

0020886510

1014/0099 50 001 Page 1 of 33
2002-08-13 13:19:23
Cook County Recorder 85.50



0020886510

Property of Cook County Clerk's Office

6 3 1 4
6 2 8 9
0 1 0 1 0 1 0

CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT

from

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

to

MMBC DEBT HOLDINGS I, LLC
a Delaware limited liability company

Dated as of July 1, 2002

Permanent Tax Index Numbers and Address:

See Exhibit A

Commonly known as the Southeast Corner of
North Wabash Avenue and East Randolph Street,
Chicago, Illinois 60601

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

Prepared By:
Barry D. Green, Esq.
Goulston & Storrs
400 Atlantic Avenue
Boston, MA 02110

33

0020886510

CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT

KNOW ALL MEN BY THESE PRESENTS that THE HERITAGE AT MILLENNIUM PARK, LLC, a Delaware limited liability company, having an address at 445 West Erie Street, Suite 210, Chicago, Illinois 60610 ("Mortgagor"), for good and valuable consideration paid, the receipt and sufficiency of which are hereby acknowledged, hereby grants, conveys, transfers, mortgages, assigns and sets-over unto MMBC Debt Holdings I, LLC, a Delaware limited liability company having an address at c/o David L. Babson & Company Inc., 1500 Main Street, Suite 2100, Springfield, Massachusetts 01115, ("Mortgagee"), the Mortgaged Property (as defined below) to secure the Obligations (as defined below).

The term Mortgagor shall include wherever the context permits its successors and assigns. The term Mortgagee shall include, wherever the context permits, its successors and assigns as the holder from time to time of this Construction Mortgage and Security Agreement and the Note and other Obligations hereby secured.

This Construction Mortgage and Security Agreement (this "Mortgage") is granted pursuant to the terms, provisions and conditions of an agreement captioned Construction and Interim Loan Agreement, dated as of even date herewith between Mortgagor and Mortgagee (as the same may be modified or amended, the "Loan Agreement"). Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Loan Agreement.

The term "Mortgaged Property" shall mean and include all of the following described property:

A. Real Estate. The land situated in the City of Chicago, Cook County, Illinois, more particularly described on Exhibit A which is annexed hereto and made a part hereof ("Land") together with the improvements, buildings and other structures now or hereafter situated thereon (such improvements being sometimes called the "Improvements") commonly known as and numbered 51 East Randolph, 59 East Randolph, 139 North Wabash, 137 North Wabash, 127 North Wabash, 123-125 North Wabash and 115 North Wabash, together with all rights, privileges, tenements, hereditaments, appurtenances, easements, including, but not limited to, rights and easements for access and egress and utility connections, and other rights now or hereafter appurtenant thereto (all of the foregoing, collectively, "Real Estate");

B. Fixtures. All real estate fixtures or items which by agreement of the parties may be deemed to be such fixtures, now or hereafter owned by Mortgagor, or in which Mortgagor has or hereafter obtains an interest, and now or hereafter located in or upon the Real Estate, or now or hereafter attached to, installed in, or used or intended to be used in connection with any of the Real Estate, including, but not limited to, any and all portable or sectional buildings, bathroom, kitchen, plumbing, heating, lighting, refrigerating, ventilating and air-conditioning apparatus and equipment, garbage incinerators and receptacles, elevators and elevator machinery, boilers, furnaces, stoves,

0020886510

B. The payment, performance, discharge and satisfaction of each covenant, warranty, representation, undertaking and condition to be paid, performed, satisfied and complied with by Mortgagor under and pursuant to this Mortgage or the Loan Agreement or under and pursuant to any of the other Loan Documents to which Mortgagor is a party;

C. The payment of all costs, expenses, reasonable legal fees and liabilities incurred by Mortgagee in connection with the enforcement of any of Mortgagee's rights or remedies under this Mortgage or any of the other Loan Documents, or any other instrument, agreement or document which evidences or secures any Obligations, whether now in effect or hereafter executed; and

D. The payment, performance, discharge and satisfaction of all other liabilities and obligations of Mortgagor to Mortgagee, whether now existing or hereafter arising, direct or indirect, absolute or contingent, and including, without limitation express or implied upon the generality of the foregoing, each liability and obligation of Mortgagor under any one or more of the Loan Documents and any amendment, extension, modification, replacement or recasting of any one or more of the instruments, agreements and documents referred to herein or therein or executed in connection with the transactions contemplated hereby or thereby.

E. Protective Advances described in Subsection(c) of Section 26 hereof.

F. In no event shall the total amount secured by this Mortgage exceed \$100,000,000.00

The loan evidenced by the Note and made pursuant to the Loan Agreement is referred to herein as the "Loan."

To secure all Obligations, Mortgagor hereby sells, mortgages, warrants, assigns, conveys, pledges, hypothecates and transfers to Mortgagee the Mortgaged Property, and grants to Mortgagee a continuing security interest in all of the Mortgaged Property in which a security interest may be granted under the Uniform Commercial Code as such is in effect in the State of Illinois, including, without limitation, the Fixtures, the Personal Property and the Purchase and Sale Agreements, together with all proceeds and products thereof, whether now or at any time hereafter acquired and whether or not used in any way in connection with the development, construction, marketing or operation of the Real Estate, or in connection with the Mortgaged Property.

This instrument is intended to take effect as (i) a Mortgage under the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 et seq. (1998) (the "Act")), (ii) a notice of assignment of rents or profits under Section 31.5 of the Conveyances Act (765 ILCS 5/31.5, (1996)) of the laws of the State of Illinois, (iii) a fixture filing financing statement under Section 9-502 of the Uniform Commercial Code, as enacted in the State of Illinois (810 ILCS 5/9-502 (2001)), and (iv) a security agreement pursuant to the Uniform Commercial Code as enacted in the State of Illinois. Further, Mortgagor warrants that the

0020880510

such Awards as may be required to restore or repair such damage or injury shall be so released; and any balance remaining shall be applied by Mortgagee to or toward the indebtedness secured hereby in such order as Mortgagee may determine. The foregoing provisions of this Section 6 shall, subsequent to the recording of any condominium documentation specifically consented to in writing by Mortgagee, be subject to the provisions of such documentation.

7. No Waste; Compliance With Law. Mortgagor shall not commit or suffer any strip or waste of the Mortgaged Property, or any portion thereof, or any violation of any law, rule, regulation, ordinance, license or permit, or the requirements of any licensing authority affecting the Mortgaged Property or any business conducted thereon, and shall not commit or suffer any demolition, removal or material alteration of any of the Mortgaged Property (except as provided in the Loan Agreement or for the replacement of Fixtures and Personal Property in the ordinary course of business, so long as items of comparable value and quality are installed free and clear of liens in favor of any other party), without the express prior written consent of Mortgagee in each instance, and shall not violate nor suffer the violation of the covenants and agreements, if any, of record against the Mortgaged Property, and in all respects Mortgagor shall do all things necessary to comply with, and keep in full force and effect all licenses, permits and other governmental authorizations required for the construction and operation of the Mortgaged Property for its intended purposes, including, without limitation express or implied, the licenses, permits and authorizations referenced in the Loan Agreement.

