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SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT dated as of July 1, 2002, by and between MMBC DEBT HOLDINGS I, LLC, a Delaware limited liability company (the "Mezzanine Lender"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association (the "Senior Loan Agent"), on its own behalf and as agent for the "Senior Lenders" (as defined herein);

WITNESSETH:

WHEREAS, The Heritage at Millennium Park, LLC, a Delaware limited liability company (the "Mortgagor"), is the owner of the real estate described in Exhibit A attached to this Agreement; and

WHEREAS, the Senior Lenders have agreed to extend the "Senior Loan" (as defined herein) to the Mortgagor in order to provide financing to the Mortgagor for the development of the said real estate, which Senior Loan is secured by, among other things, the Senior Mortgage and the Senior Assignment of Rents (each as defined herein) encumbering the Premises; and

Permanent Tax Index Numbers and Address:  
See Exhibit A

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

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

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WHEREAS, the Mezzanine Lender has agreed to extend the "Mezzanine Loan" (as defined herein) to the Mortgagor in order to provide financing to the Mortgagor for the development of the Premises, which Mezzanine Loan is secured by, among other things, the Mezzanine Mortgage and the Mezzanine Assignment of Rents (each as defined herein) encumbering the Premises; and

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WHEREAS, the Mezzanine Lender and the Senior Loan Agent are entering into this Agreement to document certain agreements concerning the Senior Loan, the Mezzanine Loan, the priority of their respective Liens (as defined herein) and certain other rights, priorities and interests between them;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Recitals. The foregoing recitals are hereby incorporated into and made a part of this Agreement.

Section 2. Defined Terms. For purposes of this Agreement, the following terms shall have the following respective meanings:

"Agreement" means this Subordination and Intercreditor Agreement by and between the Mezzanine Lender and the Senior Loan Agent, on its own behalf and as agent for the Senior Lenders, and joined in by the Mortgagor and the Initial Common Guarantors.

"Bankruptcy Code" means Title 11 of the United States Code.

"Collateral" means (i) with respect to the Senior Lenders and the Senior Loan Documents, the property encumbered by the Senior Loan Documents, and (ii) with respect to the Mezzanine Lender and the Mezzanine Loan Documents, the property encumbered by the Mezzanine Loan Documents.

"Common Guarantor" means any party that has executed a guaranty in connection with both the Senior Loan and the Mezzanine Loan, including the Initial Common Guarantors.

"Default" means, when used in reference to the Senior Loan or any one or more of the Senior Loan Documents, a "Default" as defined in the Senior Loan Documents, and means, when used in reference to the Mezzanine Loan or any one or more of the Mezzanine Loan Documents, a "Default" as defined in the Mezzanine Loan Documents.

"Earnest Money Letters of Credit" means letters of credit received by the Mortgagor as earnest money under contracts for the sale of Units.

"Event of Default" means, when used in reference to the Senior Loan or any one or more of the Senior Loan Documents, an "Event of Default" as defined in the Senior Loan Documents, and means, when used in reference to the Mezzanine Loan or any one or more of the Mezzanine Loan Documents, an "Event of Default" as defined in the Mezzanine Loan Documents.

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

"Lien" means any mortgage, deed of trust, pledge, security interest, lien and encumbrance of every sort whatsoever, whether created by contract, statute or operation of law.

"Member Guarantor" means The Heritage at Millennium Park Mezzanine LLC, a Delaware limited liability company.

"Member Guarantor Security Agreement" means the Ownership Interests Pledge and Security Agreement dated as of July 1, 2002, from the Member Guarantor to the Mezzanine Lender, creating a security interest in the Member Guarantor's 100% membership interest in the Mortgagor.

"Mezzanine Assignment of Rents" means the Collateral Assignment of Leases and Rents dated as of July 1, 2002, by the Mortgagor in favor of the Mezzanine Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on 8-13, 2002, as Document No. 0020886692.

