

EASEMENT AGREEMENT

This Easement Agreement (hereinafter "Agreement"), entered into as of the 31st day of OCTOBER, 2007, by and between **1147 West Ohio Condominium Association** (hereinafter "Grantor"), an Illinois condominium association located at **1147 West Ohio Street, Chicago, Illinois 60622, Chicago Title Land Trust Company, Successor to LaSalle National Bank, Successor to American National Bank, as Trustee Under Trust 53387 dated August 18, 1981** (hereinafter "Grantee"), and **1147 West Ohio Associates, an Illinois general partnership**, with its primary place of business located at **1425 West Fullerton, Chicago, Illinois 60614**, ("Developer") developer of the **1147 West Ohio Condominium ("Condominium")**.



Doc#: 0817134130 Fee: \$114.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 06/19/2008 02:25 PM Pg: 1 of 16

RECITALS

WHEREAS, the Condominium Declaration for the **1147 West Ohio Condominium** as originally recorded in Cook County, Illinois as document number 26419202 (hereinafter "Declaration") concerns the underlying property legally described in **Exhibit "A"** attached hereto, contained at **Article IV 3(c)**, a retained "Easement for Access to and Use of External Walls and Roof for Installation and Maintenance of Signs" ("**Original Easement**") over the property located at **1147 West Ohio Street, Chicago, Illinois 60622** (hereinafter "**Building**") for the benefit of Grantee and Developer; and

WHEREAS, Grantor, subsequently amended the declaration ("**Amendment**") to remove the provision reserving the Original Easement; and

WHEREAS, the validity of the said Amendment is disputed by Grantee and Developer; and

WHEREAS, the parties have engaged in a civil lawsuit entitled 1147 West Ohio Condominium Association v. 1147 West Ohio Associates, et. al. Case Number 05 CH 22513, Circuit Court of Cook County, Illinois, relating to the Original Easement; and

WHEREAS, the parties, by way of a settlement agreement, a copy of which is attached hereto and incorporated herein as if fully set forth herein as **Exhibit "B"** ("**Settlement Agreement**") have resolved the aforementioned civil lawsuit; and

WHEREAS, the Settlement Agreement contains, inter alia, provisions for the modification of the Original Easement including the illumination of the East Façade (as therein defined), the division of sign revenue and other matters; and

WHEREAS, the parties desire to create this Agreement to be recorded to reflect the terms and conditions of the Settlement Agreement as they relate to the easement established by this Agreement;

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NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged including the execution of the Settlement Agreement, it is agreed as follows:

1. **Incorporation of Preamble:** The Recitals set forth in the Recitals hereto are incorporated in the text hereof as if fully set forth herein.
2. **Modification of Easement:** The “Easement for Access to and Use of External Walls and Roof for Installation and Maintenance of Signs,” contained in **Article IV, Section 3(c)** of the Declaration, is hereby entirely restated as modified as provided in **Exhibit “B”** hereto.
3. **Description of New Easement:** The Grantor, its successors and assigns, do hereby grant to Grantee and Developer such limited and other and further rights as contained in the Settlement Agreement, which said rights are intended to replace the Original Easement.
4. **Governing Law:** This Agreement shall be deemed to be governed, construed, applied and enforced in accordance with the internal laws of the State of Illinois applicable to contracts to be wholly performed within such State and the applicable laws of the United States of America.
5. **No Oral Change:** This Agreement, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of the Partnership or the Association, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge, or termination is sought.
6. **Inapplicable Provisions:** If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.
7. **Number and Gender:** Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.




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Whereupon, the parties have executed this Easement Agreement as of the date set forth above.

Chicago Title Land Trust Company, not individually, but solely as Successor Trustee Under Trust Agreement 53387, as aforesaid

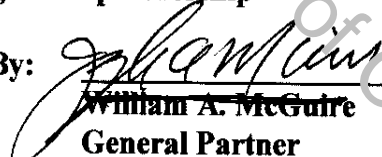
1147 West Ohio Condominium Association

By: _____

By: 
President


Secretary

1147 West Ohio Associates, an Illinois general partnership

By: 
William A. McGuire
General Partner

P.I.N:

After Recording, Mail To:

**POKORNY & MARKS, LLC
STEPHEN J. POKORNY, ESQ.
6 WEST HUBBARD ST., 7TH FLOOR
CHICAGO, IL 60610**

Document Prepared By:

**Michael Hamblet
1 East Wacker Drive, Suite 2222
Chicago, Illinois 60601**

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Whereupon, the parties have executed this Easement Agreement as of the date set forth above.

