PARCEL 1:

RESIDENTIAL UNIT NOS. AND PARKING UNITS NO. PS # AS SHOW ON THE ATTACHED SCHEDULE A AND BOAT SLIP NOS. BS #1, 2, 3, 4, 5, 6 AND 7 IN 474 NORTH LAKE SHORE DRIVE, A CONDOMINIUM, AS DELINEATED ON A PLAT OF SURVEY OF THE FOLLOWING TRACT OF LAND: PART OF LOT 2 IN BLOCK 5 IN CITYFRONT CENTER AND PART OF THE OGDEN SLIP LYING SOUTHERLY OF AND ADJOINING SAID LOT 2, BEING A PART OF THE NORTH FRACTION OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH PLAT OF SURVEY IS ATTACHED AS EXHIBIT " " TO THE DECLARATION OF CONDOMINIUM OWNERSHIP RECORDED NOVEMBER \_\_, 2005 AS DOCUMENT NO. \_\_\_\_\_, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS, IN COOK COUNTY, ILLINOIS.

## PARCEL 2:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY FIRST AMENDMENT TO GRANT AND DECLARATION OF NON-EXCLUSIVE EASEMENT FROM CHICAGO DOCK AND CANAL TRUST TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED MAY 1, 1986 AND KNOWN AS TRUST NUMBER 67050 DATED SEPTEMBER 30, 1986 AND RECORDED SEPTEMBER 30, 1986 AS DOCUMENT 86446718 AND AS AMENDED BY FIRST AMENDMENT RECORDED JULY 15, 1988 AS DOCUMENT 88312033 FOR INGRESS AND EGRESS AND NAVIGATIONAL PURPOSES.

## PARCEL 3:

EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN MUTUAL GRANT OF EASEMENTS, OPERATING AGREEMENT AND OPTION TO LEASE PARKING SPACES RECORDED JULY 15, 1988 AS DOCUMENT 88312035, AS AMENDED BY MODIFICATION AGREEMENT RECORDED \_\_\_\_\_, 2005 AS DOCUMENT \_\_\_\_\_ OVER THE NORTH PIER PARCEL DESCRIBED THEREIN FOR INGRESS AND EGRESS TO LOADING DOCKS; SUPPORT, ACCESS AND MAINTENANCE OF PARKING GARAGE CONNECTION; AND ACCESS OVER AND ACROSS THE PROMENADE AS DEFINED THEREIN.

## PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CONTAINED IN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS RECORDED \_\_\_\_\_ AS DOCUMENT \_\_\_\_\_ OVER THE COMMERCIAL PARCEL AS DEFINED THEREIN FOR USES DESCRIBED IN ARTICLE 3.2.

## PARCEL 5:

THE EXCLUSIVE RIGHT TO THE USE OF STORAGE SPACES, AS LIMITED COMMON ELEMENTS, AS SET FORTH IN THE DECLARATION OF CONDOMINIUM OWNERSHIP RECORDED NOVEMBER \_\_, 2005 AS DOCUMENT NO. \_\_\_\_\_ AND SURVEY ATTACHED THERETO.

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## SCHEDULE A

Unit Number	Unit Number
1609	2408
1701	2503
1702	2504
1706	2505
1707	2507
1708	2508
1710	2509
1711	2510
1712	2511
1801	2601
1802	2602
1803	2604
1805	2605
1807	2606
1808	2607
1809	2609
1901	2611
1902	2701
1903	2702
1907	2704
1908	2705
2001	2706
2002	2709
2004	2712
2005	2801
2006	2804
2008	2805
2009	2806
2010	2808
2012	2809
2102	2810
2105	2811
2106	2812
2109	2902
2201	2903
2202	2905
2207	2909
2208	2910
2209	2912
2301	3001
2302	3003
2305	3004
2307	3007
2308	3008
2310	3009
2401	3010
2402	3011
2405	3112
2406	3201
2407	3202

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## SCHEDULE A

Unit Number	Unit Number
3203	3707
3204	3709
3205	3801
3206	3802
3207	3805
3208	3806
3209	3809
3210	3810
3212	3812
3301	3901
3302	3902
3303	3903
3304	3904
3305	3905
3306	3906
3307	3907
3308	3908
3309	3911
3310	4001
3311	4002
3312	4004
3402	4005
3403	4006
3406	4008
3407	4011
3408	4101
3409	4102
3410	4103
3412	4105
3501	4106
3502	4107
3503	4109
3504	4111
3505	4201
3507	4202
3509	4203
3602	4207
3603	4208
3604	4209
3605	4210
3606	4211
3607	4301
3608	4302
3609	4303
3610	4304
3612	4305
3701	4306
3702	4307
3705	4308
3706	4309

