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CONSTRUCTION LOAN MORTGAGE AND SECURITY AGREEMENT

from

THE HERITAGE AT MILLENNIUM PARK, LLC,
a Delaware limited liability company

to

LASALLE BANK NATIONAL ASSOCIATION,
a national banking association

Dated as of July 1, 2002

412556901101010

Permanent Tax Index Numbers and Address:

See Exhibit A

This Instrument Prepared by and to be
Returned After Recording to:

Alvin L. Kruse
Elizabeth Pfeiler Foley
Seyfarth Shaw
55 East Monroe Street
Suite 4200
Chicago, Illinois 60603

38

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CONSTRUCTION LOAN MORTGAGE AND SECURITY AGREEMENT

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CONSTRUCTION LOAN MORTGAGE AND SECURITY AGREEMENT

THIS CONSTRUCTION LOAN MORTGAGE AND SECURITY AGREEMENT dated as of July 1, 2002, from THE HERITAGE AT MILLENNIUM PARK, LLC, a Delaware limited liability company (the "Mortgagor"), to LASALLE BANK NATIONAL ASSOCIATION, a national banking association, on its own behalf and in its capacity as agent for the Lenders under the "Loan Agreement" (as defined in Article I hereof) (the "Mortgagee");

WITNESSETH:

WHEREAS, the Mortgagor has, concurrently herewith, executed and delivered to the Mortgagee its Construction Loan Mortgage Note (the "Note"), bearing even date herewith, payable to the order of the Mortgagee, the terms of which are described in Section 2.1 hereof; and

WHEREAS, the Note evidences a construction loan being made to the Mortgagor by the Mortgagee and the other Lenders named in the Loan Agreement for the purpose of providing mortgage financing for the real estate described in Exhibit A attached hereto and the improvements located thereon;

NOW, THEREFORE FOR GOOD AND VALUABLE CONSIDERATION, including the indebtedness hereby secured, the receipt and sufficiency of which are hereby acknowledged, the Mortgagor hereby grants, bargains, sells, conveys and mortgages to the Mortgagee and its successors and assigns (never, under and subject to the terms and conditions hereinafter set forth, all of the Mortgagor's right, title and interest in and to the real property located in the City of Chicago, County of Cook, State of Illinois, described in Exhibit A attached hereto and by this reference incorporated herein, including all improvements now and hereafter located thereon;

TOGETHER WITH all right, title and interest of the Mortgagor, now owned or hereafter acquired, in and to the following:

(a) All rents, issues, profits, royalties and income with respect to the said real estate and improvements and other benefits derived therefrom, subject to the right, power and authority given to the Mortgagor to collect and apply same; and

(b) All leases or subleases covering the said real estate and improvements or any portion thereof now or hereafter existing or entered into, including, but not limited to, the Leases (as defined in Section 1.1 hereof), including, without limitation, all cash or security deposits, advance rentals, and deposits or payments of similar nature, and any and all guarantees of the lessee's obligations under any of such leases and subleases; and

(c) All privileges, reservations, allowances, hereditaments and appurtenances belonging or pertaining to the said real estate and improvements and all rights and estates in reversion or remainder and all other interests, estates or other claims, both in law and in equity, which the Mortgagor now has or may hereafter acquire in the said real estate and improvements; and

(d) All easements, rights-of-way and rights used in connection with the said real estate and improvements or as a means of ingress and egress thereto, and all

tenements, hereditaments and appurtenances thereof and thereto, and all water rights and shares of stock evidencing the same; and

(e) Any land lying within the right-of-way of any street, open or proposed, adjoining the said real estate and improvements, and any and all sidewalks, alleys and strips and gores of land adjacent to or used in connection with the said real estate and improvements; and

(f) Any and all buildings and improvements now or hereafter erected on the said real estate, including, but not limited to, all the fixtures, attachments, appliances, equipment, machinery, and other articles attached to said buildings and improvements; and

(g) All materials intended for construction, reconstruction, alteration and repairs of the said real estate and improvements, all of which materials shall be deemed to be included within the said real estate and improvements immediately upon the delivery thereof to the said real estate; and

(h) All fixtures attached to or contained in and used in connection with the said real estate and improvements, including, but not limited to, all machinery, motors, elevators, fittings, radiators, awnings, shades, screens, and all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all items of furniture, furnishings, equipment and personal property used or useful in the operation of the said real estate and improvements; and all renewals, substitutions and replacements for any or all of the foregoing, and all proceeds therefrom, whether or not the same are or shall be attached to the said real estate and improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property placed by the Mortgagor on and in the said real estate and improvements shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to any of the aforesaid property which does not so form a part and parcel of the real estate or does not constitute a "fixture" (as such term is defined in the "Code" (as defined in Section 1.1 hereof), this Mortgage is intended to be a security agreement under the Code for the purpose of creating hereby a security interest in such property, which the Mortgagor hereby grants to the Mortgagee as secured party; and

(i) All the estate, interest, right, title or other claim or demand, including claims or demands with respect to any proceeds of insurance related thereto, which the Mortgagor now has or may hereafter acquire in the said real estate and improvements or personal property and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of the said real estate and improvements or personal property, including without limitation any awards resulting from a change of grade of streets and awards for severance damages; and

(j) All right, title and interest of the Mortgagor in, to and under all present and future contracts for the sale of Units (as defined in Article I hereof), all amounts payable to the Mortgagor under all such contracts, and all proceeds of the foregoing, subject to the rights of the purchasers thereunder; and

(k) All proceeds of all of the foregoing;

the said real estate and improvements and the property and interests described in (a) through (k) above being collectively referred to herein as the "Premises"; and as to any portion of the Premises constituting property subject to the Code, this Mortgage is intended to be a security agreement under the Code for the purpose of creating hereby a security interest in such portion of the Premises, which the Mortgagor hereby grants to the Mortgagee as secured party.

TO HAVE AND TO HOLD the same unto the Mortgagee and its successors and assigns forever, for the purposes and uses herein set forth.

FOR THE PURPOSE OF SECURING the following (but not exceeding \$400,000,000 in the aggregate):

- (a) Payment of the indebtedness evidenced by the Note, and including the principal thereof and interest thereon and any and all modifications, extensions and renewals thereof, and performance of all obligations of the Mortgagor under the Note; and
- (b) Performance and observance by the Mortgagor of all of the terms, covenants and provisions of this mortgage; and
- (c) Performance and observance by the parties thereto of all of the terms, covenants and provisions of the other Loan Documents (as defined in Section 1.1 hereof); and
- (d) Payment of all sums advanced by the Mortgagee to perform any of the terms, covenants and provisions of this Mortgage or any of the other Loan Documents (as defined in Section 1.1 hereof), or otherwise advanced by the Mortgagee pursuant to the provisions hereof or any of such other documents to protect the property hereby mortgaged and pledged; and
- (e) Performance and observance of all of the terms, covenants and provisions of any other instrument given to evidence or further secure the payment and performance of any indebtedness hereby secured or any obligation secured hereby; and
- (f) Payment of any future or further advances which may be made by the Mortgagee at its sole option to and for the benefit of the Mortgagor, its successors, assigns and legal representatives.

PROVIDED, HOWEVER, that if the Mortgagor shall pay the principal and all interest as provided in the Note, and shall pay all other sums herein provided for, or secured hereby, and shall well and truly keep and perform all of the covenants herein contained, then this Mortgage shall be released at the cost of the Mortgagor, otherwise to remain in full force and effect.

TO PROTECT THE SECURITY OF THIS CONSTRUCTION LOAN MORTGAGE AND SECURITY AGREEMENT, THE MORTGAGOR HEREBY COVENANTS AND AGREES AS FOLLOWS:

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ARTICLE I

DEFINITIONS

Section 1.1. Definitions. The terms defined in this Section (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Mortgage shall have the respective meanings specified in this Section.

"Assignment of Plans, Permits and Contracts" means the Assignment of Plans, Permits and Contracts dated as of July 1, 2002, from the Mortgagor to the Mortgagee.

"Assignment of Rents" means the Construction Loan Assignment of Rents and Leases dated as of July 1, 2002, from the Mortgagor to the Mortgagee.

"Code" means the Uniform Commercial Code of the State of Illinois as from time to time in effect.

"Default" means, when used in reference to this Mortgage or any other document, or in reference to any provision of or obligation under this Mortgage or any other document, the occurrence of an event or the existence of a condition which, with the passage of time or the giving of notice, or both, would constitute an Event of Default under this Mortgage or such other document, as the case may be.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation, and Liability Act, any so-called "Superfund" or "Superlien" law, and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material, in each case as now or hereafter in force and effect.

"Event of Default" means --

- (i) when used in reference to this Mortgage, an Event of Default specified in Section 4.1 hereof; and
- (ii) when used in reference to any other document, a default or event of default under such document that has continued after the giving of any applicable notice and the expiration of any applicable grace or cure periods.

"Guarantors" means Matthew M. Walsh, Daniel J. Walsh and Richard A. Hanson.

"Guaranty" means the Construction Loan Guaranty of Payment and Performance dated as of July 1, 2002, from the Guarantors to the Mortgagee.

"Hazardous Material" means any hazardous substance or any pollutant or contaminant defined as such in, or for purposes of, any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, in each case as now or hereafter in force and effect; asbestos or any substance or compound containing asbestos; polychlorinated biphenyls or any substance or compound containing any polychlorinated biphenyl; petroleum and petroleum products; pesticides; and any other hazardous, toxic or dangerous waste, substance or material.