"Mezzanine Claims" means all rights, remedies, demands, causes of action and claims of every type and description at any time held or asserted by, or arising in favor of, the Mezzanine Lender under the Mezzanine Loan Documents or applicable law or secured by the Mezzanine Liens.

"Mezzanine Lender" means MMFC Debt Holdings I, LLC, a Delaware limited liability company.

"Mezzanine Liens" means the Liens granted to or for the benefit of the Mezzanine Lender in the Collateral described in the Mezzanine Loan Documents.

"Mezzanine Loan" means a loan by the Mezzanine Lender to the Mortgagor pursuant to the Mezzanine Loan Documents in the original principal amount of \$27,000,000, and future modifications, amendments, increases, renewals, extensions and refinancings of such loan that are accomplished in accordance with the provisions of this Agreement.

"Mezzanine Loan Documents" means the documents listed on Exhibit C to this Agreement and all other documents at any time evidencing or securing the Mezzanine Loan, and all future modifications, amendments, increases, renewals, extensions and refinancings of any of the foregoing that are accomplished in accordance with the provisions of this Agreement.

"Mezzanine Mortgage" means the Construction Mortgage and Security Agreement dated as of July 1, 2002, by the Mortgagor in favor of the Mezzanine Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on 8-13, 2002, as Document No. 0020886510.

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

"Premises" means the real estate described in Exhibit A attached hereto and all improvements now and hereafter located thereon.

"Proceeding" means any proceeding by or against the Mortgagor or any Common Guarantor under the Bankruptcy Code or under any other federal or state statute or rule of law relating to bankruptcy, insolvency, reorganization, readjustment or arrangement of debt, suspension of payments, receivership, liquidation or other matters relating to rights of debtors and creditors.

"Protective Advances" means, with respect to the Senior Lenders or the Mezzanine Lender, as the case may be, all sums expended as determined by such Lenders to be necessary or appropriate (i) to enforce the Senior Claims or the Mezzanine Claims, respectively, (ii) to foreclose or realize on the Senior Liens or the Mezzanine Liens, respectively, or to exercise any other remedy available to the Senior Lenders or the Mezzanine Lender, respectively, under the Senior Loan Documents or the Mezzanine Loan Documents, respectively, (iii) to protect the priority, validity or enforceability of the Senior Liens or the Mezzanine Liens, respectively; (iv) to prevent the value of any Collateral for the Senior Loan or the Mezzanine Loan, respectively, from being diminished or impaired, (v) to protect the Premises from being damaged, impaired, mismanaged or taken or to prevent the value of the Premises from being diminished or impaired; or (vi) to complete the construction of improvements on the Premises.

"Senior Assignment of Rents" means the Construction Loan Assignment of Rents and Leases dated as of July 1, 2002, from the Mortgagor to the Senior Loan Agent, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on 8-13-02, 2002, as Document No. 0020886508.

"Senior Claims" means all rights, remedies, demands, causes of action and claims of every type and description at any time held or asserted by, or arising in favor of, the Senior Lenders under the Senior Loan Documents or applicable law or secured by the Senior Liens.

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

"Senior Lenders" means the Senior Lenders named in the Senior Loan Documents.

"Senior Liens" means the Liens granted to or for the benefit of the Senior Lenders in the Collateral described in the Senior Loan Documents.

"Senior Loan" means a revolving loan by the Senior Lenders to the Mortgagor pursuant to the Senior Loan Documents in the original principal amount of \$190,000,000 and all reborrowings of such loan under the terms of the Senior Loan Documents, and all future modifications, amendments, increases, renewals, extensions and refinancings of such loan that are accomplished in accordance with the provisions of this Agreement.

"Senior Loan Agent" means LaSalle Bank National Association, a national banking association.

"Senior Loan Documents" means the documents listed on Exhibit B to this Agreement and all other documents at any time evidencing or securing the Senior Loan, and all

future modifications, amendments, increases, renewals, extensions and refinancings of any of the foregoing that are accomplished in accordance with the provisions of this Agreement.