8. Environmental and Related Matters; Indemnification.

Mortgagor shall at all times comply with all of the terms, conditions and provisions imposed on the Mortgagor under the Environmental Indemnity and both before and after the repayment of the Loan (subject to the limitations expressly set forth therein), at Mortgagor's sole cost and expense, indemnify, exonerate and save harmless Mortgagee and each other Indemnified Party (as defined in the Environmental Indemnity) against and from all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind whatsoever, including, without limitation, reasonable attorneys' fees and experts' fees and disbursements which may at time (including, without limitation, before or after the discharge or foreclosure of this Mortgage) be imposed upon, incurred by or asserted or awarded against Mortgagee or any other Indemnified Party and arising from or out of any of the matters for which indemnification is provided by Mortgagor pursuant to the Environmental Indemnity or on account of any liability for damage to person or property arising out of any act, omission, negligence or conduct at the Mortgaged Property, or arising or claim to have arisen, out of any act, omission, negligence or conduct of Mortgagor, or any contractor, subcontractor, tenant, occupant or invitee thereof which is in any way related to the Mortgaged Property.

0020886510

9. Payment of Taxes and Prevention of Liens. Mortgagor shall pay before delinquent or before any penalty for nonpayment attaches thereto, all taxes, assessments and charges of every nature and to whomever assessed that may now or hereafter be levied or assessed upon the Mortgaged Property or any part thereof, or upon the rents, issues, income or profits thereof or upon the lien or estate hereby created, whether any or all of said taxes, assessments or charges be levied directly or indirectly or as excise taxes or as income taxes subject to Borrower's right to contest pursuant to Section 10.1.1 of the Loan Agreement. Mortgagor may apply for tax abatements and prosecute diligently and in good faith claims for refund so long as: (i) no additional taxes, interest thereon or penalties are incurred thereby, (ii) a sufficient tax reserve fund as determined by Mortgagee in good faith has been deposited with Mortgagee, and (iii) no proceedings are instituted to divest Mortgagor of title to all or any portion of the Mortgaged Property. Mortgagor shall pay all sums which, if unpaid, may result in the imposition of a lien on the Mortgaged Property before such lien may attach (except that real estate taxes need not be paid prior to the due date thereof) or which may result in conferring upon a tenant of any part or all of the Mortgaged Property a right to recover such sums as prepaid rent.

10. Due On Sale; No Other Encumbrances; No Transfer of Ownership Interests; Failure to Comply with Permitted Title Exceptions. Except as otherwise specifically provided for in the Loan Agreement with respect to Permitted Transactions, or in this Mortgage, it shall be an Event of Default under the Loan Agreement, a breach of the conditions of this Mortgage and an event permitting Mortgagee to accelerate all indebtedness secured hereby, if, without Mortgagee's prior written consent in each instance, which consent may be granted, withheld or conditionally granted in Mortgagee's sole discretion: (a) there is any sale, conveyance, transfer or encumbrance of, or lien imposed upon, all or any portion of the Mortgaged Property; or (b) there is any transfer or assignment of, or grant of any security interest in, any of the direct or indirect ownership interests in Mortgagor; or (c) there is a failure to comply with the provisions of, or there is a default under, any of the Permitted Title Exceptions unless cured within any applicable grace period provided for in the applicable Permitted Title Exception; or (d) Mortgagor shall modify or terminate or attempt to modify or terminate the terms of any easement, covenant, restriction or other title matter affecting the Mortgaged Property (provided, however, Mortgagor may grant any easements or make any modification to existing easements affecting the Mortgaged Property if required in connection with the construction of the Improvements on the Mortgaged Property, subject to Mortgagee's consent, not to be unreasonably delayed, withheld or conditioned).

11. Mortgagee's Rights. If Mortgagor shall neglect or refuse: (a) to maintain and keep in good repair the Mortgaged Property or any part thereof as required by this Mortgage or any other Loan Documents, or (b) to maintain and pay the premiums for insurance which may be required by this Mortgage or the Loan Agreement, or (c) to pay and discharge all taxes of whatsoever nature, assessments and charges of every nature and to whomever assessed, as required by this Mortgage or the Loan Agreement, or (d) to pay the sums required to be paid by this Mortgage or any other Loan Documents, or (e) to satisfy any other terms or conditions of this Mortgage or any other Loan Documents,

0020886510

Mortgagee may, at its election in each instance, but without any obligation whatsoever to do so, upon thirty (30) days prior notice to Mortgagor (except in the case of (i) an emergency where there is danger to person or property, or (ii) required insurance coverage would lapse, or (iii) an Event of Default exists and is continuing, in each of which events no notice shall be required), cause such repairs or replacements to be made, obtain such insurance or pay said taxes, assessments, charges, and sums, incur and pay reasonable amounts in protecting its rights hereunder and the security hereby granted, pay any balance due under any conditional agreement of sale (or lease) of any property included as a part of the Mortgaged Property, and pay any amounts as Mortgagee deems reasonably necessary or appropriate to satisfy any term or condition of this Mortgage or any other Loan Document, which Mortgagor shall have failed to satisfy, or to remedy any breach of such term or condition, and any amounts or expenses so paid or incurred, together with interest thereon from the date of payment by Mortgagee at the Default Rate as provided in the Note or Loan Agreement shall be immediately due and payable by Mortgagor to Mortgagee and until paid shall be secured hereby equally and ratably, and the same may be collected as part of said debt in any suit hereon or upon the Note. No payment by Mortgagee shall relieve Mortgagor from any default hereunder or impair any right or remedy of Mortgagee consequent thereon.