Chicago Title Land Trust Company, not individually, but solely as Successor Trustee Under Trust Agreement 53387, as aforesaid

1147 West Ohio Condominium Association

By: 
ASST. VICE PRESIDENT

By: 
President

Secretary

1147 West Ohio Associates, an Illinois general partnership

By: 
William A. McGuire
General Partner

P.I.N:

**POKORNY & MARKS, LLC
STEPHEN J. POKORNY, ESQ.
6 WEST HUBBARD ST., 7TH FLOOR
CHICAGO, IL 60610**

After Recording, Mail To:

Document Prepared By:

**Michael Hamblet
1 East Wacker Drive, Suite 2222
Chicago, Illinois 60601**

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements hereinafter made on the part of the Trustee while in force purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are null and void from the date of their making and shall be null and void for all purposes whatsoever, including, representation, covenants, undertakings and agreements by the Trustee or for the purpose or with a intention of binding said Trustee personally and herein, and hereafter, for any purpose whatsoever, only that portion of the land property specifically described herein, and the obligations of the Trustee shall be limited to the obligations of said Trustee as to the land, but not by the exercise of the powers conferred by a lien upon the property of said Trustee personal liability or personal responsibility incurred by nor shall at any time be assessed or a claim be asserted against the undersigned land trustee, on account of this instrument or on account of any warranty, representation, covenant or agreement of the Trustee, or in any instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.



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EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 1:

LOT 1 IN BLOCK 25 IN OGDEN'S ADDITION TO CHICAGO IN THE NORTH EAST ¼ OF SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

LOTS 32, 33, 34, 35 AND THE EAST 0.14 FEET OF THE NORTH SOUTH PUBLIC ALLEY LYING WEST OF AND ADJOINING SAID LOT 32 (ALLEY VACATED BY ORDINANCE RECORDED AS DOCUMENT NUMBER 15999865) IN BLOCK 25 IN OGDEN'S ADDITION TO CHICAGO IN SECTION 8, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

UNOFFICIAL COPY EXHIBIT**B****SETTLEMENT AGREEMENT**

This Settlement Agreement (hereinafter this "Agreement"), is entered into the 31st day of October, 2007, by and between 1147 WEST OHIO CONDOMINIUM ASSOCIATION (hereinafter the "Association"), an Illinois condominium association located at 1147 W. Ohio Street, Chicago, Illinois 60622, 1147 WEST OHIO ASSOCIATES (hereinafter the "Partnership"), an Illinois partnership with its primary place of business located at 1425 W. Fullerton Avenue, Chicago, Illinois 60614, and CBS OUTDOOR, INC., d/b/a CBS Outdoor, as successor to Viacom Outdoor, Inc. ("CBS") located at 444 N. Michigan Ave., Chicago, IL 60611.

RECITALS

Whereas, the Association is the representative of the owners of condominium units ("Units") in a condominium building located at 1147 W. Ohio Street, Chicago, Illinois (the "Building"); and

Whereas, the Association was established pursuant to a Declaration of Condominium Ownership filed with the Cook County Recorder of Deeds on November 22, 1982 as document no. 26419202 (the "Declaration"); and

Whereas, the Partnership was the developer of the Building and the seller of Units in the Building to the original owners thereof; and

Whereas, pursuant to the Declaration, the Partnership reserved an easement (the "Easement") over certain of the Building's common elements for the purpose of constructing and maintaining advertising signs or leasing such space for advertising signs; and

Whereas, from the inception of the Easement, the Partnership or its lessees have maintained advertising signs on portions of the upper façade of the east facing exterior wall of the Building on the 6th and 7th floors of the Buildings (the "Upper East Façade" as shown on Exhibit A hereto); and

Whereas, pursuant to a Wall Lease Agreement dated January 10, 1995 as amended by an Addendum dated February 4, 2005 (the "Sign Lease"), CBS as successor-in-interest to Viacom Outdoor, Inc. has maintained advertising signs on the portion of the Upper East Façade shown on Exhibit A as the Signage Area; and