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## SCHEDULE A

Unit Number	Unit Number
4310	5008
4401	5009
4402	5010
4404	5011
4405	5101
4407	5104
4408	5106
4409	5107
4410	5108
4506	5109
4507	5110
4508	5111
4509	5201
4510	5206
4603	5207
4604	5208
4605	5211
4606	5301
4607	5302
4611	5303
4701	5305
4702	5306
4704	5307
4706	5308
4707	5309
4708	5310
4709	5311
4711	5401
4801	5402
4802	5403
4803	5404
4804	5406
4805	5407
4806	5409
4807	5410
4808	5411
4810	5501
4901	5502
4902	5504
4903	5506
4904	5508
4906	5509
4907	5510
4908	5511
4909	5605
4911	5606
5001	5607
5002	5608
5003	5711
5006	5801

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**UNOFFICIAL COPY****SCHEDULE A**

Unit Number	Unit Number
5802	PS031
5803	PS032
5804	PS033
5805	PS034
5806	PS035
5901	PS036
5902	PS037B
5903	PS039
5904	PS042
5905	PS043
6001	PS044
6002	PS045
6003	PS047
6004	PS048
6005	PS049
6006	PS052
6101	PS056
6102	PS062
6103	PS064
6105	PS067
B01	PS069
B02	PS070
B03	PS071
B04	PS072
B05	PS073
B06	PS079
B07	PS081
PS002	PS085
PS005	PS086
PS006	PS087
PS007	PS088
PS008	PS090
PS009	PS097
PS010	PS098
PS013	PS106
PS014	PS109
PS015	PS110
PS016	PS112
PS017	PS114
PS018	PS115
PS019	PS116
PS020	PS117
PS021	PS124
PS022	PS127
PS023	PS128
PS024	PS130
PS025	PS149
PS026	PS150
PS027	PS152
PS030	PS153

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## SCHEDULE A

Unit Number		Unit Number
PS157		PS223
PS159		PS224
PS160		PS225
PS161		PS226
PS162		PS228
PS163		PS229
PS164		PS230
PS166		PS232
PS167		PS233
PS168		PS234
PS169		PS235
PS170		PS238
PS171		PS239
PS172		PS240
PS173		PS243
PS175		PS244
PS177		PS246
PS178		PS248
PS180		PS249
PS181		PS250
PS182		PS252
PS183		PS253
PS186		PS254
PS187		PS256
PS189		PS257
PS190		PS258
PS194		PS259
PS195		PS260
PS196		PS261
PS199		PS262
PS201		PS263
PS202		PS266
PS203		PS267
PS204		PS268
PS205		PS269
PS206		PS270
PS207		PS271
PS208		PS276
PS209		PS278
PS211		PS279
PS212		PS280
PS213		PS281
PS214		PS282
PS215		PS283
PS216		PS284
PS217		PS285
PS218		PS286
PS220		PS287
PS221		PS288
PS222		PS290

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## SCHEDULE A

Unit Number	Unit Number
PS291	PS368
PS294	PS369
PS295	PS370
PS296	PS371
PS297	PS372
PS298	PS373
PS302	PS374
PS303	PS375
PS304	
PS305	
PS306	
PS307	
PS308	
PS309	
PS311	
PS312	
PS313	
PS314	
PS315	
PS316	
PS318	
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## EXHIBIT "B"

### ESCROW AGREEMENT

THIS ESCROW AGREEMENT ("Escrow Agreement") is dated as of the 10th day of November, 2005, by and among **474 LAKE SHORE DRIVE ASSOCIATES, LLC**, an Illinois limited liability company ("Borrower"), **LASALLE BANK NATIONAL ASSOCIATION**, a national banking association ("First Mortgagee") as agent for certain Banks (as defined below), **BRICK VENTURE**, an Illinois general partnership ("Second Mortgagee") and **FIRST AMERICAN TITLE INSURANCE COMPANY** ("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 Performance No. NCS-130612-CHI1 issued by Escrowee.