12. Tax Reserve and Insurance Reserve. Following satisfaction of the Senior Loan, if an Event of Default exists, Mortgagor shall, upon the request of Mortgagee, from time to time, pay to Mortgagee on the first day of every month, such amount as Mortgagee from time to time estimates as necessary to create and maintain a reserve fund from which to pay before the same become due: (a) all taxes, assessments, liens and charges on or against the Mortgaged Property, and (b) all premiums for insurance policies which are required by this Mortgage. Such payments, if so requested, shall be invested in a non-interest bearing account which shall be held by Mortgagee as Cash Collateral as additional collateral, and as security for the Obligations and so long as no Event of Default exists hereunder or under any of other Loan Documents, shall be paid to or for Mortgagor's benefit as set forth below. Payments from such reserve fund for said purposes may be made by Mortgagee at its discretion even though subsequent owners of the property described herein may benefit thereby. In the event of any Event of Default under the Loan Agreement or under the terms of this Mortgage, any part or all of such reserve fund may be applied, at the option of Mortgagee, to cure any such Event of Default or to any part of the indebtedness hereby secured and, in refunding any part of said reserve fund, Mortgagee may deal with whomever is the record owner of such property at that time. Prior to an Event of Default, the amount in such reserve fund, but not in excess of the applicable real estate taxes or insurance premiums then due, shall be paid to the taxing authority or the insurer upon written request of Mortgagor provided that such request is accompanied by the applicable current billing from the taxing authority or the insurer.

13. Certain Expenses. If any action or proceeding is commenced, including, without limitation, an action to foreclose this Mortgage or to collect the debt hereby secured, to which action or proceeding Mortgagee is made a party by reason of the

0020886510

execution of this Mortgage, or by reason of any obligation which it secures, or by reason of entry or any other action under this Mortgage, or if in Mortgagee's judgment it becomes necessary in connection with legal proceedings or otherwise to defend or uphold the mortgage hereby granted or the lien hereby created or any act taken to defend or uphold the mortgage hereby granted or the lien hereby created or any act taken under this Mortgage, all reasonable sums paid or incurred by Mortgagee for the expense of any litigation or otherwise, in connection with any rights created by this Mortgage or any other Loan Document, shall be paid by Mortgagor, or may at the option of Mortgagee, if not so paid, be added to the debt secured hereby and shall be secured hereby equally and ratably and shall bear interest until paid at the Default Rate set forth in the Note or the Loan Agreement.

14. Regarding Leases. Except as otherwise provided in the Loan Agreement, Mortgagor shall not enter into any leases or occupancy agreements with respect to the Mortgaged Property and shall not modify or amend any such leases or occupancy agreements without Mortgagee's prior written consent in each instance. As to each permitted lease or occupancy agreement, Mortgagor will perform every material obligation of the lessor and, to the extent commercially reasonable, will enforce every material obligation of the lessee in the leases in effect with respect to all or any part of the Mortgaged Property and, except as otherwise provided in the Loan Agreement, Mortgagor will not: (i) cancel any such lease, nor terminate or accept a surrender thereof, or reduce the rent payable thereunder or modify or amend any such lease; (ii) accept any prepayment of rent thereunder (except any rent which may be required to be prepaid by the terms of any such lease); or (iii) enter into any new leases without first obtaining on each occasion the prior written consent of Mortgagee. If any portion of the Mortgaged Property is leased or rented for residential purposes, Mortgagor shall comply with all legal requirements pertaining to security deposits, last month's rent, and interest thereon, and Mortgagor shall defend, indemnify and save harmless Mortgagee with respect to all claims relating thereto (including, without limitation, attorneys' fees and costs). As to all leases and occupancy agreements, Mortgagee, at its option from time to time, may require that all security deposits and similar funds or security provided by a lessee or occupant be deposited with Mortgagee, or with an escrow agent satisfactory to Mortgagee, subject to the rights of the lessee or occupant, but otherwise subject to a security interest in favor of Mortgagee.

15. Declaration of Subordination. At the option of Mortgagee, which may be exercised at any time or from time to time, by written notice to Mortgagor and to any applicable tenant, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or condemnation proceeds), to any and all leases of all or any part of the Mortgaged Property upon the execution by Mortgagee and recording or filing thereof, at any time hereafter in the appropriate official records wherein the Mortgaged Property are situated of a unilateral declaration to that effect.

16. Further Assignment by Mortgagor. Mortgagor hereby further assigns to Mortgagee as security for the Obligations the lessor's interests in any or all leases, now or hereafter outstanding, and to the extent it may lawfully do so Mortgagor's interests in all agreements, contracts, licenses and permits, now or hereafter outstanding, affecting all or any portion of the Mortgaged Property, including, without limitation, any third party consents necessary for any easement agreements. Mortgagor shall execute, acknowledge and deliver such further or confirmatory assignments thereof, by instruments in form satisfactory to the Mortgagee, as Mortgagee may reasonably require. Mortgagor hereby authorizes Mortgagee in the event of foreclosure, to sell and assign said interests to the purchaser at foreclosure, but neither such assignment nor any such future assignment shall be construed as binding Mortgagee to any lease, agreement, contract, license or permit so assigned, or to impose upon Mortgagee any obligations with respect thereto. Mortgagor hereby irrevocably appoints Mortgagee, or any agent designated by Mortgagee, the true and lawful attorney-in-fact of Mortgagor, with full power of substitution, to execute, acknowledge and deliver any such assignment to a purchaser at a foreclosure on behalf of Mortgagor which Mortgagor fails or refuses to do. In the event of any conflict between the provisions of this Section and the provisions of the Assignment of Leases and Rents, or any of the other Loan Documents, the Mortgagee shall have the right, from time to time, to determine which provision shall govern.

17. UCC Filing. Mortgagor upon Mortgagee's written request shall promptly cause this Mortgage and any required financing statements to be recorded and re-recorded, registered and re-registered, filed and re-filed at such times and places as may be required by law or reasonably deemed advisable by Mortgagee to create, preserve or protect the priority hereof and of any lien or security interest created hereby upon the Mortgaged Property or any part thereof; and Mortgagor shall from time to time do and cause to be done all such things as may be required by Mortgagee, or required by law, including all things which may from time to time be necessary under the Uniform Commercial Code of the State of Illinois fully to create, preserve and protect the priority hereof and of any lien or security interest created hereby upon said property. Mortgagor agrees and authorizes Mortgagee to file such financing statements, amendment thereto and continuation statements without Mortgagor's signature describing or relating to the Mortgaged Property (or any part thereof) as Mortgagee may elect from time to time. Mortgagor hereby irrevocably appoints Mortgagee, or any agent designated by Mortgagee, the true and lawful attorney-in-fact of Mortgagor, with full power of substitution, to execute, acknowledge and deliver any such things on behalf of Mortgagor which Mortgagor fails or refuses to do.

18. Right to Deal with Successor. Mortgagee may, without notice to any person, deal with any successor in interest of Mortgagor herein regarding this Mortgage and the debt hereby secured in all respects as it might deal with Mortgagor herein, without in any way affecting the liability hereunder or upon the debt hereby secured of any predecessor in interest of the person so dealt with; and no sale of the premises hereby mortgaged, nor any forbearance on the part of Mortgagee, nor any extension by Mortgagee of the time for payment of the debt hereby secured, shall operate to release,

0020886510

discharge, modify, change or affect the original liability of any predecessor in interest of the equity owner at the time of such sale, forbearance or extension.

