

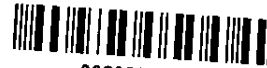
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1014/0100 50 001 Page 1 of 14

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Cook County Recorder 47.50



0020886511

COLLATERAL ASSIGNMENT OF LEASES AND RENTS

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, 2007

01011089.9 8 14

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

(14)

COLLATERAL ASSIGNMENT OF LEASES AND RENTS

This COLLATERAL ASSIGNMENT OF LEASES AND RENTS (this "Assignment") is made this 1st day of July, 2002 between THE HERITAGE AT MILLENNIUM PARK, LLC, a Delaware limited liability company, having an address at 445 West Erie Street, Suite 210, Chicago, Illinois 60610 ("Assignor" and the term Assignor shall include, wherever the context permits, its successor and permitted assigns), to 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, ("Lender" and the term Lender shall include, whenever the context permits, its successors and assigns as the holder of this Assignment and the Note and other Obligations secured hereby). 0020886511

1. Background. This Assignment is granted pursuant to the terms, provisions and conditions of the agreement captioned Construction and Interim Loan Agreement (the "Loan Agreement") dated as of even date herewith between Assignor and Lender. Capitalized terms used herein which are not otherwise specifically defined shall have the same meaning herein as in the Loan Agreement.

2. Grant of Assignment. Assignor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants, transfers and assigns to Lender, and grants to Lender a continuing pledge of and security interest in, the entire present and future interest of Assignor in, to and under: (a) all leases, subleases, rental agreements or other occupancy agreements ("Leases") now or hereafter in existence, with respect to all or any portion of the real property located, known and numbered as 51 East Randolph, 59 East Randolph, 139 Wabash, 137 North Wabash, 127 North Wabash, 123-125 North Wabash and 115 North Wabash, all situated in Chicago, Cook County, Illinois, and the buildings and other improvements located thereon, all as more particularly described in Exhibit A attached hereto and made a part hereof (collectively, the "Property"); (b) all rents, income and profits of any kind arising from the Leases and any renewals or extensions thereof; (c) all guaranties of and security for the Leases; and (d) all proceeds of the foregoing.

3. Obligations Secured. This Assignment is made for the purpose of securing the "Obligations" which term shall mean the following:

A. The payment of the principal sum, interest, charges and indebtedness evidenced by a promissory note (together with any extensions, renewals, replacements, allonges, modifications and amendments thereof, the "Note") dated as of even date herewith, in the original principal amount of TWENTY SEVEN MILLION AND 00/100 DOLLARS (\$27,000,000.00) given by Assignor to the order of Lender, pursuant to which Note the interest shall accrue and be compounded on and added to the original principal amount of \$27,000,000.00 such that, assuming no amount is prepaid, the amount of Fifty Four Million One Hundred Twenty Two Thousand Five Hundred Forty

Three and 05/100 Dollars (54,122,543.05) shall be due and payable on the scheduled maturity date thereof;

B. The payment, performance, discharge and satisfaction of each covenant, warranty, representation, undertaking and condition to be paid, performed, satisfied and complied with by Assignor under and pursuant to this Assignment, the Loan Agreement and all other Loan Documents;

C. The payment of all costs, expenses, legal fees and liabilities incurred by Lender in connection with the enforcement of any of Lender's rights or remedies under this Assignment and the other Loan Documents; and

D. The payment, performance, discharge and satisfaction of all other liabilities and obligations of Assignor to Lender, 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 Assignor 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.

4. Warranties and Representations. ASSIGNOR WARRANTS AND REPRESENTS that it is, and shall be, in the future the sole owner of the entire interests described in Section 2 above and that, except for any assignment delivered in connection with the Senior Loan, no rent reserved in the Leases has been or will be in the future otherwise assigned or anticipated, and that no rent for any period subsequent to the date of this Assignment will be collected more than one (1) month in advance except for security deposits and last month's rents taken in the usual course of business pursuant to Approved Leases.