Whereas, a dispute has arisen between the Association and the Partnership relating to (i) the validity of the Easement and (ii) the Partnership's obligations with respect to payment of maintenance and repair expenses relating to the exterior common elements of the Building; and

Handwritten initials and signature

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Whereas, as a result of the dispute, the Association has sued the Partnership and an affiliated land trust in the Circuit Court of Cook County, Illinois in the cause entitled 1147 West Ohio Condominium Association v. 1147 West Ohio Associates, et al., Case No. 05 CH 22513 (the "Lawsuit"); and

Whereas the parties hereto desire to settle the Lawsuit and to reach an amicable settlement of the dispute without admission of fault, liability or wrongdoing by any party hereto.

NOW THEREFORE, in consideration of the Recitals and in exchange for the mutual promises and covenants contained herein, and for other good and valuable considerations, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Recitals The Recitals are incorporated by reference and made a part hereof.
2. Release and Dismissal of Lawsuit. (a) In consideration of the mutual promises contained herein, the Association on behalf of itself and its members, successors and assigns hereby releases, remits and discharges the Partnership, Chicago Title Land Trust Company as Trustee under Land Trust No. 53387 as successor trustee to American National Bank and Trust Company of Chicago Trust No. 53387 dated August 18, 1981 and CBS and their respective partners, beneficiaries, employees, agents and assigns from all claims, actions, causes of action, damages, demands and expenses ("Claims") whether known or unknown and whether now existing or hereinafter arising which relate directly or indirectly to the Easement or the use of the Building or any of its common elements for advertising sign purposes, including without limitation, all Claims asserted by the Association in the Lawsuit; provided, however, that nothing contained in the foregoing release shall release or discharge any party from any obligation arising under this Agreement or the Easement Agreement (as hereinafter defined).
 (b) Within five (5) days after execution of this Agreement, the Association and the Partnership shall present an Agreed Order to the presiding judge in the Lawsuit which dismisses the Lawsuit with prejudice and without costs. Each of the Association and the Partnership shall pay their own respective costs, expenses and attorneys fees relating to the Lawsuit.
3. Modification of Easement. The Easement shall be modified pursuant to the terms and conditions of an Easement Agreement in the form of Exhibit B attached hereto (the "Easement Agreement"). Pursuant to the Easement Agreement: (a) The Partnership and its agents, independent contractors and lessees shall have the right to use the Signage Area, for the purposes of constructing, maintaining, displaying and leasing revenue-producing advertising signs. In addition, the Partnership and its employees, agents, independent contractors and lessees shall have the right to use such other common elements in the Building, including the roof and stairways, as are necessary or appropriate for purposes of erecting, constructing, maintaining, removing or accessing revenue producing advertising signs on the Signage Area or for any other purpose relating to the constructing, maintaining, displaying and leasing revenue-producing signs

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on the Signage Area, such use to occur only during normal business hours, except in emergency situations. Without limiting the foregoing, CBS shall have access to the Building for the purposes of effectuating the purposes of this Agreement during normal business hours on 24 hours notice to the Association or its designated agent, which notice shall not be necessary in cases of emergency. The Association shall provide CBS with any a copy of the key and/or lock combinations required for access to the Building.

(b) The sign easement granted by the Easement Agreement shall be limited to the Signage Area on the Upper East Façade, and the Partnership shall have no sign easement rights with respect to the roof of the Building or any exterior wall of the Building except the Upper East Façade; provided however, that nothing contained herein shall limit or impair the right to use the Building's Common Elements, including roof and stairways, for the purposes set forth in Section 3(a) above. Signs shall be placed only on the Signage Area and not on any other Common Element of the Building. No sign shall be constructed on the Signage Area that impairs or obstructs the ventilation opening for the elevator machine room, or which protrudes from the Signage Area so as to impair the usage of the adjacent roof areas. No penetration of the Upper East Wall Façade masonry shall be made without the prior written consent of the Association, which consent shall not be unreasonably denied, upon demonstration to the Association that the penetration is necessary and will not adversely affect the integrity of the masonry wall. No paint or other coloring material other than the lime based product referred to in Paragraph 7 (a) below shall be applied to the Upper East Façade without the Association's prior approval.