19. Acceleration of Debt. If there is an Event of Default under the Note or the Loan Agreement or if an event occurs which pursuant to the Note or the Loan Agreement entitles Mortgagee to accelerate the Loan, then, at the option of Mortgagee (or automatically as provided in the Loan Agreement), the entire indebtedness hereby secured shall become immediately due and payable without notice.

Property of Cook County Clerk's Office

0020886510

20. Additional Rights of Mortgagee.

20.1 Enter and Perform. Mortgagor authorizes Mortgagee, to the fullest extent permitted by applicable law, in addition to all other rights granted by law or by this Mortgage, or by any of the other Loan Documents, whenever and as long as any Default hereunder or under the Loan Agreement shall exist and remain uncured beyond the applicable grace period, if any, and without notice beyond the notice, if any, required to be given by the terms of the Note or the Loan Agreement, or upon the occurrence of an Event of Default under the Loan Agreement, or this Mortgage, to enter and take possession of all or any part of the Mortgaged Property and to use, lease, operate, manage, sell and control the same and conduct the business thereof, and perform lessor's obligations under any lease or the seller's obligations under any Purchase and Sale Agreement or Mortgagee's obligations under any other agreement affecting all or any part of the Mortgaged Property, perform the obligations of the seller under any contracts, and collect the rents, profits and all receipts of every nature therefrom as Mortgagee or the receiver, as applicable, shall deem best.

20.2 Repairs and Improvements. Upon every such entry pursuant to Section 20.1, Mortgagee may from time to time at the expense of Mortgagor make all such repairs, replacements, alterations, additions and improvements to the Mortgaged Property as Mortgagee may deem proper, or necessary to maintain the Mortgaged Property, but in no event shall Mortgagee be obligated to do so, and may, but shall not be obligated to, exercise all rights and powers of Mortgagor, either in the name of Mortgagor, or otherwise as Mortgagee shall determine. Without limitation express or implied upon the generality of the foregoing, Mortgagee, in connection with such entry, shall have the right to do all things necessary or desirable in order to keep in full force and effect all applicable licenses, permits and authorizations and any amendments thereto.

20.3 Pay Costs and Expenses. Upon such entry and pursuant to Section 20.1 Mortgagee may, at its option, but without any obligation to do so, do any one or more of the following: pay and incur all expenses necessary or deemed by it appropriate for the holding and operating of the Mortgaged Property, the conduct of any business thereon, the maintenance, sale, repair, replacement, alteration, addition and improvement of the Mortgaged Property, including without limitation payments of taxes, assessments, insurance, wages of employees connected with the Mortgaged Property or any business conducted thereon, charges and reasonable compensation for services of Mortgagee, its attorneys and accountants and all other persons engaged or employed in connection with the Mortgaged Property or of any business conducted thereon and, in addition, Mortgagee, at its option, may, but shall not be obligated to, make payments or incur liability with respect to obligations arising prior to the date it takes possession.

20.4 Add to Secured Indebtedness. All obligations so paid or incurred by Mortgagee pursuant to Section 20.3 shall be reimbursed or paid for by Mortgagor upon demand and prior to the repayment thereof shall be added to the debt secured hereby and

shall bear interest at the Default Rate provided for in the Note or the Loan Agreement, and shall be secured hereby equally and ratably. Mortgagee may also reimburse itself therefor from the income or receipts of the Mortgaged Property or any business conducted thereon, or from the sale of all or any portion of the Mortgaged Property. Mortgagee may also apply toward any of the Obligations any tax or insurance reserve account, deposit or any sum credited or due from Mortgagee to Mortgagor without first enforcing any other rights of Mortgagee against Mortgagor or against any endorser or guarantor of any of the Obligations or against the Mortgaged Property.

20.5 Attorney-In-Fact. Mortgagor hereby irrevocably constitutes and appoints Mortgagee, or any agent designated by Mortgagee, for so long as this Mortgage remains undischarged of record, as attorney-in-fact of Mortgagor to execute, acknowledge, seal and deliver all instruments, agreements, deeds, certificates and other documents of every nature and description in order to carry out or implement the exercise of Mortgagee's rights hereunder and under the other Loan Documents.

20.6 Receiver. If an Event of Default has occurred, Mortgagee may make application to a court of competent jurisdiction, as a matter of strict right and without notice to Mortgagor or regard to the adequacy of the Mortgaged Property for the repayment of the Obligations, for appointment of a receiver of the Mortgaged Property, and Mortgagor does hereby irrevocably consent to such appointment. Any such receiver shall have all the usual powers and duties of receivers in similar cases, including the full power to rent, maintain and otherwise operate the Mortgaged Property upon such terms as may be approved by the court. All references to Mortgagee in Sections 20.2-20.5 inclusive shall be deemed to include any receiver so appointed for the Mortgaged Property. Mortgagee may, but shall not be required to, seek appointment as receiver, to the fullest extent permitted by applicable law, pursuant to the terms of this Section 20.6 and all of the other provisions of this Mortgage.

21. Contest of Laws/Lawful Use. Subject to the terms of the Loan Agreement, Mortgagor shall have the right to contest by appropriate legal proceedings, but without cost or expense to Mortgagee, the validity of any Legal Requirements affecting the Mortgaged Property subject to the provisions of the Loan Agreement and the Environmental Indemnity dealing with the right to contest, but only if compliance may be so contested without: (a) the imposition of any charge, lien or liability against the Mortgaged Property, (b) the loss or suspension of any license, right or permit with respect to the Mortgaged Property, and (c) causing any Event of Default to exist under the Loan Agreement or any other Loan Document. Subject to the foregoing, Mortgagor may postpone compliance therewith until the final determination of any such proceedings, provided it shall be prosecuted with due diligence and dispatch, and if any lien or charge is incurred, Mortgagor may, nevertheless, make the contest and delay compliance, provided Mortgagee is furnished with security satisfactory to Mortgagee in its reasonable discretion against any loss or injury by reason of such noncompliance or delay and provided further that the same is and may be done without causing any Event of Default to exist under the Loan Agreement or any of the other Loan Documents.

0020886510

Mortgagor shall use the Mortgaged Property solely for the Intended Use and not for any other purpose without the prior written consent of Mortgagee.

22. Notices. Any demand, notice or request by either party to the other shall be in writing and shall be given and become effective in the manner provided therefor in the Loan Agreement.

23. Mortgagee Not Obligated; Cumulative Rights. Nothing in this instrument shall be construed as obligating Mortgagee to take any action or incur any liability with respect to the Mortgaged Property or any business conducted thereon, and all options given to Mortgagee are for its benefit and shall and may be exercised in such order and in such combination as Mortgagee in its sole discretion may from time to time decide.