ASSIGNOR FURTHER WARRANTS AND REPRESENTS that as of the date hereof: (a) the Leases identified on Exhibit B attached hereto and incorporated herein are in full force and effect and true and complete copies thereof together with all amendments and modifications have been previously delivered to Lender; (b) to Assignor's knowledge, no default exists on the part of any of the lessees or tenants or of Assignor as lessor in the performance of any of the terms, covenants, provisions or agreements in the Leases contained; (c) Assignor knows of no condition which with the giving of notice or the passage of time or both would constitute a default on the part of any of the lessees or Assignor under the Leases; and (d) no security deposit or advance rental payment has been made by any lessee under the Leases except as may be shown on Exhibit B, or as may be specifically designated in the copies of the Leases previously furnished to Lender.

5. Covenants. Except as may be otherwise provided for or permitted by the Loan Agreement, ASSIGNOR COVENANTS with Lender: (i) to observe and perform all the obligations imposed upon the lessor under every such Lease and not to do or permit to be

done anything to impair the security thereof; (ii) not to collect any of the rent, income and profits arising or accruing under the Leases or from the Property more than one (1) month in advance of the time when the same shall become due; (iii) other than in connection with the Senior Loan, not to execute any other assignment of lessor's interest in the Leases or assignment of rents arising or accruing from the Leases or from the Property; (iv) not to alter, modify or change the terms of the Leases, or cancel or terminate the same, or accept a surrender thereof without the prior written consent of Lender in each instance; (v) other than the Senior Loan, not to subordinate any Lease to any mortgage or other encumbrance, or permit, consent or agree to such subordination, without Lender's prior written consent in each instance; (vi) not to convey or transfer or suffer or permit a conveyance or transfer of the premises demised by any Lease or of any interest therein so as to affect directly or indirectly a merger of the estates and rights, or a termination or diminution of the obligations, of any lessee thereunder; (vii) not to alter, modify or change the terms of any guaranty of any Lease, or any security for any Lease, or cancel or terminate any such guaranty, or release or reduce any such security, without the prior written consent of Lender in each instance; (viii) not to consent to any assignment of or subleasing under any such Lease, unless in accordance with its terms, without the prior written consent of Lender in each instance; (ix) not to enter into any future Leases of all or any part of the Property without Lender's prior written consent in each instance; at Lender's request, furnish to Lender true and complete copies of all Leases and amendments thereto; and (x) at Lender's further request (and in confirmation of the assignment and transfer already made herein of future Leases) to assign and transfer to Lender, subject to the Senior Loan, any and all subsequent Leases upon all or any part of the Property and to execute and deliver at the request of Lender all such further assurances and assignments in the Property as Lender in good faith shall from time to time require. Lender's consent as to items (iv) and (viii) above shall not be unreasonably withheld.

6. Further Terms, Covenants and Conditions. This Assignment is made on the following terms, covenants and conditions:

6.1 Prior to Default. So long as no Event of Default exists: Assignor shall have the right and license to manage and operate the Property and to collect at the time of, but not more than one (1) month prior to, the date provided for the payment thereof, all rents, income and profits arising under the Leases or from the premises described therein and, subject to the provisions of the other Loan Documents, to use the same to pay Project Costs with the balance paid to Senior Lender, if the Senior Loan is outstanding, and otherwise to Lender to be applied to the Obligations. In no event shall the rents, income and profits be retained by Assignor.

6.2 After Default. At any time when an Event of Default exists, Lender, without in any way waiving such default, may at its option, without notice, and without regard to the adequacy of the security for the Obligations revoke the right and license granted above to Assignor and subject to the rights of the Senior Lender:

- (i) Authorize and direct the lessees named in any existing Leases or any other or future lessees or occupants of the Property, upon receipt from Lender of written notice to the effect that Lender is then the holder of the Note and the Mortgage and that an Event of Default exists thereunder, to pay over to Lender all rents, income and profits arising or accruing under the Leases or from the Property and to continue to do so until otherwise notified in writing by Lender. Assignor agrees that every lessee and occupant shall have the right to rely upon any such statement and request by Lender that lessee or occupant shall pay such rents to Lender without any obligation or right to inquire as to whether such Event of Default actually exists notwithstanding any notice from or claim of Assignor to the contrary and that Assignor shall have no right or claim against lessees or occupants for any such rent so paid by lessees or occupants to Lender after such notice to the lessee or occupant by Lender;
- (ii) Either in person or by agent, with or without bringing any action or proceedings, or by a receiver appointed by a court, take possession of the Property and have, hold, manage, lease and operate the same on such terms and for such period of time as Lender may deem proper and, either with or without taking possession of the Property in its own name, demand, sue for, or otherwise collect and receive, all rents, income and profits of the Property, including those past due and unpaid, with full power to make from time to time all improvements, alterations, renovations, repairs and replacements thereto or thereof as may seem proper to Lender; and
- (iii) Apply such rents, income and profits to the payment of:
- (a) all reasonable expenses of managing the Property including, without being limited thereto, the salaries, fees and wages of a managing agent or receiver and such other employees as Lender may deem necessary or desirable, and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water rents, sewer rents and other liens, and premiums for all insurance which Lender may deem necessary or desirable, the payment or refund of security deposits, or interest thereon, and the cost of all improvements, alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and
 - (b) all sums which Assignor is responsible to pay under the Mortgage, and the principal sum, interest and indebtedness secured hereby and by the Mortgage, and all other Obligations together with all reasonable costs and reasonable attorneys' fees,

in such order of priority as to any of the items mentioned in this clause (iii), as Lender in its sole discretion may determine, any statute, law, custom, or use to the contrary notwithstanding.

The exercise by Lender of the option granted it in this Section 6.2 and the collection of the rents, income and profits and the application thereof as herein provided shall not be considered a waiver by Lender of any Default under the other Loan Documents, or the Leases, or this Assignment.

6.3 Continuing Effect. Upon payment in full to Lender of the principal sum, interest, indebtedness and other Obligations secured hereby and by the other Loan Documents, this Assignment shall become and be void and of no effect, but the affidavit of any officer, agent, or attorney of Lender made in good faith showing any part of said principal, interest, indebtedness or other Obligations to remain unpaid shall be and constitute conclusive evidence of the validity, effectiveness and continuing force of this Assignment and any person may, and is hereby authorized to, rely thereon. The discharge of record of the Mortgage dated as of even date herewith given by Assignor to Lender shall constitute a discharge of this Assignment and a release of Lender's interest in the Leases and rents assigned hereby and the reassignment thereof (without recourse to Lender) to Assignor and all those claiming of record by, through or under Assignor.

6.4 No Waiver; Concurrent Rights. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the powers and rights granted it hereunder shall be deemed to be a waiver by Lender of its rights and remedies hereunder or under any one or more of the other Loan Documents, and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms of any of the other Loan Documents. The right of Lender to collect said principal sums, interest and indebtedness and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder.

6.5 No Liability. Lender shall not be liable for any loss sustained by Assignor resulting from Lender's failure to let the Property after default or from any other act or omission of Lender in managing the Property after default unless such loss is caused by the gross negligence or willful misconduct of Lender. Unless and until Lender takes title to and control of the Property, Lender shall not be obligated to perform or discharge nor does Lender hereby undertake to perform or discharge, any obligation, duty or liability under the Leases, under any ground lease, or under or by reason of this Assignment, and Assignor shall, and does hereby agree to, indemnify Lender for, and to defend and hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any ground lease. Should Lender incur any such liability under the Leases or under or by reason of this Assignment prior to taking title to and control of the Property, or in defense of any such claims or demands, the amount

thereof, including costs, expenses and reasonable attorneys' fees shall be secured hereby and by the Mortgage and by the other collateral for the Obligations and Assignor shall reimburse Lender therefor immediately upon demand and upon the failure of Assignor so to do, Lender may, at its option, declare all sums secured hereby immediately due and payable. It is further understood that this Assignment shall not operate to place responsibility for the control, care, management or repair of said Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any ground lease; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by tenants or any other parties, or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of said Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

6.6 Effect of Foreclosure Deed. Unless Lender otherwise elects in the instance of a Lease which is subordinate to the Mortgage and is thus terminated by the foreclosure, upon the issuance of any deed or deeds pursuant to a foreclosure of the Mortgage, all right, title and interest of Assignor in and to the Leases shall, by virtue of this instrument and such deed or deeds, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by Assignor. Assignor hereby irrevocably appoints Lender and its successors and assigns as its agent and attorney in fact to execute all instruments of assignment for further assurance in favor of such grantee or grantees in such deed or deeds as may be necessary or desirable for such purpose.