(c) The term of the Easement shall be perpetual and shall be subject to termination only under the following circumstances:

- (i) the destruction of the Building; or
- (ii) in the event that the Building ceases to be a residential condominium building, any subsequent owner of the Building shall have the right to modify the purposes for which the Building is used, or its layout or physical configuration, and if such modification eliminates the possibility of maintaining signs on the Signage Area, the Easement shall terminate so long as the termination of the Easement is only an incidental effect and not the main purpose of the owner's actions.

4. Division of Sign Revenue. Effective as of January 1, 2007, net revenues received by the Partnership from the use of the Upper East Façade for sign purposes shall be divided between the Partnership and the Association as follows:

	<u>Partnership</u>	<u>Association</u>
Annual Revenues up to the Base Amount	67 2/3%	33 1/3%
Annual Revenues in excess of the Base Amount	50%	50%

Revenues shall be determined based upon revenues earned in each fiscal year beginning on May 1 of each calendar year (and without regard to when such revenues are

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actually received by the Partnership). The Association's share of sign revenues for the period January 1, 2007 through April 30, 2007 shall be determined on a prorata basis. The Partnership shall pay the Association's share of sign revenue within ten (10) days of the Partnership's receipt of such sign revenue. As used herein, the term "Base Amount" shall mean \$39,000 in any fiscal year. An example of division of sign revenue under the existing Sign Lease is set forth in Exhibit C attached hereto. Expenses paid by CBS to complete the façade paint removal and repainting or to reimburse the Association for costs of masonry repairs shall be deducted from the annual revenues under the sign lease for purposes of duly determining amounts payable by CBS thereunder. In no event shall these expenses be deducted from the base amount payable to the lessee under the lease.

The Partnership agrees to provide the Association with access to all records necessary to insure the accuracy of the Partnership net revenue as reported to the Association as reported to the Association, including copies of all checks received from CBS. Partnership agrees to instruct any of its successors in interest to provide the same information to the Association.

5. Illumination of East Façade. In order to increase the revenue producing potential under the Sign Lease, the Association consents to the illumination of the Signage Area on the terms herein set forth. CBS agrees to install lights and related lighting facilities (the "Lighting Facilities") sufficient to illuminate that portion of the Signage Area which CBS intends to use for sign purposes pursuant to the Sign Lease. The Lighting Facilities shall be installed (including any required electrical service) at CBS' sole and exclusive expense. The Lighting Facilities shall be separately metered and all applicable utility charges shall be paid by CBS. The Lighting Facilities shall illuminate only that portion of the Upper East Façade utilized for sign purposes and shall not illuminate any other portion of the Building, any Unit in the Building, any adjoining property or any portion of the public way. The Lighting Facilities may be operated seven (7) days per week from dusk to 12:00 midnight. CBS shall be responsible for obtaining any required permits or authorizations relating to the Lighting Facilities. Upon CBS' request, the Association will provide a letter of support to CBS for any zoning or permit application CBS submits related to lighting the Signage Area. No lighting may be installed to illuminate the Signage Area shall be installed until the Association, in its reasonable discretion, has been satisfied its installation will not compromise the peaceful uses of the living units in the Building or the roof deck areas used by the resident owners. Once installed, no material change in the type or degree of illumination shall be made without the Association's prior written approval, which approval shall not be unreasonably withheld. The Association shall promptly notify CBS of any objections to any proposed lighting installation and, in the event the Association does not object to a proposed lighting installation in writing within 30 days of submission by CBS, the Association shall be deemed to have approved the proposed lighting installation.

6. General Maintenance and Repair Responsibility. Future maintenance and repair expenses relating to or arising out of the use of the Upper East Façade or other Common Elements in the Building for sign purposes ("Sign Expenses") shall be shared by the Partnership and the Association in proportion to their division of sign revenues as

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determined for the year preceding the date such maintenance and repair expenses are incurred. All maintenance and repair expenses relating to the common elements of the Building, (including the Upper East Façade), except for Sign Expenses, shall be the sole and exclusive obligation of the Association. The Partnership shall have no obligation to pay any maintenance or repair expenses with respect to the Building's Common Elements (including the Upper East Façade) which do not relate to or arise out of the use of the Upper East Façade or other Common Elements of the Building for sign purposes such as routine maintenance and repair expenses associated with ordinary wear and tear. Nothing contained herein shall impair or affect CBS' maintenance and repair obligations under the Sign Lease.