24. Severability. In case any one or more of the provisions of this Mortgage, the Note, the Assignment of Leases and Rents, the Loan Agreement, any of the other Loan Documents, or any other agreement now or hereafter executed in connection with any one or more of the foregoing are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof. Each of the provisions of every such agreement, document or instrument shall be enforceable by Mortgagee to the fullest extent now or hereafter not prohibited by applicable law.

25. No Waiver. No consent or waiver, express or implied, by Mortgagee to or of any Default by Mortgagor shall be construed as a consent or waiver to or of any other Default at the same time or upon any future occasion.

26. Foreclosure and Other Remedies. This Mortgage is upon the condition that all covenants and agreements of, and conditions imposed upon, Mortgagor contained herein and in the Note, the Loan Agreement, and the other instruments and agreements evidencing or securing the Obligations secured hereby shall be kept and fully performed, for any breach of which (remaining uncured beyond the grace period, if any, provided herein or therein, or in the Loan Agreement) or upon the occurrence of any other Event of Default, Mortgagee shall have the option to exercise any one or more of the rights and remedies to which it is entitled under the Act, and upon the further condition that upon any Event of Default Mortgagee shall have as to the Personal Property all the rights and remedies of a secured party under the Uniform Commercial Code as in effect in the State of Illinois, including, but not limited to, the option to proceed as to all of the Mortgaged Property under the law relating to foreclosure of real estate mortgages with respect to either (at Mortgagee's option) the entire amount of Mortgagor's Obligations, or any delinquent installment or installments of the indebtedness secured hereby without accelerating the due date of the entire indebtedness, in which case any sale of the Mortgaged Property under such a foreclosure proceeding shall be subject to and not affect the unmaturing part of the indebtedness secured hereby and this Mortgage shall be and continues as a lien on the Mortgaged Property securing such unmaturing indebtedness.

0020886510

Mortgagee shall also have the option of exercising such further remedies as from time to time may now or hereafter be provided in Illinois for a secured party, and upon the further condition that all rights of Mortgagee under this Mortgage and the other Loan Documents Mortgaged Property and any other Collateral may be exercised together or separately and, at Mortgagee's discretion, in connection with the exercise by Mortgagee of its rights under any one or more of the Loan Documents.

In exercising its rights and remedies under this instrument, Mortgagee may sell the Personal Property, or any part thereof, either separately from or together with the Real Estate and the balance of the Mortgaged Property, or any part thereof, either as one parcel or unit or in each separate parcels or units, all as Mortgagee may in its discretion elect; and may so sell the Mortgaged Property, or the Real Estate, as one parcel or unit or in such separate parcels or units, all as Mortgagee may in its discretion elect; and may so sell the Mortgaged Property or any part thereof either separately from or together with the whole or any part of other collateral which may constitute security for any obligation secured by the Mortgaged Property, also as Mortgagee may in its discretion elect. In the event of any separate sale of Personal Property, Mortgagee will give to Mortgagor reasonable notice of the time and place of any public sale or of the time after which any private sale or other intended disposition hereof is to be made, and such requirement of reasonable notice shall be met if such notice is mailed postage prepaid to the address of Mortgagor as provided in this Mortgage at least ten (10) days before the time of the sale or other disposition.

(a) Benefits of Act. Mortgagor and Mortgagee shall have the benefit of all of the provisions of the Act, including all amendments thereto which may become effective from time to time after the date hereof. If any provision of the Act which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(b) Insurance. Whenever provision is made in this Mortgage or the Loan Agreement for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure all such rights and powers of Mortgagee shall continue in the Mortgagee as judgment creditor or Mortgagee until confirmation of sale.

(c) Protective Advances. All advances, disbursements and expenditures made by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, in addition to those otherwise authorized by this Mortgage or by the Act (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the Act including those provisions of the Act hereinbelow referred to:

20886510

- (i) all advances by Mortgagee in accordance with the terms of this Mortgage to: (1) preserve or maintain, repair, restore or rebuild the Improvements; (2) preserve the lien of this Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;
- (ii) payments by Mortgagee of: (1) installments of principal, interest or other obligations when due in accordance with the terms of any senior mortgage or other prior lien or encumbrance; (2) installments of real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever when due which are assessed or imposed upon the Mortgaged Property or any part thereof; (3) other obligations authorized by this Mortgage; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 5/15-1505 of the Act;
- (iii) advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens;
- (iv) reasonable attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 1504 (d)(2) and 5/15-1510 of the Act; (2) in connection with any action, suit or proceeding brought by or against the Mortgagee for the enforcement of this Mortgage or arising from the interest of the Mortgagee hereunder; or (3) in the preparation for the commencement or defense of any such foreclosure or other action related to this Mortgage or the Mortgaged Property;
- (v) Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;
- (vi) expenses deductible from proceeds of sale as referred to in subsections (a) and (b) of Section 5/15-1512 of the Act;
- (vii) expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or Mortgagee takes possession of the Mortgaged Property imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (2) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (3) payments required or deemed by Mortgagee to be for the benefit of the Mortgaged Property or required to be made by the

0020886510

Mortgagor under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; and (4) pursuant to any lease or other agreement for occupancy of the Mortgaged Property (or any part thereof) for amounts required to be paid by Mortgagor.

All Protective Advances shall be included within the Obligations, and shall become immediately due and payable without notice and with interest thereon from the date of the advance thereof until paid at the Default Rate due and payable under the terms of the Note.

This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(1) of Section 5/15-1302 of the Act.

All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in:

- (i) determination of the amount of indebtedness secured by this Mortgage at any time;
- (ii) the indebtedness found due and owing to the Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (iii) if right of redemption has not been waived by the Mortgagor in this Mortgage, computation of amount required to redeem, pursuant to Subsection (d)(2) and (e) of Section 5/15-1603 of the Act;
- (iv) determination of amount deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;
- (v) application of income in the hands of any receiver or Mortgagee in possession; and
- (vi) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Act.

(d) Mortgagee in Possession. In addition to any provision of this Mortgage authorizing the Mortgagee to take or be placed in possession of the Mortgaged Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 5/15-1701 and 5/15-1702 of the Act, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or

Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Mortgage, all powers, immunities, and duties as provided for in Sections 5/15-1701 and 5/15-1703 of the Act.

(e) Waiver of Redemption. Mortgagor acknowledges that the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 5/15-1201 of the Act or residential real estate as defined in Section 5/15-1219 of the Act. Pursuant to Section 5/15-1601 (b) of the Act, Mortgagor hereby waives any and all right to redemption.