"Impositions" means Impositions as defined in Section 2.6(a) hereof.

"Improvements" means the Improvements as defined in the Loan Agreement.

"Indemnity Agreement" means the Construction Loan Indemnity Agreement dated as of July 1, 2002, from the Mortgagor and the Guarantors to the Mortgagee.

"Intercreditor Agreement" means the Subordination and Intercreditor Agreement dated as of July 1, 2002, by and between the Mortgagee, on its own behalf and as agent for the Lenders, and the Mezzanine Lender and joined in by the Mortgagor.

"Leases" means the Leases as defined in the Loan Agreement.

"Lenders" means the Mortgagee and the other Lenders named in Exhibit I attached to the Loan Agreement.

"Loan" means the loan to be made by the Mortgagee to the Mortgagor in accordance with the terms and conditions of the Loan Agreement.

"Loan Agreement" means the Construction Loan Agreement dated as of July 1, 2002, by and between the Mortgagor and the Mortgagee.

"Loan Documents" means the Loan Agreement, the Note, this Mortgage, the Assignment of Rents, the Assignment of Plans, Permits and Contracts, the Indemnity Agreement, the Guaranty, the Intercreditor Agreement, and all other documents and instruments at any time evidencing and/or securing the indebtedness secured by this Mortgage.

"Mezzanine Lender" means MMBC Dent Holdings I, LLC, a Delaware limited liability company.

"Mezzanine Loan" means the loan by the Mezzanine Lender in the amount of \$27,000,000 under the Mezzanine Loan Documents, as defined in the Intercreditor Agreement.

"Mortgage" means this Construction Loan Mortgage and Security Agreement dated as of July 1, 2002, from the Mortgagor to the Mortgagee.

"Mortgagee" means LaSalle Bank National Association, a national banking association, on its own behalf and in its capacity as agent for the Lenders under the Loan Agreement.

"Mortgagor" means The Heritage at Millennium Park, LLC, a Delaware limited liability company.

"Note" means the Construction Loan Mortgage Note of the Mortgagor dated July 1, 2002, in the principal amount of \$190,000,000 made payable to the order of the Mortgagee, issued under the Loan Agreement to evidence the Loan.

"Parking Unit" or "Parking Units" means one or more of the 599 condominium parking spaces to be constructed on the Premises.

"Permitted Encumbrances" means Permitted Encumbrances as defined in the Loan Agreement.

"Premises" means the real estate described in Exhibit A attached hereto and all improvements now and hereafter located thereon, and all other property, rights and interests described in the foregoing granting clauses of this Mortgage.

"Qualified Contract" means a Qualified Contract as defined in the Loan Agreement.

"Residential Unit" or "Residential Units" means one or more of the 356 residential condominium units to be constructed on the Premises.

"Unit" or "Units" means one or more of the Residential Units and the Parking Units.

ARTICLE II

COVENANTS AND AGREEMENTS OF MORTGAGOR

Section 2.1. Payment of Indebtedness. The Mortgagor covenants and agrees that it will pay when due the principal of and interest on the indebtedness hereby secured evidenced by the Note, all other sums which may become due pursuant thereto or hereto, and all other indebtedness hereby secured as described in the foregoing granting clauses of this Mortgage, including, but not limited to, all charges, fees and all other sums to be paid by the Mortgagor as provided in the Loan Documents, and that it will duly and punctually perform, observe and comply with all of the terms, provisions and conditions herein and in the other Loan Documents provided to be performed and observed by the Mortgagor. All amounts payable under this Mortgage shall be paid by the Mortgagor without offset or other reduction. The Note secured hereby, which is hereby incorporated into this Mortgage by reference with the same effect as if set forth in full herein, is in the principal amount of \$190,000,000, and bears interest at the greater of 4.75% per annum and a variable rate equal to the Mortgagee's Prime Rate (as defined below) from time to time in effect while the Note is outstanding (the "Prime-Based Rate"). For such purposes, the term "Prime Rate" shall mean the rate of interest per year announced from time to time by the Mortgagee called its prime rate, which rate at any time will not necessarily be the lowest rate charged by the Mortgagee. Changes in the rate of interest on the Note resulting from a change in the Prime Rate shall take effect on the date of change in the Prime Rate set forth in each announcement. The Mortgagee shall not be obligated to give notice of any change in the Prime Rate. The Mortgagor shall have the option from time to time, in the manner and on the terms provided in the Loan Agreement, to have the interest rate on the entire principal balance of the Note which would otherwise bear interest at the Prime-Based Rate, or any portion of such unpaid principal balance of not less than \$100,000 or any integral multiple thereof, changed from the Prime-Based Rate to a rate per annum (a "LIBOR-Based Rate") equal to the greater of 4.75% per annum and a variable rate equal to 2.5% per annum in addition to a rate based on the rate at which dollar deposits are offered in immediately available funds in the London Interbank Market to the Mortgagee for periods of 30, 60 or 90 days, calculated as provided in the Loan Agreement; provided, however, that at any one time, the Mortgagor shall not be entitled to have more than seven separate portions of the principal of the Note bear interest at such a LIBOR-Based Rate. Interest is payable on the Note in arrears on the first day of each month commencing as provided in the Loan Agreement. All of the unpaid principal of and accrued and unpaid interest on the Note shall be due and payable on August 9, 2006.

Section 2.2. Escrow Deposits. If and to the extent that the reserve for taxes and insurance premiums created under the Loan Agreement is insufficient for such purposes, if requested by the Mortgagee, in order to provide moneys for the payment of the Impositions on the Premises required to be paid by the Mortgagor pursuant to Section 2.6 hereof and the premiums on the insurance required to be carried by the Mortgagor pursuant to Section 2.4 hereof, the Mortgagor shall pay to the Mortgagee with each monthly payment on the Note such amount as the Mortgagee shall estimate will be required to accumulate, by the date 30 days prior to the due date of the next annual installment of such Impositions and insurance premiums, through substantially equal monthly payments by the Mortgagor to the Mortgagee, amounts sufficient to pay such next annual Impositions and insurance premiums. All such payments shall be held by the Mortgagee in escrow, and if so requested by the Mortgagor, shall be held by the Mortgagee in an interest bearing money market account. Amounts held in such escrow shall be made available by the Mortgagee to the Mortgagor for the payment of the Impositions and insurance premiums on the Premises when due, or may be applied thereto by the Mortgagee if in its sole discretion so elects. The Mortgagee may at any time and from time to time waive the requirement for the escrow deposits provided for in this Section. In the event of any such waiver, the Mortgagee may thereafter in its sole discretion elect to require that the Mortgagor commence making such escrow deposits by giving the Mortgagor not less than 10 days' written notice of such election. No such waiver shall impair the right of the Mortgagee thereafter to require that such escrow deposits be made. The Mortgagor may use the reserve for taxes and insurance premiums created under the Loan Agreement for such purposes in accordance with the terms and conditions of the Loan Agreement.

Section 2.3. Completion, Maintenance, Repair and Alterations. The Mortgagor shall --

- (i) Keep the Premises in good condition and repair;
- (ii) Not remove, demolish or substantially alter (except such alterations as may be required by laws, ordinances or governmental regulations or the Plans (as defined in the Loan Agreement)) any of the improvements which are a part of the Premises;
- (iii) Complete promptly and in a good and workmanlike manner the construction of the Improvements as contemplated by the Loan Agreement, or any other improvements which may be constructed on or at the Premises;
- (iv) Except as otherwise expressly provided in this Mortgage or the Loan Agreement, promptly repair and restore any portion of the Premises which may become damaged or be destroyed so as to be of at least equal value and of substantially the same character as prior to such damage or destruction;
- (v) Subject to Section 2.13(b) hereof, pay when due all claims for labor performed and materials furnished to and for the Premises;
- (vi) Comply in all material respects with all laws, ordinances, regulations, covenants, conditions and restrictions now or hereafter affecting the Premises or any part thereof or requiring any alterations or improvements;
- (vii) Not commit or permit any waste or deterioration of the Premises or any portion thereof;

(viii) Keep and maintain the Premises and abutting grounds, sidewalks, roads, parking and landscape areas in good and neat order and repair and free of nuisance;

(ix) Not commit, suffer or permit any act to be done in or upon the Premises in material violation of any law, ordinance or regulation;

(x) Not initiate or acquiesce in any zoning change or reclassification of the Premises; and

(xi) Subject to Section 2.13(b) hereof, keep the Premises free and clear of all liens and encumbrances of every sort except Permitted Encumbrances.

Section 2.4. Required Insurance. (a) The Mortgagor shall at all times provide, maintain and keep in force, or cause to be provided, maintained and kept in force, policies of insurance conforming to the requirements set forth in Exhibit B attached to this Mortgage.

(b) The Mortgagor shall also provide from time to time insurance in addition to that set forth in Exhibit B to this Mortgage as required by the Mortgagee in response to changes in exposure or other events or circumstances that materially change the nature of the risk as determined by an independent insurance consultant selected by the Mortgagee in its sole discretion. Before the Mortgagee's insurance consultant finalizes any recommendations to the Mortgagee for additional insurance, the Mortgagor shall be given a period of not less than 15 days to have an independent insurance consultant selected by the Mortgagor provide input to the Mortgagee and the Mortgagee's insurance consultant concerning the proposed recommendations, it being understood that the final recommendations of the Mortgagee's independent insurance consultant after review of the input of the Mortgagor's insurance consultant, and the decision of the Mortgagee based on such final recommendations, shall be controlling.