7. Upper East Façade Work. (a) On the terms set forth herein, CBS shall cause at its expense the following work to be completed on the Upper East Façade (the "Façade Work"):

(i) The existing layers of paint on the Upper East Façade shall be removed by use of a thermal process; and

(ii) Portions of the Upper East Façade that must be painted to facilitate sign usage will be repainted with a lime-based paint product designated by the Association's Engineer (as herein defined).

Subject to Section 7(d) below, the Façade Work will be performed by qualified licensed and bonded contractors selected by CBS. At least three (3) weeks prior to commencement of Façade Work, CBS shall provide the Association with written quotations from the contractors setting forth the cost of the Façade Work (the "Façade Cost"). Gustitus Group, Inc. ("Association's Engineer") shall designate the lime-based paint product to be used for the Façade Work. The painting contractor shall use the product so designated unless the painting contractor determines that the designated product is not appropriate for the contemplated use. In that event, the painting contractor and the Association's Engineer shall consult with each other to reach agreement on the type of paint to be used in connection with the Façade Work. In addition, the Association's Engineer shall be given the opportunity to review and approve the thermal process utilized in removing the existing paint from the Upper East Façade. The Façade Work shall be completed not later than May 31, 2008.

MM (b) Within two (2) weeks of receipt of Façade Work quotations provided in accordance with Section 7 (a), the Association may elect to complete the Façade Work by use of contractors selected by the Association ("Association Contractors"). In the event that the Association elects to use Association Contractors to complete the Façade Work, (i) CBS shall have no obligation to complete the Façade Work and (ii) CBS shall pay an amount to the Association equal to the lesser of (x) the Association's cost of completing the Façade Work by use of the Association Contractors or (y) the Façade Cost which payment will be used by the Association to complete the Façade Work. Before commencing any Façade Work, the Association Contractors shall consult with CBS and provide CBS with information satisfactory to CBS that the Façade Work will be completed in a prompt and satisfactory manner so as to minimize interference with CBS' use of the Upper East Façade pursuant to the Sign Lease.

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(c) Except for the Façade Work hereinabove described, neither CBS nor the Partnership shall have any obligation to perform maintenance or repair work relating to any condition currently existing on the Upper East Façade or to reimburse the Association for the cost of performing any such maintenance or repairs. Without limiting the foregoing, except for the Façade Work, the Association releases and discharges the Partnership and CBS from responsibility for any of the maintenance or repair work that is the subject matter of the Lawsuit.

(d) CBS shall reimburse the Association for up to \$3,000 as a contribution to the Association's costs of repairing spalled, cracked or deteriorated masonry on the Upper East Façade ("Masonry Repairs).

8. Governing Law. This Agreement shall be deemed to be governed, construed, applied and enforced in accordance with the internal laws of the State of Illinois applicable to contracts to be wholly performed within such State and the applicable laws of the United State of America.

9. No Oral Change. This Agreement and any provisions hereof, may not be modified, amended, waived, extended, changed, discarded or terminated orally or by any act on the part of the Partnership or the Association, but only by agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

10. Liability; Benefit. If Partnership consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon both Parties and their respective successors and assigns forever and shall inure to the benefit of both Parties and their respective successors and assigns forever.

11. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

12. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns and pronouns shall include the plural and vice versa.

13. Amendments to Lease. To the extent the provisions hereof amend the terms of the Sign Lease between the Partnership and CBS, this Agreement shall be deemed an amendment of the Sign Lease.

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Executed this ___ day of October, 2007, at Chicago, Illinois.

1147 WEST OHIO ASSOCIATES:

1147 WEST OHIO CONDO
-MINIUM ASSOCIATION:

By: William O'M'Amie
partner (Title)

By: _____
(Title)

CBS OUTDOOR, INC.
d/b/a CFS OUTDOOR

By: Michael Hart _____
(Title)
DIRECTOR RET ASSAULT

Property of Cook County Clerk's Office

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Executed this ___ day of October, 2007, at Chicago, Illinois.