"Senior Loan Satisfaction" means that, and occurs when, both of the following conditions have been satisfied:

- (i) The Senior Lenders have no obligation under the Senior Loan Documents to disburse any additional proceeds of the Senior Loan; and
- (ii) All of the principal of and interest on the Senior Loan have been indefeasibly paid in full and all other obligations of the Mortgagor and the other parties to the Senior Loan Documents to the Senior Lenders under the Senior Loan Documents have been indefeasibly paid in full.

"Senior Mortgage" means the Construction Loan Mortgage and Security Agreement dated as of July 1, 2002, from the Mortgagor to the Senior Loan Agent, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on 8-13-, 2002, as Document No. 0020886694

"Units" means Units as defined in the Senior Loan Documents.

**Section 3. Consent to Mezzanine Liens.** Subject to the provisions of this Agreement, but notwithstanding anything to the contrary in any Senior Loan Document, the Senior Lenders consent to the Mezzanine Liens and the Mezzanine Loan Documents; provided, however, that nothing contained in this Agreement shall be construed to constitute consent by the Senior Lenders to any Lien in favor of the Mezzanine Lender in the Letter of Credit Proceeds Cash Collateral Account provided for in the Senior Loan Documents. Subject to Section 4 and the other provisions of this Agreement, any possession by the Senior Loan Agent of the Release Payment Cash Collateral Account (as defined in the Senior Loan Documents), amounts held in any pledged account in which earnest money deposits under contracts for the sale of Units are held, and any Earnest Money Letters of Credit shall be on behalf of and for the benefit of the Senior Lenders, and on behalf of and for the benefit of the Mezzanine Lender as collateral agent for the Mezzanine Lender, in order to effect the perfection of the Senior Lenders' first priority security interest in all such amounts and any Earnest Money Letters of Credit and the proceeds of drawings thereon, and the Mezzanine Lender's second priority security interest in all such amounts and any Earnest Money Letters of Credit and the proceeds of drawings thereon. Upon the occurrence of Senior Loan Satisfaction, the Senior Loan Agent shall promptly deliver to the Mezzanine Lender (i) all amounts then held in the aforesaid accounts held by the Senior Loan Agent, (ii) all Earnest Money Letters of Credit then held by the Senior Loan Agent, and (iii) in the case of any such Earnest Money Letter of Credit the proceeds of which have been assigned by the Mortgagor to the Senior Loan Agent, an executed release by the Senior Loan Agent in the form provided for in such assignment by the Mortgagor, if any, and otherwise in a form acceptable to the Senior Loan Agent. The Senior Loan Agent shall in no event have any fiduciary duties to the Mezzanine Lender with respect to such accounts or the Earnest Money Letters of Credit or the possession thereof, and, except as expressly provided above, shall have no liability or responsibility to the Mezzanine Lender with respect to such accounts or the Earnest Money Letters of Credit or the possession thereof. After delivery of such Earnest Money Letters of Credit to the Mezzanine Lender, the Senior Loan Agent shall, at the cost and expense of the Mezzanine Lender, provide reasonable cooperation to the Mezzanine Lender in connection with any assignment to it of the right to receive the proceeds of drawings on the Earnest Money Letters of Credit. If after Senior Loan

Satisfaction has occurred any proceeds of drawings on any Earnest Money Letters of Credit are paid to the Senior Loan Agent by the issuer of such a letter of credit, the Senior Loan Agent shall promptly remit same to the Mezzanine Lender.

Section 4. Subordination of Mezzanine Liens in Senior Loan Collateral;

Forbearance by Mezzanine Lender. (a) The Senior Lenders shall have a first and prior Lien in the Collateral described in the Senior Loan Documents and all proceeds thereof. In the case of Collateral that secures both the Senior Loan and the Mezzanine Loan pursuant to the Senior Loan Documents and the Mezzanine Loan Documents, the Mezzanine Liens in such Collateral are and shall be subject and subordinate in all respects to the Senior Liens in such Collateral, and the Mezzanine Lender shall never take any action to subordinate such Senior Liens to such Mezzanine Liens.