(c) The following notice is provided pursuant to paragraph (3) of Section 180/10 of Chapter 815 of the Illinois Compiled Statutes (1998). As used herein, "you" means the Mortgagor and "we" means the Mortgagee: Unless you provide evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including the insurance premium, interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own.

Section 2.5. Delivery of Policies; Payment of Premiums. Except as otherwise stated in Exhibit B to this Mortgage, the Mortgagor shall furnish the Mortgagee with the original of all required policies of insurance or certificates satisfactory to the Mortgagee, and at least 30 days prior to the expiration of each such policy, the Mortgagor shall furnish the Mortgagee with evidence satisfactory to the Mortgagee of the payment of the premium and the reissuance of a policy continuing insurance in force as required by this Mortgage.

Section 2.6. Taxes and Other Impositions. (a) The Mortgagor shall pay or cause to be paid, at least 10 days prior to delinquency, all real property taxes and assessments, general and special, and all other taxes and assessments of any kind or nature whatsoever, including without limitation any non-governmental levies or assessments such as maintenance charges, owner association dues or charges or fees, levies or charges resulting from covenants, conditions and restrictions affecting the Premises, which are assessed or imposed upon the Premises, or become due and payable, and which create, may create or appear to create a lien upon the Premises, or any part thereof (all of which taxes, assessments and other governmental charges and non-governmental charges of the above-described or like nature are hereinafter referred to as "Impositions"); provided however, that if, by law, any such Imposition is payable, or at the option of the taxpayer may be paid, in installments, the Mortgagor may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

(b) The Mortgagor shall furnish to the Mortgagee within 30 days after the date upon which any Imposition is due and payable by the Mortgagor, official receipts of the appropriate taxing authority, or other proof satisfactory to the Mortgagee, evidencing the payment thereof.

(c) The Mortgagor shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings properly instituted and prosecuted in such manner as shall stay the collection of the contested Impositions and prevent the sale or forfeiture of the Premises to collect the same; provided, however, that no such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Mortgagor's covenants to pay any such Imposition at the time and in the manner provided in this Section unless the Mortgagor has given prior written notice to the Mortgagee of the Mortgagor's intent to so contest or object to an Imposition, and unless the Mortgagor shall satisfy one or both of the following requirements, as reasonably required by the Mortgagee: (i) the Mortgagor shall demonstrate to the Mortgagee's satisfaction that legal proceedings instituted by the Mortgagor contesting or objecting to such impositions shall conclusively operate to prevent the sale or forfeiture of the Premises, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings, or (ii) the Mortgagor shall furnish a good and sufficient bond, surety or security as requested by and satisfactory to the Mortgagee, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Premises during the pendency of such contest, adequate fully to pay all such contested Impositions and all interest and penalties upon the adverse determination of such contest.

Section 2.7. Utilities. The Mortgagor shall pay or cause to be paid when due all utility charges which are incurred by the Mortgagor or others for the benefit of or service to the Premises or which may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting the Premises or any portion thereof, whether or not such assessments or charges are liens thereon.

Section 2.8. Actions by Mortgagee to Preserve Premises. Should the Mortgagor fail to make any payment or to do any act as and in the manner provided herein or in any of the other Loan Documents, the Mortgagee in its own discretion, without obligation so to do and without releasing the Mortgagor from any obligation, may make or do the same in such manner and to such extent as it may deem necessary to protect the security hereof. In connection

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therewith, without limiting its general powers, the Mortgagee shall have and is hereby given the right, but not the obligation, to the extent permitted by applicable law (i) to enter upon and take possession of the Premises; (ii) to make additions, alterations, repairs and improvements to the Premises which it may consider necessary and proper to keep the Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the Premises, the security hereof or the rights or powers of the Mortgagee; (iv) to pay any Impositions asserted against the Premises and to do so according to any bill, statement or estimate procured from the appropriate office without inquiry into the accuracy of the bill, statement or estimate or into the validity of any Imposition; (v) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in the judgment of the Mortgagee may affect or appears to affect the Premises or the security of this Mortgage or which may be prior or superior hereto; (vi) to complete the construction of the Improvements and to take such actions in connection therewith as are provided for in the Loan Agreement; and (vii) in exercising such powers, to pay necessary expenses, including employment of and payment of compensation to counsel or other necessary or desirable consultants, contractors, agents and other employees. The Mortgagor irrevocably appoints the Mortgagee its true and lawful attorney in fact, at the Mortgagee's election, to do and cause to be done all or any of the foregoing in the event the Mortgagee shall be entitled to take any or all of the action provided for in this Section. The Mortgagor shall immediately, upon demand therefor by the Mortgagee, pay all costs and expenses incurred by the Mortgagee in connection with the exercise by the Mortgagee of the foregoing rights, including without limitation, costs of evidence of title, court costs, appraisals, surveys and attorneys' fees, all of which shall constitute so much additional indebtedness secured by this Mortgage immediately due and payable, with interest thereon from the date of such demand until paid at a variable rate 3% above the highest interest rate from time to time prevailing on the Note.

Section 2.9. Damage and Destruction. (a) The Mortgagor shall give the Mortgagee prompt notice of any damage to or destruction of any portion or all of the Premises, and the provisions contained in the following paragraphs of this Section shall apply in the event of any such damage or destruction.

(b) In the case of loss covered by policies of insurance, so long as no Default or Event of Default under this Mortgage or any of the other Loan Documents has occurred and is continuing, the Mortgagor shall have the right to negotiate for a settlement of the claim under such policies arising from such loss for a period of three months; provided, however, that such three-month period shall be extended for such longer period as shall be reasonably necessary for the Mortgagor to consummate such settlement so long as, in the judgment of the Mortgagee (whose judgment shall be controlling unless manifestly unreasonable), the Mortgagor is making satisfactory progress in such negotiations. The Mortgagor shall keep the Mortgagee informed as to the status of such negotiations and shall not consummate a settlement of such claim without the prior written consent of the Mortgagee, whose decision shall be controlling unless manifestly unreasonable. Except as provided above in this paragraph, the Mortgagee is hereby authorized at its option either (i) to settle and adjust any claim under such policies without the consent of the Mortgagor, or (ii) to allow the Mortgagor to agree with the insurance company or companies on the amount to be paid upon the loss. In any case the Mortgagee shall, and is hereby authorized to, collect and receipt for any such insurance proceeds; and the reasonable expenses incurred by the Mortgagee in the adjustment and collection of insurance proceeds shall be so much additional indebtedness secured by this Mortgage, and shall be reimbursed to the Mortgagee upon demand.

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(c) In the event of any insured damage to or destruction of the Premises or any part thereof the proceeds of insurance payable as a result of such loss shall be applied upon the indebtedness secured by this Mortgage or applied to the repair and restoration of the Premises, as the Mortgagee in its sole discretion shall elect.

(d) In the event that the Mortgagee shall elect that proceeds of insurance are to be applied to the repair and restoration of the Premises, the Mortgagor hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time to time, to pay or reimburse the costs of such repair and restoration in the manner and on the terms provided in the Loan Agreement for disbursements of construction loan proceeds.

(e) Notwithstanding any provision herein to the contrary and in particular Section 2.9(c) hereof, in the event of any such damage or destruction, the Mortgagee shall make the proceeds of insurance received as a result of such damage or destruction available for the repair and restoration of the Premises, subject to the following conditions:

(i) There does not then exist any Default or Event of Default under this Mortgage or any of the other Loan Documents.

(ii) Either --

(A) All of the then existing contracts for the sale of Units shall continue in full force and effect, or

(B) After the cancellation of any such contracts, (1) the number of Qualified Contracts for the sale of Residential Units that will remain in full force and effect, together with the number of Residential Units the sale of which has been closed, will be not less than 176, and (2) the total base sale price, not including options, extras or upgrades, under such Qualified Contracts for the sale of Residential Units that will remain in full force and effect, together with the total base sale price, not including options, extras or upgrades, for Units the sale of which has been closed and the total sale price under Qualified Contracts for the sale of Parking Units that will remain in effect, will be not less than \$138,600,000.

(iii) In the judgment of the Mortgagee (whose judgment shall be controlling unless manifestly unreasonable) the Loan is and will continue to be in balance in accordance with the requirements of the Loan Agreement during the period required to repair and restore the Premises.

(iv) The Mortgagee shall first be given satisfactory proof that the Premises have been fully repaired and restored, or that by the expenditure of such money will be fully repaired and restored, free and clear of all liens, except the lien of this Mortgage and the mortgage securing the Mezzanine Loan.

(v) In the event such proceeds shall be insufficient to repair and restore the Premises, the Mortgagor shall deposit promptly with the Mortgagee the amount of such deficiency.

(vi) In the event the Mortgagor shall fail within a reasonable time to repair and restore the Premises, then the Mortgagee, at its option, may repair and restore the

Premises for or on behalf of the Mortgagor and for such purpose may do all necessary acts, including using said funds deposited by the Mortgagor as aforesaid.

(vii) Waiver of the right of subrogation shall be obtained from any insurer under such policies of insurance who, at that time, claims that no liability exists as to the Mortgagor or the then owner or the assured under such policies.

(viii) Such insurance proceeds shall be disbursed as provided in Section 2.9(d) hereof.

(ix) The excess of said insurance proceeds above the amount necessary to complete such repair and restoration shall be applied as a credit upon any portion, as selected by the Mortgagee, of the indebtedness secured hereby.