The proceeds of any foreclosure sale of the Mortgaged Property shall be distributed and applied in accordance with the provisions of Subsection (c) of Section 15-1512 of the Act. The judgment of foreclosure or order confirming the sale shall provide (after application pursuant to Subsections (a) and (b) of said Section 15-1512) for application of sale proceeds in the following order of priority: first, all items not covered by the provisions of said Subsections (a) and (b), which under the terms hereof constitute Obligations other than principal and interest evidenced by the Note, with interest thereon as herein provided; and second, all principal and interest remaining unpaid on the Note.

27. Disbursement of Proceeds of Note for Construction of Improvements: Construction Mortgage. This Mortgage secures an obligation incurred for the construction of improvements on land and is a "construction mortgage" as that term is defined in Section 9-334(h) of the Uniform Commercial Code. Under the Loan Agreement, Mortgagee has bound itself to make advances up to the original principal amount of the Note on the terms and conditions therein specified and has contemporaneously herewith advanced to Mortgagor the full original principal amount of the Note. All advances made and indebtedness arising, accruing and compounding under the Loan Agreement and Note, from time to time, shall be secured hereby, including, without limitation, accrued and compounded interest. As provided in the definition of the term "Note" in this Mortgage, no payments under the Note are due until the scheduled maturity thereof, interest will accrue, compound and be added to the principal due under the Note on a monthly basis, and the amount due under the Note and secured hereby if no payment is made on the Note prior to the scheduled maturity date shall be \$54,122,543.05.

28. Waivers By Mortgagor. Mortgagor, to the fullest extent that Mortgagor may legally do so, hereby: (a) agrees that Mortgagor will not at any time insist upon, plead, claim or take the benefit or advantage of any law, including, without limitation, the Act, now or hereafter in force providing for any appraisal, valuation, stay, extension, or redemption, and waives and releases all rights of redemption, valuation, appraisal, stay of execution, notice of election to mature or declare due the debt secured hereby; and (b) waives all rights to a marshaling of the assets of Mortgagor, including the Mortgaged Property, or to a sale in inverse order of alienation in the event of a sale hereunder of the Mortgaged Property, and agrees not to assert any right under any statute or rule of law pertaining to the marshaling of assets, sale in inverse order of alienation, or other matters

020886510

whatever to defeat, reduce or affect the right of Mortgagee under the terms of this Mortgage or any other Loan Document to a sale of the Mortgaged Property for the collection of the Obligations without any prior or different resort for collection (including, without limitation, any other Collateral granted by any Person), or the right of Mortgagee to the payment of such indebtedness out of the proceeds of sale of the Mortgaged Property in preference to every other claimant whatever.

29. Business Loan: Not Personal Residence. Mortgagor covenants, warrants and represents that all of the proceeds of the Loan secured hereby shall be used for business or commercial purposes, and none of the proceeds of the Loan secured hereby shall be used for personal, family or household purposes.

30. Headings. Headings and captions in this Mortgage are for convenience and reference only and the words and phrases contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of any of the provisions hereof.

31. Time of Essence. Time shall be of the essence of each and every provision of the Loan Agreement, the Note, this Mortgage and each of the other Loan Documents.

32. Estoppel Affidavit. Mortgagor, within ten (10) business days after written request from Mortgagee, shall furnish a written statement, duly acknowledged, acknowledging the unpaid principal of, and interest on, the Obligations secured hereby and stating whether or not any offsets or defenses exists against such indebtedness, and covering such other matters as Mortgagee may reasonably require.

33. Binding on Successors and Assigns. This Mortgage and all provisions hereof shall be binding upon Mortgagor and all persons claiming under or through Mortgagor, and shall inure to the benefit of the holders from time to time of the Note and of the successors and assigns of the Mortgagee, but the foregoing shall not detract from the transfer limitations imposed on Mortgagor in the Loan Agreement and other Loan Documents.

34. Approvals and Consents by Mortgagee. Wherever Mortgagee's consent or approval is contemplated or required in this Mortgage, such consent or approval may be granted or withheld in Mortgagee's sole and absolute discretion, unless otherwise expressly provided herein.

35. No Partnership or Joint Venture. No provision of this Mortgage or any of the other Loan Documents shall be deemed to create a partnership, joint venture, tenancy in common or joint tenancy between Mortgagor and Mortgagee, it being intended that the only relationship created by this Mortgage, the Loan Agreement, the Note and the other Loan Documents shall be that of debtor and creditor.

0020886510

36. Powers of Attorney. Each and every power of attorney granted under this Mortgage is coupled with an interest and is irrevocable.

37. Condominium; Unit Sales. The Loan Agreement contemplates that a portion of the Mortgaged Property shall be converted to a condominium upon satisfaction of the conditions specified therein. The Loan Agreement also contains provisions providing for the subordination of this Mortgage to certain condominium documents and releases of this Mortgage in connection with the sale of condominium units, in each case upon satisfaction of certain conditions specified therein and execution by Mortgagee of appropriate documentation.

Subject to the satisfaction of the conditions set forth in the Loan Agreement and compliance with all of the terms, provisions and conditions thereof, Mortgagor may convert a portion of the Mortgaged Property to condominium ownership. Any such conversion shall be conditioned upon execution and delivery by Mortgagor in form and substance reasonably satisfactory to Mortgagee documentation modifying this Mortgage and the other Loan Documents as Mortgagee requires to reflect that a portion of the Mortgaged Property has been converted to condominium ownership and to spread the lien of this Mortgage to encumber all condominium units as well as all other rights of Mortgagor in and to the condominium so created (including, without limitation, rights as declarant and interests in the common element). Upon such conversion of the Mortgaged Property (or a portion thereof) to condominium ownership, the following additional provisions shall become effective without any requirement of any further instrument or agreement:

A. Notwithstanding anything to the contrary contained in other provisions of this Mortgage, Mortgagor and Mortgagee agree as follows:

- (i) In the event of any casualty loss to the condominium or any units therein, Mortgagor covenants and agrees that: (a) Mortgagor immediately shall notify Mortgagee of such loss; (b) subject to the Senior Loan Documents, Mortgagee may, in its sole discretion, with respect to any units in the condominium and their appurtenant common interests which are subject to this Mortgage from time to time, and to the extent permitted by law, elect to vote in place and stead of Mortgagor with respect to all matters of repair and restoration of the same and with respect to insurance under the terms and as provided in the by-laws and rules and regulations adopted thereunder, to the extent that any such votes are taken it being understood, however, that in certain circumstances, as set forth in the by-laws, restoration and repair after a casualty loss shall be required without the need for any vote to that effect, and in such event such restoration and repair shall be conducted as provided in the by-laws notwithstanding anything to the contrary contained in the Loan Agreement including, without limitation, any provision allowing Mortgagee the right to receive any of the

0020886510

proceeds of insurance; (c) in order to effectuate the foregoing, Mortgagor hereby irrevocably appoints Mortgagee, or any agent designated by Mortgagee, as the agent of Mortgagor so to act with respect to said right to vote; (d) written notice from Mortgagee of such election in each such event to the condominium unit owners association and to Mortgagor is to be deemed conclusive evidence as to such right to vote; (e) said agency is coupled with an interest; (f) Mortgagor shall make all advances for repair and restoration due to inadequacy of insurance; (g) if Mortgagor fails to promptly do so, Mortgagee may make such advances and the same together with interest thereon at the Default Rate shall be secured hereby; and (h) if Mortgagee make such advances pursuant to (g), Mortgagor shall execute and deliver and record at no expense to Mortgagee, such documents as Mortgagee may reasonably require further evidencing and confirming such advances and such security.