6.7 Upon Termination of Lease in Bankruptcy. In the event any lessee under any of the Leases should be the subject of any proceeding under the Federal Bankruptcy Code, as amended from time to time, or any other federal, state or local statute which provides for the possible termination or rejection of the Leases assigned hereby, Assignor covenants and agrees that, if any of the Leases is so terminated or rejected, no settlement for damages shall be made without the prior written consent of Lender (which consent shall not be unreasonably withheld), in each instance, and any check in payment of damages for termination or rejection of any such Lease will be made payable both to Assignor and Lender. Assignor hereby assigns any such payment to Lender and further covenants and agrees that upon the request of Lender Assignor will duly endorse to the order of Lender any such check, the proceeds of which will be applied to the indebtedness secured by this Assignment. Assignor hereby irrevocably appoints Lender and its successors and assigns as its attorney-in-fact to so endorse any such checks if Assignor does not do so.

6.8 Rights Contained in Mortgage. This Assignment is intended to be supplementary to, and not in substitution for, or in derogation of, any assignment of rents to secure the Obligations contained in the Mortgage or in any other Loan Document. In the event of any conflict between this Assignment and any of the other Loan Documents, Lender shall have the right from time to time to determine which provisions shall govern.

6.9 Notices. Any notice or communications in connection herewith shall be sufficiently given only if in writing and given in the manner provided for in the Loan Agreement and shall be effective as provided in the Loan Agreement.

6.10 Grace Periods and Notice. The grace period and notice provisions set forth in Section 11 of the Loan Agreement shall be applicable to any Default under this Assignment.

6.11 Powers of Attorney. Any power of attorney granted by Assignor under this Assignment is coupled with an interest and irrevocable.

6.12 Governing Law. This Assignment, 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 are on following pages]

County of Cook County Clerk's Office

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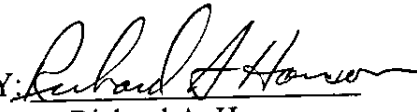
IN WITNESS WHEREOF, the Assignor has caused this Assignment to be duly executed and delivered at Boston, Massachusetts as a sealed instrument as of the 1st day of July, 2002.

ASSIGNOR:

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

(notary block on following page)

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STATE OF ILLINOIS

, ss.

July 30, 2002

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

Christine A. Kohn
_____, Notary Public/
My Commission Expires: 7/28/2003



Property of Cook County Clerk's Office

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EXHIBIT A ANNEXED TO AND MADE A PART OF THE
COLLATERAL ASSIGNMENT OF LEASES AND RENTS
GIVEN BY THE HERITAGE AT MILLENNIUM PARK, LLC

Assignor:

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

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LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY 0020886511

The land and other improvements now or hereafter thereon situated, in Chicago, Cook County, Illinois and more particularly described as follows

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.

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.

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EXHIBIT B ANNEXED TO
COLLATERAL ASSIGNMENT OF LEASES AND RENTS
GIVEN BY THE HERITAGE AT MILLENNIUM PARK, LLC

LEASES PRESENTLY IN EFFECT

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EXHIBIT B EXISTING LEASES

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1. Lease dated December 14, 2001, between The Heritage at Millennium Park, LLC, as Landlord, and McDonald's Corporation, as Tenant.
2. Lease dated Mary 31, 2001, between The Heritage at Millennium Park, LLC, as Landlord, and Archibald Candy Corporation, as Tenant.
3. Lease dated May 28, 1998, between Eddie Bauer, Inc., predecessor in interest to The Heritage at Millennium Park, LLC, as Landlord and SprintCom, Inc. as Tenant, as modified by the following documents: that certain notice of termination from Landlord to Tenant dated September 19, 2001, that certain letter from Landlord to Tenant dated February 13, 2002, that certain letter agreement between Landlord and Tenant dated April 26, 2002, that certain letter from counsel to Tenant to counsel to Landlord dated May 2, 2002, and that certain letter agreement between Landlord and Tenant dated May 23, 2002.

PROPERTY OF COOK COUNTY CLERK'S OFFICE