In the event any of the said conditions are not or cannot be satisfied, then the alternate disposition of such insurance proceeds as provided in Section 2.9(c) hereof shall become applicable. Under no circumstances shall the Mortgagee become personally liable for the fulfillment of the terms, covenants and conditions contained in any contract for the sale of a Unit or any lease of space in the Premises, nor obligated to take any action to repair and restore the Premises.

Section 2.10. Eminent Domain. (a) Should the Premises or any part thereof or interest therein be taken or damaged by reason of any public improvement or condemnation proceeding, or in any other manner, or should the Mortgagor receive any notice or other information regarding any such proceeding, the Mortgagor shall give prompt written notice thereof to the Mortgagee, and the provisions contained in the following paragraphs of this Section shall apply.

(b) The Mortgagee shall be entitled to all compensation, awards and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name any action or proceedings. So long as no Default or Event of Default under this Mortgage or any of the other Loan Documents has occurred and is continuing, the Mortgagor shall have the right to negotiate for a settlement in connection with such taking or damage. The Mortgagor shall keep the Mortgagee informed as to the status of such negotiations and shall not consummate a settlement without the prior written consent of the Mortgagee, whose decision shall be controlling unless manifestly unreasonable. Except as provided above in this paragraph, the Mortgagee shall be entitled to make any compromise or settlement in connection with such taking or damage. All proceeds of compensation, awards, damages, rights of action and proceeds awarded to the Mortgagor are hereby assigned to the Mortgagee and the Mortgagor shall execute such further assignments of such proceeds as the Mortgagee may require.

(c) In the event that any portion of the Premises are taken or damaged as aforesaid, all such proceeds shall be applied upon the indebtedness secured by this Mortgage or applied to the repair and restoration of the Premises, as the Mortgagee in its sole discretion shall elect.

(d) In the event that the Mortgagee shall elect that such proceeds are to be applied to the repair and restoration of the Premises, the Mortgagor hereby covenants promptly to repair and restore the same. In such event such proceeds shall be made available, from time

to time, to pay or reimburse the costs of such repair and restoration in the manner and on the terms provided in the Loan Agreement for disbursements of construction loan proceeds.

Section 2.11. Inspection of Premises. The Mortgagee, or its agents, representatives or workmen, are authorized to enter at any reasonable time, with reasonable notice under the circumstances, upon or in any part of the Premises for the purpose of inspecting the same and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage or any of the other Loan Documents.

Section 2.12. Inspection of Books and Records. (a) The Mortgagor shall keep and maintain full and correct records showing in detail the income and expenses of the Premises and shall make such books and records and all supporting vouchers and data available for examination by the Mortgagee and its agents at any time and from time to time on request at the offices of the Mortgagee, or at such other location as may be mutually agreed upon.

(b) The Mortgagor shall also furnish to the Mortgagee such other information and data with respect to the Premises as may be requested by the Mortgagee.

Section 2.13. Title, Liens and Conveyances. (a) The Mortgagor represents and warrants that it holds good and marketable title to the Premises, subject only to Permitted Encumbrances.

(b) Except for Permitted Encumbrances, the Mortgagor shall not create, suffer or permit to be created or filed against the Premises, or any part thereof or interest therein, any mortgage lien or other lien, charge or encumbrance, either superior or inferior to the lien of this Mortgage. The Mortgagor shall have the right to contest in good faith the validity of any such lien, charge or encumbrance, provided that the Mortgagor shall first deposit with the Mortgagee a bond, title insurance or other security satisfactory to the Mortgagee in such amounts or form as the Mortgagee shall require; provided further that the Mortgagor shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged. If the Mortgagor shall fail to discharge or so contest any such lien, encumbrance or charge, then, in addition to any other right or remedy of the Mortgagee, the Mortgagee may, but shall not be obligated to, discharge the same, either by paying the amount claimed to be due, or by procuring the discharge of such lien by depositing in court a bond for the amount claimed or otherwise giving security for such claim, or in such manner as is or may be prescribed by law and any amounts expended by the Mortgagee in so doing shall be so much additional indebtedness secured by this Mortgage. Except for Permitted Encumbrances and liens, charges and encumbrances being contested as provided above, in the event that the Mortgagor shall suffer or permit any superior or junior lien, charge or encumbrance to be attached to the Premises and shall fail to discharge same as described above, the Mortgagee, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to the Mortgagor.

(c) In the event title to the Premises is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein upon the creation of any lien against the Premises shall also be construed as a similar prohibition or limitation against the creation of any lien or security interest upon the beneficial interest under such trust.

(d) With the exception of sales of Units and conveyance of the Non-Residential Parcel (as defined in the Loan Agreement) in accordance with the provisions of the Loan Agreement and leases entered into in accordance with the provisions of Section 3.1 of this Mortgage, in the event that the Mortgagor shall sell, transfer, convey or assign the title to all or any portion of the Premises, whether by operation of law, voluntarily, or otherwise, or the Mortgagor shall contract to do any of the foregoing, the Mortgagee, at its option, shall have the unqualified right to accelerate the maturity of the Note causing the full principal balance and accrued interest on the Note to become immediately due and payable without notice to the Mortgagor.

(e) Any waiver by the Mortgagee of the provisions of this Section shall not be deemed to be a waiver of the right of the Mortgagee to insist upon strict compliance with the provisions of this Section in the future.

Section 2.14. Taxes Affecting Mortgage. (a) If at any time any federal, State or municipal law shall require any documentary stamps or other tax hereon or on the Note, or shall require payment by the Mortgagee of any tax upon the indebtedness secured hereby, then the said indebtedness and the accrued interest thereon shall be and become due and payable at the election of the Mortgagee upon 30 days' notice to the Mortgagor; provided, however, that said election shall be unavailing and this Mortgage and the Note shall be and remain in effect, if the Mortgagor lawfully may pay for such stamps or such tax including interest and penalties thereon to or on behalf of the Mortgagee and the Mortgagor does in fact pay, when payable, for all such stamps or such tax, as the case may be, including interest and penalties thereon.

(b) In the event of the enactment after the date of this Mortgage of any law of the State in which the Premises are located deducting from the value of the Premises for the purpose of taxation any lien thereon, or imposing upon the Mortgagee the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by the Mortgagor, or changing in any way the laws relating to the taxation of mortgages or debts secured by mortgages or the Mortgagee's interest in the Premises, or the manner of collection of taxes, so as to affect this Mortgage or the debt secured hereby or the holder hereof, then, and in any such event, the Mortgagor, upon demand by the Mortgagee, shall pay such taxes or assessments, or reimburse the Mortgagee therefor; provided, however, that if, in the opinion of counsel for the Mortgagee, (i) it might be unlawful to require Mortgagor to make such payment or (ii) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then, and in such event, the Mortgagee may elect, by notice in writing given to the Mortgagor, to declare all of the indebtedness secured hereby to be due and payable within 30 days from the giving of such notice. Notwithstanding the foregoing, it is understood and agreed that the Mortgagor is not obligated to pay any portion of Mortgagee's federal or State income tax.

Section 2.15. Environmental Matters. (a) The Mortgagor hereby represents and warrants to the Mortgagee that, except as disclosed in the environmental site assessment referred to in the Loan Agreement, neither the Mortgagor nor any of its affiliates or subsidiaries, nor, to the best of the Mortgagor's knowledge, any other person or entity, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Premises or any part thereof, and that none of the property described above has ever been used by the Mortgagor or any of its affiliates or subsidiaries, or, to the best of the Mortgagor's knowledge, by any other person or entity, as a treatment, storage or disposal site, whether permanent or temporary, for any Hazardous Material, and that there are no underground storage tanks located on the Premises.

(b) Without limitation on any other provision hereof, the Mortgagor hereby agrees to indemnify and hold the Mortgagee harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses and claims of any kind whatsoever, including, without limitation, any losses, liabilities, damages, injuries, costs, expenses or claims asserted or arising under any Environmental Law, paid, incurred, suffered by or asserted against the Mortgagee as a direct or indirect result of any of the following, regardless of whether or not caused by, or within the control of, the Mortgagor: (i) the presence of any Hazardous Material on or under, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release of any Hazardous Material from the Premises or any part thereof, or (ii) any liens against the Premises permitted or imposed by any Environmental Law, or any actual or asserted liability or obligations of the Mortgagor or any of its affiliates or subsidiaries under any Environmental Law, or (iii) any actual or asserted liability or obligations of the Mortgagee or any of its affiliates or subsidiaries under any Environmental Law relating to the Premises.

(c) The representations, warranties, covenants, indemnities and obligations provided for in this Section 2.15 shall be continuing and shall survive the payment, performance, satisfaction, discharge, cancellation, termination, release and foreclosure of this Mortgage; provided, however, that such representations, warranties, covenants, indemnities and obligations shall not apply with respect to Hazardous Materials which are first placed on the Premises, other than by the Mortgagor or its agents or affiliates, on or after the date on which the Mortgagee or any other party obtains title to and possession of the Premises as a result of an exercise by the Mortgagee of its remedies under this Mortgage or any of the other Loan Documents or as a result of a conveyance of title to the Premises by the Mortgagor to the Mortgagee or such other party in lieu of such exercise of remedies, including, without limitation, releases from the Premises of such Hazardous Materials first placed on the Premises on or after such date unless caused by the Mortgagor or its agents or affiliates. Nothing contained in this Section shall be construed to require the Indemnitors to indemnify the Mortgagee against its own negligent or intentional acts or omissions.