B. Certain financial institutions (the "Banks") have agreed to make a loan in the principal amount of \$85,500,000.00 (the "First Loan") to Borrower pursuant to a Loan Agreement dated as of even date herewith between Borrower and the Banks (the "First Loan Agreement"), which First Loan is evidenced by certain Promissory Note from Borrower to the Banks dated as of even date herewith (collectively, the "First Notes") in the aggregate principal amount of \$85,500,000.00 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 Notes and the First Mortgage, the "First Loan Documents").

C. Second Mortgagee has agreed to make a mezzanine loan in the principal amount of \$16,000,000.00 (the "Second Loan"), 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 \$16,000,000.00 and is secured by, among other things, a Junior 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. Borrower, First Mortgagee and Second Mortgagee each acknowledge and agree that: (i) the Borrower will be converting the Property to residential condominiums; (ii) following the submission of the Property to the Illinois Condominium Property Act, 765 ILCS 605/1 et seq., up to 502 condominium units (individually, a "Unit" and collectively, the "Units"), 376 garage parking spaces (each, a "Parking Space") and 7 boat slips (the "Boat Slips"), to be created thereby will be sold and conveyed by the Borrower over a period of time; (iii) until the First

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Loan shall have been repaid in full, the proceeds of each sale shall be paid in the manner herein provided, and (iv) the cooperation of each of the parties to this Escrow 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 of each Unit, Parking Space and/or Boat Slip shall be conducted under agency-type closings at the offices of the Escrowee located at 30 N. LaSalle Street, Suite 310, Chicago, Illinois 60601.

2. Deposit of Partial Releases. Notwithstanding anything to the contrary in the Second Loan Documents, within 10 days after the date of this Escrow Agreement, Second Mortgagee shall deposit with the Escrowee \_\_\_ 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 shall have been repaid in full, upon the delivery to Escrowee of a partial release of the First Loan as to a Unit (each a "Lender's Partial Release"), the Escrowee shall attach a legal description of such Unit, Parking Space and/or Boat Slip 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 an amount equal to 100% of the gross sales price for such Unit, Parking Space (if any) and/or Boat Slip (if any), less customary closing costs, brokers commissions and prorations (such costs, commissions and prorations not to exceed 7% in the aggregate of the gross sales price), to be applied in accordance with the terms of the First Loan Agreement.

(b) After the First Loan has been repaid in full, until such time as the Second Loan has been repaid in full and concurrently with such recording of the Partial Release, Escrowee shall pay to Second Mortgagee an amount equal to 80% of the gross base sales price for such Unit, Parking Space (if any) and/or Boat Slip (if any) (as shown as Exhibit "B" attached hereto) in partial repayment of the Second Loan.

(c) If Second Mortgagee notifies Escrowee that a default or Event of Default has occurred and is continuing under the Second Loan Documents, at each closing Escrowee shall pay to Second Mortgagee 100% of the total gross sales proceeds from each sale less customary closing costs, brokers commissions and prorations (such costs, commissions and prorations not to exceed 7% in the aggregate of the gross sales price).

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(d) Escrowee next shall pay Second Mortgagee for deposit by Second Mortgagee in the "Working Capital Account" (as defined in the Second Loan Documents) the balance of the sales proceeds, less customary closing costs, brokers commissions and prorations (such costs, commissions and prorations not to exceed 7% in the aggregate of the gross sales price).

4. First Mortgage Final Release. Upon repayment in full of the First Loan, the First Mortgagee shall deliver to Escrowee a release of all remaining Units subject to the First Mortgage.

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.

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

Address:  
  
30 N. LaSalle Street  
Suite 310  
Chicago, Illinois 60601  
Attention: \_\_\_\_\_

FIRST AMERICAN TITLE INSURANCE  
COMPANY

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

Address:  
  
Equity Marketing Services, Inc.  
303 W. Madison Street  
Suite 1000  
Chicago, Illinois 60611  
Attention: Herbert P. Emmerman

474 LAKE SHORE DRIVE ASSOCIATES LLC,  
an Illinois limited liability company

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

Address:  
  
c/o Michael S. Kurtzon  
Schwartz, Cooper, Greenberger &  
Krauss, Chartered  
180 North LaSalle Street  
Suite 2700  
Chicago, Illinois 60601

LASALLE BANK NATIONAL ASSOCIATION

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

Address:  
  
c/o The Broadacre Management  
Company  
505 East Illinois Street, Suite 1900  
Chicago, Illinois 60601  
Attn: Francis F. Freeman, Vice  
President

BRICK VENTURE

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