B. Mortgagor further covenants and agrees:

- (i) Promptly to deliver to Mortgagee a true and full copy of each and every notice of default, if any, received by Mortgagor with respect to any obligation of Mortgagor under any of the condominium documents or applicable law regarding the condominium;
- (ii) Except with the prior written consent of Mortgagee not to be unreasonably withheld, conditioned or delayed, in each instance, not to vote for or consent to any modification of, amendment to, termination of, or relaxation of the enforcement of any provision of any of the condominium documents;
- (iii) In each and every case involving a vote of unit holders in the condominium, not to vote or give consent without, in each and every case, the prior written consent of Mortgagee not to be unreasonably withheld, conditioned or delayed;
- (iv) Promptly to pay as the same become due and payable the share of Mortgagor as owner of units in the condominium subject to this Mortgage from time to time of common expenses and all assessments (including, without limitation, reserves) as required from time to time and promptly upon demand to exhibit to Mortgagee receipts for all such payments, and in the event Mortgagor shall fail to make such payments as the same become due and payable, Mortgagee, from time to time at its option, but without any obligation so to do and without notice or demand upon Mortgagor, may make such payments, and all sums expended by Mortgagee for such purpose, including without limiting the

0020886510

generality of the foregoing attorneys' fees, shall be added to the indebtedness secured hereby and shall be payable on demand and bear interest at the Default Rate until repaid;

- (v) Fully and faithfully to keep and perform each and every covenant, agreement and provision in the condominium documents and applicable law on the part of Mortgagor, as owner of units in the condominium subject to this Mortgage from time to time or as declarant under the condominium documents, to be kept and performed, and in the event of the failure of Mortgagor so to do, Mortgagee may from time to time at its option, but without any obligation so to do, cure or remedy any such default of Mortgagor (Mortgagor hereby authorizing Mortgagee to enter upon the Mortgaged Property as may be necessary for such purpose), and all sums expended by Mortgagee for such purpose, including without limiting the generality of the attorneys' fees, shall be added to the indebtedness secured hereby and shall be payable on demand and bear interest at the Default Rate until repaid; and
- (vi) To defend, indemnify and save harmless Mortgagee, and all those claiming by, through or under Mortgagee, from and against any loss, damage, cost, expense or other liability of any nature whatsoever arising out of any obligations of the developer of the condominium, or of the Project, to unit owners or otherwise including, without limitation, liability arising under applicable law.

38. Governing Laws. This Mortgage, except as otherwise provided in the Loan Agreement as to liens, security interests and the exercise of remedies as to which the law of Illinois shall govern, shall in all respects be governed, construed, applied and enforced in accordance with the internal laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

[SIGNATURE AND NOTARY ON FOLLOWING PAGES]

UNOFFICIAL COPY

0020886510


IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be duly executed and delivered at as a sealed instrument as of the 1st day of July, 2002.

MORTGAGOR:

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

BY: The Heritage at Millennium Park Mezzanine
LLC, a Delaware limited liability company,
its sole member and manager

BY: MESA MPT LLC, a Delaware limited
liability company

BY: 
Name: Richard A. Hanson
Title: Manager

020886510

STATE OF ILLINOIS

, ss.

July 20, 2002

Then personally appeared before me the above-named Richard A. Hanson, the Manager of MESA MPT LLC, the Manager of The Heritage at Millennium Park Mezzanine LLC, the Manager of THE HERITAGE AT MILLENNIUM PARK, LLC (the Mortgagor described above) and acknowledged the foregoing instrument to be such person's free act and deed and the free act and deed of such Mortgagor.

Christine A. Kohn

Notary Public

My Commission Expires: 7/28/2003



Property of Cook County Clerk's Office

UNOFFICIAL COPY

0020886510

EXHIBIT "A" ANNEXED TO AND MADE A PART OF THE
CONSTRUCTION MORTGAGE AND
SECURITY AGREEMENT
GIVEN BY THE HERITAGE AT MILLENNIUM PARK, LLC

Mortgagor:

The Heritage At Millennium Park, LLC
445 West Erie Street, Suite 210
Chicago, Illinois 60610

PINs:

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

Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT "B" ANNEXED TO AND MADE A PART OF THE
CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT
GIVEN BY THE HERITAGE AT MILLENNIUM PARK, LLC

020886510

PERMITTED TITLE EXCEPTIONS

Property of Cook County Clerk's Office

0020886510

Exhibit B - Permitted Title Exceptions

Parcel 1:

1. General real estate taxes for the years 2001 and 2002. Tax number 17-10-309-001-0000, Volume 510.

Note: The first installment of the 2001 taxes have been deposited with the Cook County Collector.

Note: The second installment 2001 and 2002 taxes are not yet due and payable.

2. Intentionally Deleted.
3. Intentionally Deleted.
4. Intentionally Deleted.
5. Intentionally Deleted.

6. Terms, provisions and conditions contained in the City of Chicago Ordinance establishing Special Service District 12, recorded as document number 91075841.

Note: No tax levied to date.

Parcels 2 and 3:

7. (A) General real estate taxes for the years 2001 and 2002. Tax Numbers 17-10-309-010-0000 and 17-10-309-011-0000, (Affects Parcel 2).

Note: The first installment of the 2001 taxes have been deposited with the Cook County Collector.

Note: The second installment of the 2001 and the 2002 taxes are not yet due or payable.

- (B) General real estate taxes for the years 2001 and 2002. Tax Number 17-10-309-003-0000 (Affects Parcel 3) Volume 510.

Note: The first installment of the 2001 taxes have been deposited with the Cook County Collector.

Note: The second installment 2001 and 2002 taxes are not yet due and payable.