Section 2.16. Estoppel Letters. The Mortgagor shall furnish from time to time within 15 days after the Mortgagee's request, a written statement, duly acknowledged, of the amount due upon this Mortgage and whether any alleged offsets or defenses exist against the indebtedness secured by this Mortgage.

ARTICLE III

LEASES; DECLARATION OF SUBORDINATION TO LEASES

Section 3.1. Leases. The Mortgagor agrees (i) that it will not enter into any lease of the Premises or any portion thereof without the prior written consent of the Mortgagee; (ii) that it will at all times duly perform and observe in all material respects all of the terms, provisions, conditions and agreements on its part to be performed and observed under any and all leases of the Premises or any portion thereof, including, but not limited to, the Leases, and shall not suffer or permit any Default or Event of Default on the part of the lessor to exist thereunder; (iii) that it will not agree or consent to, or suffer or permit, any termination (other than by operation of law or court order obtained by a party other than the Mortgagor), modification, amendment or assignment of, or any sublease under, any lease of the Premises, or any portion thereof, including, but not limited to, the Leases, without the prior written consent of the Mortgagee; and (iv) except for security deposits not to exceed one month's rent for any one lessee, that it will not collect any rent for more than one month in advance of the date same

is due. With the exception of the Leases, unless otherwise approved by the Mortgagee, all leases of space in the Premises shall be prepared on a lease form approved by the Mortgagee. Nothing herein contained shall be deemed to obligate the Mortgagee to perform or discharge any obligation, duty or liability of the lessor under any lease of the Premises, and the Mortgagor shall and does hereby indemnify and hold the Mortgagee harmless from any and all liability, loss or damage which the Mortgagee may or might incur under any leases of the Premises or by reason of the Assignment of Rents; and any and all such liability, loss or damage incurred by the Mortgagee, together with the costs and expenses, including reasonable attorneys fees and expenses, incurred by the Mortgagee in the defense of any claims or demands therefor, whether successful or not, shall be so much additional indebtedness secured by this Mortgage, and the Mortgagor shall reimburse the Mortgagee therefor on demand; provided, however, that the foregoing provisions shall not be construed to require the Mortgagor to indemnify the Mortgagee against the negligent or intentional acts or omissions of the Mortgagee.

Section 3.2. Declaration of Subordination to Leases. At the option of the Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any award in condemnation) to any and all leases and subleases of all or any part of the Premises upon the execution by the Mortgagee and recording thereof, at any time hereafter, in the Office of the Recorder of Deeds of the county wherein the Premises are situated, of a unilateral declaration to that effect.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

Section 4.1. Events of Default. Any one or more of the following shall constitute an Event of Default under this Mortgage:

(a) A Default shall occur in the payment when due of any installment of principal of or interest on the Note, or in the payment when due of any other amount required to be paid by the Mortgagor to the Mortgagee under this Mortgage or under any of the other Loan Documents, or in the payment when due of any other indebtedness secured by this Mortgage and in each case such failure shall continue for a period of five days after written notice to the Mortgagor; or

(b) A Default by the Mortgagor shall occur under any provision of this Mortgage or of any of the other Loan Documents, relating to the payment by the Mortgagor of any amount payable to a party other than the Mortgagee and such payment is not made prior to the expiration of any notice or cure period granted by the party to which it is due; or

(c) The Mortgagor or any Guarantor shall file a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall file any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of the Mortgagor or any Guarantor or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, or shall make any general assignment for the benefit of creditors, or shall admit in writing its or his inability to pay its or his debts generally as they become due; or

(d) A court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Mortgagor or any Guarantor seeking any reorganization, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, and such order, judgment or decree shall remain unvacated and unstayed for an aggregate of 30 days, whether or not consecutive, from the first date of entry thereof; or any trustee, receiver or liquidator of the Mortgagor or any Guarantor or of all or any part of the Premises, or of any or all of the royalties, revenues, rents, issues or profits thereof, shall be appointed and such appointment shall remain unvacated and unstayed for an aggregate of 30 days, whether or not consecutive; or

(e) A writ of execution or attachment or any similar process shall be issued or levied against all or any part of or interest in the Premises, or any judgment involving monetary damages shall be entered against the Mortgagor which shall become a lien on the Premises or any portion thereof or interest therein and such execution, attachment or similar process or judgment is not released, bonded, satisfied, vacated or stayed within 30 days after its entry or levy; or

(f) If any representation or warranty of the Mortgagor or Guarantor, contained in this Mortgage, in any of the other Loan Documents, or in any statement, certificate or other document delivered in connection with the Loan, shall be untrue or incorrect in any material respect; provided, however, that --

(i) An unintentional misrepresentation that is susceptible of being corrected shall not constitute an Event of Default if the same is corrected within 30 days after the Mortgagor or other party making such misrepresentation discovers or reasonably should have discovered that such misrepresentation has been made; and

(ii) If an unintentional misrepresentation referred to in (i) above cannot be corrected solely by the payment of money and is of such a nature that it cannot reasonably be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the Mortgagor or other party making such misrepresentation within such 30-day period and diligently pursued and such misrepresentation is corrected within 90 days after the Mortgagor or other party making such misrepresentation discovers or reasonably should have discovered that such misrepresentation has been made; or

(g) If any Event of Default by the Mortgagor shall occur and be continuing under any lease of the Premises, including, without limitation, the Leases, or if any such lease shall be terminated, modified, amended or assigned, or a sublease thereunder shall occur, in violation of the provisions of Section 3.1 of this Mortgage; or

(h) All or any substantial part of the Premises shall be taken by a Governmental Body or any other person whether by condemnation, eminent domain or otherwise; or

(i) Default by the Mortgagor shall occur in the performance, observance or compliance with any term, covenant, condition, agreement or provision contained in this Mortgage other than as described in paragraphs (a) through (h) above; provided, however, that --

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- (i) If such Default can be cured solely by the payment of money, such Default shall not constitute an Event of Default unless it shall continue for a period of five days after written notice to the Mortgagor;
- (ii) If such Default cannot be cured solely by the payment of money and does not pose an emergency or dangerous condition or a material threat to the security for the Loan, such Default shall not constitute an Event of Default unless it shall continue for a period of 30 days after written notice to the Mortgagor; and
- (iii) If a Default described in (ii) above is of such a nature that it cannot reasonably be cured within such 30-day period, and if such Default is susceptible of cure, it shall not constitute an Event of Default if corrective action is instituted by the Mortgagor within such 30-day period and diligently pursued and such Default is cured within 90 days after the occurrence of such Default; or
- (j) If any Event of Default shall occur and be continuing under any of the other Loan Documents; or
- (k) Any Event of Default shall occur and be continuing under the Mezzanine Loan; or
- (l) If any Event of Default shall occur and be continuing under any other mortgage or trust deed on the Premises.

Section 4.2. Acceleration upon Event of Default; Additional Remedies. Upon or at any time after the occurrence of any Event of Default under this Mortgage, the Mortgagee may declare the Note and all indebtedness secured by this Mortgage to be due and payable and the same shall thereupon become due and payable without any presentment, demand, protest or notice of any kind. Thereafter the Mortgagee may --

- (a) Either in person or by agent, with or without bringing any action or proceeding, if applicable law permits, enter upon and take possession of the Premises, or any part thereof, in its own name, and do any acts which it deems necessary or desirable to preserve the value, marketability or rentability of the Premises, or any part thereof or interest therein, increase the income therefrom or protect the security hereof and, with or without taking possession of the Premises, sue for or otherwise collect the rents, issues and profits thereof, including those past due and unpaid, and apply the same to the payment of taxes, insurance premiums and other charges against the Premises or in reduction of the indebtedness secured by this Mortgage; and the entering upon and taking possession of the Premises, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any Event of Default or notice of Event of Default hereunder or invalidate any act done in response to such Event of Default or pursuant to such notice of Event of Default and, notwithstanding the continuance in possession of the Premises or the collection, receipt and application of rents, issues or profits, the Mortgagee shall be entitled to exercise every right provided for in any of the other Loan Documents or by law upon occurrence of any Event of Default; or
- (b) Commence an action to foreclose this Mortgage, appoint a receiver, or specifically enforce any of the covenants hereof; or

(c) Sell the Premises, or any part thereof, or cause the same to be sold, and convey the same to the purchaser thereof, pursuant to the statute in such case made and provided, and out of the proceeds of such sale retain all of the indebtedness secured by this Mortgage including, without limitation, principal, accrued interest, costs and charges of such sale, the attorneys fees provided by such statute, or in the event of a suit to foreclose by court action, a reasonable attorneys fee, rendering the surplus moneys, if any, to the parties legally entitled thereto; provided, that in the event of public sale, such property may, at the option of the Mortgagee, be sold in one parcel or in several parcels as the Mortgagee, in its sole discretion, may elect; or

(d) Exercise any or all of the remedies available to a secured party under the Code and any notice of sale, disposition or other intended action by the Mortgagee, sent to the Mortgagor at the address specified in Section 5.15 hereof, at least five days prior to such action, shall constitute reasonable notice to the Mortgagor; or

(e) Exercise any of the rights and remedies provided for in this Mortgage, in any of the other Loan Documents or by applicable law, including, without limitation, the right of set off.