1147 WEST OHIO ASSOCIATES:

1147 WEST OHIO CONDO
-MINIUM ASSOCIATION:

By: _____
(Title)

By: [Signature] President
(Title)

CBS OUTDOOR, INC.
d/b/a CBS OUTDOOR.

By: [Signature]
(Title)

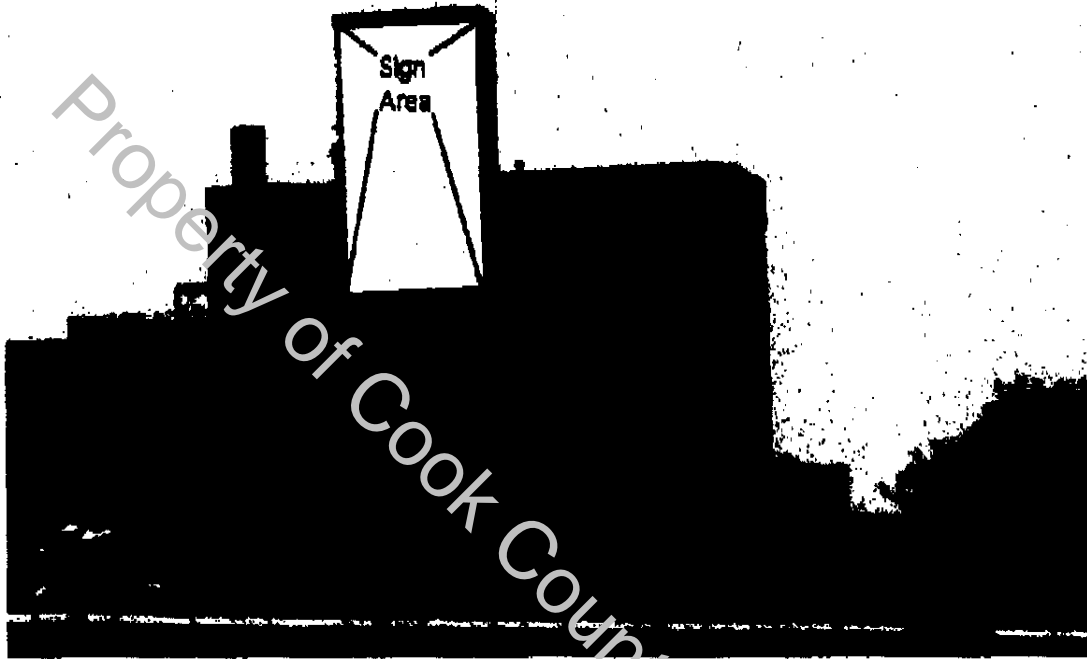
DIRECTOR of REAL ESTATE

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Exhibit A

1147 W. Ohio



The sign is a 43' X 24' wall mounted vinyl sign with industry standard extensions on the east wall of 1147 W. Ohio.

This Exhibit A is attached to and made a part of the SETTLEMENT AGREEMENT dated _____, 2007 by and between 1147 WEST OHIO CONDOMINIUM ASSOCIATION, 1147 WEST OHIO ASSOCIATES and CBS OUTDOOR

Acknowledged and agreed:

[Signature]
1147 CONDOMINIUM ASSOC.

[Signature]
1147 WEST OHIO ASSOC.

[Signature]
CBS OUTDOOR

nm 11/14

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EXHIBIT B

Easement Agreement as amended and restated.

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AM *[Signature]*
1/14/18

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Assume: Total Annual Revenue of \$46,000 consisting of

- (i) 12 monthly installments of \$2,166.67 (\$26,000 total)
- (ii) Percentage Rent Payment of \$20,000

Association receives \$16,500 in total payable as follows:

A	1/3 of each monthly installment (\$26,000/3)	\$8,666.67
B.	Percentage Rent $1/3 (39,000 - 26,000) + 1/2 ($46,000 - 39,000)$	<u>\$7,833.33</u>
	TOTAL	\$16,500.00

Note: This example assumes division of revenues for a full fiscal year. Revenues for any partial year (e.g. January 1, 2007 – April 30, 2007) will be prorated.

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