8. Intentionally Deleted.
9. Intentionally Deleted.
10. Intentionally Deleted.
11. Intentionally Deleted.

12. Easement, Construction and Operating Agreement recorded March 21, 1986 as document number 86110787 made by and between the City of Chicago, American National Bank and Trust Company of Chicago, as trustee under trust agreement dated January 21, 1985 and known as trust number 63352, and Commercial Retail Specialists, Inc., granting a permanent easement over, across and through a three dimensional portion of a certain property for a subsurface pedestrian passageway, as described therein.

13. Terms, provisions and conditions contained in the City of Chicago Ordinance establishing Special Service District 12, recorded as document number 91075841.

Note: No tax levied to date.

0020880510

Parcel 4:

14. General real estate taxes for the years 2001 and 2002. Tax number 17-10-309-004, Volume 510.

Note: The first installment of 2000 taxes in the amount of \$62,567.64 has been deposited with the County Collector.

Note: The second installment of the 2000 taxes in the amount of \$83,508.45 has been deposited with the County Collector.

Note: The 2001 and 2002 taxes are not yet due and payable.

15. Intentionally Deleted.

16. Intentionally Deleted.

17. Intentionally Deleted.

18. Terms, provisions and conditions contained in the City of Chicago Ordinance establishing Special Service District 12, recorded as document number 91075841. Note: No tax levied to date.

19. Terms of the Settlement Agreement entered in proceedings in the Circuit Court of Cook County, case number 01M1404482 on a complaint filed by City of Chicago against The Heritage at Millennium Park, LLC for building code violations that requires demolition of the building by September 30, 2002.

Note: Intentionally Omitted.

Note: Intentionally Omitted.

Note: Intentionally Omitted.

Parcel 5:

20. General real estate taxes for the years 2001 and 2002. Tax number 17-10-309-005, Volume 510.

Note: The first installment of 2000 taxes in the amount of \$53,485.81 has been deposited with the County Collector.

Note: The second installment of the 2000 taxes in the amount of \$59,119.32 has been deposited with the County Collector.

Note: The 2001 and 2002 taxes are not yet due and payable.

21. Intentionally Deleted

22. Terms, provisions and conditions contained in the City of Chicago Ordinance establishing Special Service District 12, recorded as document number 91075841. Note: No tax levied to date.

Parcel 6:

23. General real estate taxes for the years 2001 and 2002. Tax number 17-10-309-006, Volume 510.

Note: The first installment of 2000 taxes in the amount of \$76,302.28 has been deposited with the County Collector.

Note: The second installment of the 2000 taxes in the amount of \$84,737.66 has been deposited with the County Collector.

Note: The 2001 and 2002 taxes are not yet due and payable.

0020886510

24. Intentionally Deleted.

25. Terms, provisions and conditions contained in the City of Chicago Ordinance establishing Special Service District 12, recorded as document number 91075841. Note: No tax levied to date.

26. Memorandum of PCS Site Agreement recorded August 11, 1998 as document number 98702895, between Eddie Bauer, Inc., a Delaware Corporation and SprintCom, Inc., a Kansas Corporation.

Note: This agreement will be deleted as of September 21, 2002 pursuant to the Termination Notice from Eddie Bauer, Inc. to Sprintcom, Inc. and Sprintcom's acknowledgement thereof in a letter agreement between Eddie Bauer, Inc., Sprintcom, Inc. and The Heritage at Millennium Park, LLC.

Parcel 7:

27. General real estate taxes for the year 2001 and 2002. Tax Numbers 17-10-309-007 and 17-10-309-008, Volume 510.

Note: The first installments of 2000 taxes in the amounts of \$42,886.92 (-007) and \$52,886.92 (-008) have been deposited with the County Collector.

Note: The second installment of the 2000 taxes in the amount of \$36,509.79 (-007) and \$36,509.79 (-008) have been deposited with the County Collector.

Note: The 2001 taxes are not yet due and payable.

28. Intentionally Deleted.

29. Note: We have learned that the United States department has interpreted the statute 42 USC 3604 to mean title companies are prohibited from either providing copies of, or reflecting as exceptions in title commitments, preliminary reports or policies, restrictive covenants which are in violation of the statute. In light of this interpretation, we believe it necessary to include the following "carve out" as part of the language of any exception for restrictive covenants included in all title evidence:

If any document referenced herein contains a covenant, condition or restriction violative of 42usc 3604(c), such covenant, condition or restriction to the extent of such violation is hereby deleted.

30. Matters disclosed on the survey prepared by Gremley & Biedermann Inc. No. 1001898 dated October 25, 2000 and last revised June 13, 2002 as follows:

Parcel 1:

a) Encroachment by canopies and awning onto the public right-of-way lying East, North and West of the land;

Parcel 2:

b) Possible encroachment of vaults onto Randolph Street;

Parcel 4:

c) Encroachment by canopy over the public right-of-way lying West of the land;

d) Encroachment by sheet metal duct over the public right-of-way lying East of the land;

e) Possible vault encroachment onto Wabash Avenue.

Parcel 5:

0020886510

f) Encroachment by the improvement on the land onto the public right-of-way lying West of the land by 0.16 feet and 0.20 feet and onto the public right-of-way lying East of the land by 0.70 feet.

Parcel 6:

g) Encroachment by canopy over the public right-of-way lying West of the land;

Parcel 7:

h) Encroachment by the improvement on the land onto the public right-of-way lying East of the land by 0.62 feet and 0.93 feet and onto the public right-of-way lying West of the land by 1.19 feet;

i) Encroachment by the canopy over the public right-of-way lying West of the land

j) Possible encroachment by the vaults onto the public right-of-way lying West of the land;

k) Possible encroachment by the window sills and outward opening windows onto the property lying South and adjoining.

31. Note: All encroaching improvement exceptions will be waived upon receipt of satisfactory evidence that such encroaching improvements have been demolished or removed.

32. Mortgage dated _____, 2002, and recorded _____, 2002, as document number _____, made by The Heritage at Millennium Park, LLC, a Delaware limited liability company, to Zionsville Bank, National Association and _____, to secure an indebtedness of \$190,000,000.00.

33. Memorandum of Lease recorded January 4, 2002 as document number 0020017001 between The Heritage at Millennium Park, LLC, a Delaware limited liability company, as lessee, and McDonald's Corporation, a Delaware corporation, as lessor, demising the land for a term of years commencing December 27, 2001 and ending as defined in said lease, and all rights thereunder of, and all acts done or suffered thereunder by, said lessee or by any party claiming by through or under said lessee, which lease contains an exclusive restriction prohibiting landlord from leasing any property that is adjacent or contiguous to the leased premises thereunder, or within the "Retail Component" (as defined in said lease), for use or occupancy as a "quick service food restaurant" (as defined in said lease) which serves hamburgers for off-site consumption.