Section 4.3. Foreclosure; Expense of Litigation. When the indebtedness secured by this Mortgage, or any part thereof, shall become due, whether by acceleration or otherwise, the Mortgagee shall have the right to foreclose the lien hereof for such indebtedness or part thereof. In any suit to foreclose the lien hereof or enforce any other remedy of the Mortgagee under this Mortgage or the Note, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree, all expenditures and expenses which may be paid or incurred by or on behalf of the Mortgagee for reasonable attorneys fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. All expenditures and expenses of the nature in this Section mentioned, and such expenses and fees as may be incurred in the protection of the Premises and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by the Mortgagee in any litigation or proceeding affecting this Mortgage, any of the other Loan Documents or the Premises, including probate and bankruptcy proceedings, or in preparations for the commencement or defense of any proceeding or threatened suit or proceeding, shall be so much additional indebtedness secured by this Mortgage, immediately due and payable, with interest thereon from the date due until paid at a variable rate 3% above the highest interest rate from time to time prevailing on the Note. In the event of any foreclosure sale of the Premises, the same may be sold in one or more parcels. The Mortgagee may be the purchaser at any foreclosure sale of the Premises or any part thereof.

Section 4.4. Application of Proceeds of Foreclosure Sale. The proceeds of any foreclosure sale of the Premises or of the exercise of any other remedy hereunder shall be distributed and applied in the following order of priority: first, on account of all costs and expenses incident to the foreclosure proceedings or such other remedy, including all such items as are mentioned in Section 4.3 hereof; second, all other items which under the terms hereof constitute indebtedness secured by this Mortgage additional to that evidenced by the Note, with interest thereon as therein provided; third, all principal and interest remaining unpaid on the

Note; and fourth, any remainder to the parties legally entitled thereto, as their rights may appear.

Section 4.5. Appointment of Receiver. Upon or at any time after the filing of a complaint to foreclose this Mortgage, the court in which such complaint is filed may appoint a receiver of the Premises or any portion thereof. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of the Mortgagor at the time of application for such receiver and without regard to the then value of the Premises and the Mortgagee or any holder of the Note may be appointed as such receiver. Such receiver shall have power (i) to collect the rents, issues and profits of the Premises during the pendency of such foreclosure suit, as well as during any further times when the Mortgagor, except for the intervention of such receiver, would be entitled to collect such rents, issues and profits; (ii) to extend or modify any then existing leases and to make new leases, which extension, modifications and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured by this Mortgage and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options or other such provisions to be contained therein, shall be binding upon the Mortgagor and all persons whose interests in the Premises are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding discharge of the indebtedness secured by this Mortgage, satisfaction of any foreclosure judgment, or issuance of any certificate of sale or deed to any purchaser; and (iii) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Premises during the whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of the indebtedness secured by this Mortgage, or found due or secured by any judgment foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to foreclosure sale.

Section 4.6. Insurance After Foreclosure. In case of an insured loss after foreclosure proceedings have been instituted, the proceeds of any insurance policy or policies, if not applied in repairing and restoring the Premises, shall be used to pay the amount due in accordance with any judgment of foreclosure that may be entered in any such proceedings, and the balance, if any, shall be paid as the court may direct.

Section 4.7. Remedies Not Exclusive; No Waiver of Remedies. (a) The Mortgagee shall be entitled to enforce payment and performance of any indebtedness or obligations secured hereby and to exercise all rights and powers under this Mortgage or under any of the other Loan Documents or other agreement or any laws now or hereafter in force, notwithstanding that some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Mortgage nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect the Mortgagee's right to realize upon or enforce any other security now or hereafter held by the Mortgagee, it being agreed that the Mortgagee shall be entitled to enforce this Mortgage and any other security now or hereafter held by the Mortgagee in such order and manner as it may in its absolute discretion determine. No remedy herein conferred upon or reserved to the Mortgagee is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by any of the Loan Documents to the Mortgagee or to which it may be otherwise entitled,

may be exercised, concurrently or independently, from time to time and as often as it may be deemed expedient by the Mortgagee and the Mortgagee may pursue inconsistent remedies. Failure by the Mortgagee to exercise any right which it may exercise hereunder, or the acceptance by the Mortgagee of partial payments, shall not be deemed a waiver by the Mortgagee of any Default or Event of Default hereunder or of its right to exercise any such rights thereafter.

(b) In the event the Mortgagee at any time holds additional security for any of the indebtedness secured by this Mortgage, it may enforce the sale thereof or otherwise realize upon the same, at its option, either before or concurrently with exercising remedies under this Mortgage or after a sale is made hereunder.

Section 4.8. No Mortgagee in Possession. Nothing herein contained shall be construed as constituting the Mortgagee a mortgagee in possession.

Section 4.9. Waiver of Certain Rights. The Mortgagor shall not and will not apply for or avail itself of any appraisement, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but rather waives the benefit of such laws. The Mortgagor for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Premises sold as an entirety. The Mortgagor hereby waives any and all rights of redemption under any applicable law, including, without limitation, redemption from sale or from or under any order, judgment or decree of foreclosure, pursuant to rights herein granted, on behalf of the Mortgagor and all persons beneficially interested therein and each and every person acquiring any interest in or title to the Premises subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by the provisions of the laws of the State in which the Premises are located.

THE MORTGAGOR HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING RELATING TO THIS MORTGAGE.

Section 4.10. Mortgagee's Use of Deposits. With respect to any deposits made with or held by the Mortgagee or any depository pursuant to any of the provisions of this Mortgage, when any Event of Default shall exist under this Mortgage, the Note or any of the other Loan Documents, the Mortgagee may, at its option, without being required to do so, apply any moneys or securities which constitute such deposits on any of the obligations under this Mortgage, the Note or the other Loan Documents, in such order and manner as the Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to or as directed by the Mortgagor. Such deposits are hereby pledged as additional security for the prompt payment of the Note and any other indebtedness hereunder and shall be held to be irrevocably applied by the depository for the purposes for which made hereunder and shall not be subject to the direction or control of the Mortgagor.

ARTICLE V

MISCELLANEOUS

Section 5.1. Recitals. The recitals hereto are hereby incorporated into and made a part of this Mortgage.

Section 5.2. Time of Essence. Time is of the essence of this Mortgage and of each and every provision hereof.

Section 5.3. Usury. The Mortgagor hereby represents and covenants that the proceeds of the Note will be used for the purposes specified in subparagraph 1(c) contained in Section 2054 of Chapter 815 of the Illinois Compiled Statutes (1998), and that the indebtedness secured hereby constitutes a "business loan" within the meaning of that Section.

Section 5.4. Lien for Service Charges and Expenses. At all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures, in addition to any loan proceeds disbursed from time to time, the payment of any and all origination fees, loan commissions, service charges, liquidated damages, expense and advances due to or incurred by the Mortgagee in connection with the loan to be secured hereby, all in accordance with the Loan Agreement and the other Loan Documents.

Section 5.5. Subrogation. To the extent that proceeds of the indebtedness secured by this Mortgage are used to pay any outstanding lien, charge or prior encumbrance against the Premises, the Mortgagee shall be subrogated to any and all rights and liens owned by any owner or holder of such outstanding liens, charges and prior encumbrances, and shall have the benefit of the priority thereof, irrespective of whether said liens, charges or encumbrances are released.

Section 5.6. Revolving Credit Mortgage. This Mortgage is given to secure, among other things, a revolving credit loan under the Loan Documents, and shall secure not only presently existing indebtedness under the Loan Documents, but also such future advances, whether such advances are obligatory or to be made at the option of the Lenders, or otherwise, as are made within 20 years from the date hereof, to the same extent as if such future advances were made on the date of the execution of this Mortgage, although there may be no advance made at the time of the execution of this Mortgage, and although there may be no indebtedness hereby secured outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all such indebtedness and future advances, from the time this Mortgage is filed for record in the office of the Recorder of Deeds of the county in which the Premises are located. The total amount of indebtedness so secured may increase or decrease from time to time, but the total unpaid principal balance of indebtedness so secured at any one time outstanding shall not exceed the maximum principal amount set forth above in this Mortgage, plus interest thereon, and any disbursements made for payment of taxes, special assessments or insurance on the Premises, with interest on such disbursements. This Mortgage shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, except taxes and assessments levied on the Premises.

Section 5.7. Recording. The Mortgagor shall cause this Mortgage and all other documents securing the indebtedness secured by this Mortgage at all times to be properly filed and/or recorded at the Mortgagor's own expense and in such manner and in such places as may be required by law in order to fully preserve and protect the rights of the Mortgagee.

Section 5.8. Further Assurances. The Mortgagor will do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or advisable, in the judgment of the Mortgagee, for the better assuring, conveying, mortgaging, assigning and confirming unto the Mortgagee all property mortgaged hereby or property intended so to be, whether now owned by the Mortgagor or hereafter acquired.

Section 5.9. No Defenses. No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the party interposing the same in an action at law upon the Note.

Section 5.10. Invalidity of Certain Provisions. If the lien of this Mortgage is invalid or unenforceable as to any part of the indebtedness secured by this Mortgage, or if such lien is invalid or unenforceable as to any part of the Premises, the unsecured or partially secured portion of the indebtedness secured by this Mortgage shall be completely paid prior to the payment of the remaining and secured or partially secured portion thereof, and all payments made on the indebtedness secured by this Mortgage, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion thereof which is not secured or fully secured by the lien of this Mortgage.

Section 5.11. Illegality of Terms. Nothing herein or in the Note contained nor any transaction related thereto shall be construed or shall so operate either presently or prospectively, (i) to require the Mortgagor to pay interest at a rate greater than is now lawful in such case to contract for, but shall require payment of interest only to the extent of such lawful rate, or (ii) to require the Mortgagor to make any payment or do any act contrary to law. If any provision contained in this Mortgage shall otherwise so operate to invalidate this Mortgage, in whole or in part, then such provision only shall be held for naught as though not herein contained and the remainder of this Mortgage shall remain operative and in full force and effect, and the Mortgagee shall be given a reasonable time to correct any such error.

Section 5.12. Mortgagee's Right to Deal with Transferee. In the event of the voluntary sale, or transfer by operation of law, or otherwise, of all or any part of the Premises, the Mortgagee is hereby authorized and empowered to deal with such vendee or transferee with reference to the Premises, or the debt secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might with the Mortgagor, without in any way releasing or discharging the Mortgagor from the covenants and/or undertakings hereunder, specifically including Section 2.13(d) hereof, and without the Mortgagee waiving its rights to accelerate the Note as set forth in Section 2.13(d).

Section 5.13. Releases. The Mortgagee, without notice, and without regard to the consideration, if any, paid therefor, and notwithstanding the existence at that time of any inferior liens, may release any part of the Premises, or any person liable for any indebtedness secured hereby, without in any way affecting the liability of any party to the Note, this Mortgage, the Guaranty, or any other guaranty given as additional security for the indebtedness secured hereby and without in any way affecting the priority of the lien of this Mortgage, and may agree with any party obligated on said indebtedness to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not, in any way, release or impair the lien created by this Mortgage, or reduce or modify the liability, if any, of any person or entity personally obligated for the indebtedness secured hereby, but shall extend the lien hereof as against the title of all parties having any interest in said security which interest is subject to the

indebtedness secured by this Mortgage. The Mortgagee has agreed in the Loan Agreement to deliver partial releases of this Mortgage from time to time upon satisfaction of certain conditions.

Section 5.14. Construction Mortgage. This Mortgage secures an obligation incurred for the construction of an improvement on the land mortgaged herein, including the acquisition cost of the land, and constitutes a "construction mortgage" within the meaning of Section 9-334(h) of the Code.

Section 5.15. Giving of Notice. All communications provided for herein shall be in writing and shall be deemed to be given or made when served personally or two business days after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

if to the Mortgagor: The Heritage at Millennium Park, LLC
445 West Erie Street
Suite 210
Chicago, Illinois 60610

Attention: Richard A. Hanson

with a copy to: Piper Rudnick
203 North LaSalle Street
Suite 1800
Chicago, Illinois 60601

Attention: Robert H. Goldman

if to the Mortgagee: LaSalle Bank National Association
135 South LaSalle Street
Chicago, Illinois 60603

Attention: Commercial Real Estate

or to such party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

Section 5.16. Binding Effect. This Mortgage and each and every covenant, agreement and other provision hereof shall be binding upon the Mortgagor and its successors and assigns, including, without limitation, each and every from time to time record owner of the Premises or any other person having an interest therein, and shall inure to the benefit of the Mortgagee and its successors and assigns. Wherever herein the Mortgagee is referred to, such reference shall be deemed to include the holder from time to time of the Note, whether so expressed or not; and each such holder of the Note shall have and enjoy all of the rights, privileges, powers, options and benefits afforded hereby and hereunder, and may enforce all and every of the terms and provisions hereof, as fully and to the same extent and with the same effect as if such from time to time holder were herein by name specifically granted such rights, privileges, powers, options and benefits and was herein by name designated the Mortgagee.

Section 5.17. Covenants to Run with the Land. All the covenants hereof shall run with the land.

Section 5.18. Entire Agreement. This Mortgage sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Mortgage, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this Mortgage other than as are herein set forth.

Section 5.19. Governing Law; Severability; Modification. This Mortgage shall be governed by the laws of the State of Illinois. In the event that any provision or clause of this Mortgage conflicts with applicable laws, such conflicts shall not affect other provisions hereof which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage are declared to be severable. This Mortgage and each provision hereof may be modified, amended, changed, altered, waived, terminated or discharged only by a written instrument signed by the party sought to be bound by such modification, amendment, change, alteration, waiver, termination or discharge.

Section 5.20. Meanings. Wherever in this Mortgage the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

Section 5.21. Captions. The captions or headings at the beginning of each Article and Section hereof are for the convenience of the parties and are not a part of this Mortgage.

Section 5.22. Approval or Consent of Mortgagee. (a) Wherever in this Mortgage provision is made for the approval or consent of the Mortgagee, or that any matter is to be to the Mortgagee's satisfaction, or that any matter is to be as estimated or determined by the Mortgagee, or the like, unless specifically stated to the contrary, such approval, consent, satisfaction, estimate, determination or the like shall be made, given or determined by the Mortgagee pursuant to a reasonable application of judgment in accordance with institutional lending practice and commercial custom in connection with major real estate loans.

(b) Notwithstanding any other provision of this Mortgage or any of the other Loan Documents, wherever in this Mortgage provision is made for the approval or consent of the Mortgagee with respect to a matter, if the Mortgagee elects to grant such approval or consent, it shall not be unreasonable for the Mortgagee to make such approval or consent subject to the condition that such matter must also be approved or consented to in writing by the Guarantors and any other guarantors of the Loan.

(c) Notwithstanding any other provision of this Mortgage or any of the other Loan Documents, wherever in this Mortgage provision is made for the approval or consent of the Mortgagee with respect to a matter relating to the construction of the Improvements, if the Mortgagee elects to grant such approval or consent, it shall not be unreasonable for the Mortgagee to make such approval or consent subject to the condition that such matter must also be approved or consented to in writing by any surety that has issued a bond for any contractor or subcontractor performing work on the Premises.

(d) Notwithstanding any other provision of this Mortgage or any of the other Loan Documents, wherever in this Mortgage provision is made for the approval or consent of the Mortgagee with respect to a matter, if the Mortgagee elects to grant such approval or consent, it shall not be unreasonable for the Mortgagee to make such approval or consent subject to the

condition that such matter must also be approved or consented to in writing by the Mezzanine Lender.

Section 5.23. Construction and Interpretation. The Mortgagor and the Mortgagee, and their respective legal counsel, have participated in the drafting of this Mortgage, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Mortgage.

[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]

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UNOFFICIAL COPY

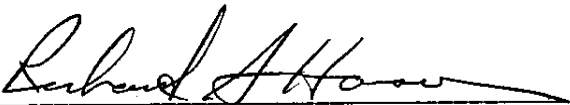
0020886507

IN WITNESS WHEREOF, the Mortgagor has caused this instrument to be executed as of the date first above written.

THE HERITAGE AT MILLENNIUM PARK, LLC

By The Heritage at Millennium Park Mezzanine LLC, Sole Member and Manager

By Mesa MPT LLC, Manager

By 
Richard A. Hanson
Manager

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0020886507

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 30th day of July, 2002, by Richard A. Hanson, the Manager of Mesa MPT LLC, a Delaware limited liability company, the Manager of The Heritage at Millennium Park Mezzanine LLC, a Delaware limited liability company, the Manager of The Heritage at Millennium Park, LLC, a Delaware limited liability company, on behalf of said limited liability companies.

Rebecca Milietto
Notary Public



Property of Cook County Clerk's Office

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EXHIBIT A

0020886507

LEGAL DESCRIPTION OF THE PREMISES

Parcel 1:

THE WEST ½ OF LOT 1 IN BLOCK 12 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel 2:

THE EAST ½ OF LOT 1 IN BLOCK 12 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel 3:

LOT 2 IN BLOCK 12 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel 4:

LOT 3 IN BLOCK 12 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel 5:

LOT 4 IN BLOCK 12 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel 6:

LOT 5 IN BLOCK 12 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

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Parcel 7:

LOT 6 IN BLOCK 12 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL 1/4 OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Tax Index Numbers:

17-10-309-001
17-10-309-010
17-10-309-011
17-10-309-003
17-10-309-004
17-10-309-005
17-10-309-006
17-10-309-007
17-10-309-008

0020886507

Address of Premises:

Southeast corner of Randolph Street
and Wabash Avenue
Chicago, Illinois

Property of Cook County Clerk's Office

UNOFFICIAL COPY

0020886507

EXHIBIT B

INSURANCE REQUIREMENTS

Mortgagee retains the right to modify or add to these requirements in response to changes in exposure or other events or circumstances that materially change the nature of the risk as determined by an independent insurance consultant selected by the Mortgagee in its sole discretion.

A. Property Insurance

The property insurance must cover:

- Direct physical damage to the property
- The incremental soft costs of construction incurred as a result of direct physical damage to the property

The property insurance must meet the following requirements:

1. **Covered Perils** The property policy must cover All Risks of direct physical loss to the property, including coverage for collapse and transit.
2. **Water Damage** Water damage, other than flood caused by the natural overflow of bodies of water such as lakes, rivers and streams, must be included in the perils covered by the All Risk policy form.
3. **Earthquake or Earth Movement** Earthquake and/or earth movement insurance is not required.
4. **Boiler and Machinery Insurance** Boiler and machinery coverage on a breakdown basis is to be included in the All Risk policy or provided in a separate policy. Testing of any building equipment (for example, elevators, window washing equipment and air conditioning and heating equipment) is to be covered.
5. **Mortgagee Clause** Each property policy must contain a Mortgagee Clause in favor of:
LaSalle Bank National Association, its Successors, and/or Assigns as their interests may appear
135 South LaSalle Street
Chicago, IL 60606-3499

The Mortgagee Clause must:

1. State that any losses are payable first to the Mortgagee to the extent of the Mortgagee's interest, with any remaining amount payable to the Mortgagor; and
 2. Provide that the insurance will not be voided as respects the Mortgagee as the result of any act, failure to act, error, or omission of the Mortgagor.
6. **Replacement Cost** Each property insurance policy is to cover the cost to replace or repair the damaged property without deduction for physical depreciation.
 7. **Coinsurance** No property policy is to contain a coinsurance clause.

8. **Ordinance or Law** Each property policy is to cover the costs incurred in repairing or replacing the damaged property to meet current building codes. Coverage is to be provided for:
- Loss to the Undamaged Portion of the Building
 - Demolition Cost
 - Increased Cost of Construction
9. **Expediting Expense** Policy is to cover the Expediting Expenses incurred to accelerate the repair or replacement of damaged property, including building equipment.
10. **Debris Removal** Policy is to cover the cost to demolish the property and remove debris following a covered loss.
11. **Permission to Occupy** Any property policy must contain language allowing for occupancy upon completion of work on that part of the property to be occupied by condominium or retail space owners or lessees.
12. **Terrorism Exclusion** Any Terrorism Exclusion must comply with the ISO War and Terrorism Exclusion (With Limited Exception) approved by the Illinois Insurance Department. Should federal legislation be passed providing for a federal terrorism insurance program, terrorism coverage is to be provided in accord with such federal program.
13. **Minimum Limits – Except Boiler** The follow limit requirements are minimum requirements.
- A. **Direct Damage:** Replacement value of all covered real and personal property excluding the cost of land and foundations and footings below the lowest basement floor. Limits are to be adjusted as needed to reflect increases in construction costs over the period of the construction. At inception, the direct damage limit will be \$179,974,000, inclusive of \$4,685,000 for the façade being retained from the prior building on the site.
 - B. **Soft Costs:** At inception, the Soft Costs limit is to be \$35,890,000. This amount is to be reviewed and adjusted annually to reflect the floating rate of interest on the construction loan.
 - C. **Expediting Expense:** \$5,000,000⁽¹⁾
 - D. **Ordinance or Law:** \$5,000,000⁽¹⁾
 - E. **Debris Removal:** \$15,000,000⁽¹⁾⁽²⁾
- ⁽¹⁾ To be in addition to and not a part of the overall limit.
⁽²⁾ To apply if the basic Debris Removal sublimit of 25% of the direct damage loss is not available because the direct damage policy limit has been exhausted.
14. **Minimum Limits – Boiler & Machinery** The follow limit requirements are minimum requirements applicable if a separate boiler and machinery policy is purchased. Mortgagors are encouraged to carry higher limits.
- A. **Direct Damage:** 10% of the Direct Damage limit requirement shown in 10. A. above. The initial limit will be \$17,997,400.
 - B. **Soft Costs:** 10% of the Soft Costs limit shown in 10. B. above. The initial limit will be \$3,589,000
 - C. **Expediting Expense:** \$1,000,000⁽¹⁾

- D. Ordinance or Law:** \$1,000,000 ⁽¹⁾
- E. Debris Removal:** \$2,000,000 ⁽¹⁾⁽²⁾

⁽¹⁾ To be in addition to and not a part of the overall limit.
⁽²⁾ To apply if the basic Debris Removal sublimit of 25% of the Boiler & Machinery direct damage loss is not available because the Boiler & Machinery direct damage policy limit has been exhausted.

15. Deductibles The maximum deductibles permitted are:

- a. Direct Damage except as stated in b. below: \$50,000
- b. Direct Damage to the existing five story façade that will be retained: \$100,000
- c. Soft Costs: 21 days

B. General Liability Insurance

Mortgagor must carry General Liability insurance covering the Mortgagor's liability for bodily injury or property damage to others arising out of the construction activities. Completed operations coverage is to be included for two years following completion of the property. Coverage is to be on an occurrence basis. Any policy aggregate limit is to be on an annual basis. The full policy limit must be available for claims arising out of activities related solely to this project. The limit may be met with any combination of primary General Liability insurance and Excess (or Umbrella) Liability insurance.

- 1. Limit** \$100,000,000 per occurrence and policy aggregate
- 2. Additional Insured** The General Liability policy and any Excess or Umbrella Liability policy must be endorsed to name the Mortgagee as an additional insured.
- 3. General Contractor** If the General Contractor and any subcontractors are not included as insureds in the Mortgagor's General Liability coverage, then the General Contractor and any subcontractor must carry separate General Liability coverage, which must comply with B.2. above (Additional Insured). The minimum limits required are:
 - a. General Contractor: Same as Mortgagor
 - b. Subcontractors with total contracts of \$5 million or more: \$10,000,000
 - c. Subcontractors with total contracts over \$1 million but under \$5 million: \$5,000,000
 - d. Subcontractors with total contracts under \$1 million: \$2,000,000
- 4. Deductibles or Retentions** Deductibles, retentions or other form of self-insurance may be utilized if notice of such is provided to the Mortgagor. The maximum self-insured amounts permitted are:
 - a. Mortgagor and General Contractor: \$500,000
 - b. Subcontractors with contracts over \$5 million: \$100,000
 - c. All other subcontractors: \$50,000

C. Automobile Liability Insurance

Mortgagor must carry Automobile Liability insurance covering the Mortgagor's liability for bodily injury or property damage to others arising out of the use of any automobile (including trucks) during the construction activities.

- 1. Limit** \$50,000,000 per occurrence and policy aggregate.
 The limit may be met with any combination of primary General Liability insurance and Excess (or Umbrella) Liability insurance.

2. General Contractor If the General Contractor and any subcontractors are not included as insureds in the Mortgagor's Automobile Liability coverage, then the General Contractor and any subcontractor must carry separate Automobile Liability coverage with the following limits:

- | | |
|--|-------------------|
| a. General Contractor: | Same as Mortgagor |
| b. Subcontractors with total contracts of \$5 million or more: | \$10,000,000 |
| c. Subcontractors with total contracts over \$1 million but under \$5 million: | \$5,000,000 |
| d. Subcontractors with total contracts under \$1 million: | \$2,000,000 |

3. Deductibles or Retentions Deductibles, retentions or other form of self-insurance may be utilized if notice of such is provided to the Mortgagor. The maximum self-insured amounts permitted are:

- | | |
|---|-----------|
| a. Mortgagor and General Contractor | \$500,000 |
| b. Subcontractors with contracts over \$5 million | \$100,000 |
| c. All other subcontractors | \$50,000 |

D. Workers Compensation Insurance

The General Contractor and any subcontractor are to carry Workers Compensation insurance in accordance with Illinois law. The Employer's Liability limit may be met with any combination of primary Workers Compensation and Excess (or Umbrella) Liability insurance.

- | | | |
|-----------------|---|-----------|
| 1. Limit | Workers Compensation: | Statutory |
| | Employers Liability – each accident | See Below |
| | Employers Liability – disease – each employee | See Below |
| | Employers Liability – policy limit | See Below |

Each of the three Employers Liability limits is to be as shown immediately below:

- | | |
|--|---------------|
| a. Mortgagor and General Contractor: | \$100,000,000 |
| b. Subcontractors with contracts of \$5 million or more: | \$10,000,000 |
| c. Subcontractors with total contracts over \$1 million but under \$5 million: | \$5,000,000 |
| d. Subcontractors with total contracts under \$1 million: | \$2,000,000 |

2. Deductibles or Retentions Deductibles, retentions or other form of self-insurance may be utilized if notice of such is provided to the Mortgagor. The maximum self-insured amounts permitted are:

- | | |
|---|-----------|
| a. Mortgagor and General Contractor | \$500,000 |
| b. Subcontractors with contracts over \$5 million | \$100,000 |
| c. All other subcontractors | \$50,000 |

E. Other Insurance Requirements

1. Insurance Company Rating All insurance companies must be rated A- or better by A.M. Best's. Should an insurance company's rating fall below A- during the period of the loan, Mortgagor must replace that insurance company with a qualifying insurance company within 60 days.

2. Notice of Cancellation Each insurance company must provide written notification to the Mortgagee 60 days prior to the effective date of any cancellation, non-renewal or material change.

3. **Evidence of Compliance with Insurance Requirements at Closing** At least 5 days prior to closing the loan, Mortgagor must provide evidence that these Insurance Requirements have been met. Evidence is to consist of:
- a. An original certificate of insurance signed by an approved officer of the insurance company or its authorized representative.
 - b. The original, or a notarized copy, of the Mortgagee endorsement to the property insurance policy. If Boiler insurance is provided by a different policy, Mortgagor must also provide the same evidence of the Mortgagee endorsement to that policy. If a copy is provided, it must include a notarized statement that the copy is a true and exact copy of the original Mortgagee endorsement. The endorsement must show:
 - The Mortgagee clause
 - The name of the insurance company
 - The policy period
 - The policy number
 - The description of the property
 - The name of the Mortgagor/Policyholder
 - c. The original, or a notarized copy, of the Additional Insured endorsement to the General Liability, Automobile Liability and any Excess or Umbrella Liability policies. If a copy is provided, it must include a notarized statement that the copy is a true and exact copy of the original Additional Insured endorsement. The endorsement must:
 - Name the Mortgagee as an Additional Insured
 - Commit the insurance company to providing the notice of cancellation, non-renewal or material change set forth in E.2. above
4. **Evidence of Renewal or Replacement Policies** Mortgagor must advise Mortgagee of any renewals or replacements of the required insurances by providing the same documentation required for closing in E. 3. above. Such evidence must be provided prior to the expiration date of the policy that is being renewed or replaced.