(b) The provisions of this paragraph are without limitation on the generality of any other provisions of this Agreement. The Mezzanine Mortgage, the Mezzanine Assignment of Rents and the other Mezzanine Loan Documents encumbering the Premises are hereby made and shall hereafter be subject and subordinate in all respects to the Senior Mortgage, the Senior Assignment of Rents and the other Senior Loan Documents encumbering the Premises. All rights of the Mezzanine Lender under the Mezzanine Mortgage, the Mezzanine Assignment of Rents and the other Mezzanine Loan Documents in and to the Premises and the proceeds thereof, including, but not limited to, rents, issues and profits, proceeds of sales of the Premises or any portion thereof, including Units, and proceeds of insurance and condemnation awards and settlements in lieu thereof, are and shall be subject and subordinate to (i) the rights of the Senior Lender in and to the Premises and such proceeds thereof on the terms set forth in the Senior Mortgage, the Senior Assignment of Rents and the other Senior Loan Documents; and (ii) subject to the terms of this Agreement, any and all advances made and other expenses incurred under, and as permitted in, the Senior Mortgage, the Senior Assignment of Rents and the other Senior Loan Documents. Until such time as Senior Loan Satisfaction has occurred, as between the Senior Lenders and the Mezzanine Lender, the Senior Lenders shall be entitled to receive all such proceeds, and any such proceeds received by the Mezzanine Lender shall be received and held in trust for the benefit of the Senior Lenders, and shall be paid over or delivered to the Senior Loan Agent, or to its representative, in precisely the form received, except for the endorsement or assignment of the Mezzanine Lender without representation or recourse whenever necessary. In the event of any failure by the Mezzanine Lender to make any such endorsement or assignment within five days after written request by the Senior Loan Agent, the Senior Loan Agent is hereby irrevocably authorized to make same.

(c) The provisions of this paragraph are without limitation on the generality of any other provisions of this Agreement. The interest of the Mezzanine Lender in all performance and labor and material payment bonds furnished to the Mortgagor by any contractor or subcontractor, including, without limitation, the Mezzanine Lender's interest under the dual obligee rider on any such bond, is hereby made and shall hereafter be subject and subordinate in all respects to the interest of the Senior Lenders in such bonds, including, without limitation, the interest of the Senior Lenders under the dual obligee rider on any such bond. Until such time as Senior Loan Satisfaction has occurred, as between the Senior Lenders and the Mezzanine Lender, the Senior Lenders shall be entitled to receive all amounts paid under such bonds, and any such amounts received by the Mezzanine Lender shall be received and held in trust for the benefit of the Senior Lenders, and shall be paid over or delivered to the Senior Loan Agent, or to its representative, in precisely the form received, except for the endorsement or assignment of the Mezzanine Lender without representation or recourse whenever necessary. After Senior Loan Satisfaction has occurred, as between the Senior

Lenders and the Mezzanine Lender, the Mezzanine Lender shall be entitled to receive all amounts paid under such bonds, and any such amounts received by the Senior Lenders or the Senior Loan Agent shall be received and held in trust for the benefit of the Mezzanine Lender, and shall be paid over or delivered to the Mezzanine Lender, or to its representative, in precisely the form received, except for the endorsement or assignment of the Senior Lenders or the Senior Loan Agent without representation or recourse whenever necessary. In the event of any failure by the Mezzanine Lender or the Senior Lenders or Senior Loan Agent to make any such endorsement or assignment within five days after written request, the Mezzanine Lender or the Senior Loan Agent, as the case may be, is hereby irrevocably authorized to make same. Upon the occurrence of Senior Loan Satisfaction, the Senior Loan Agent shall promptly deliver to the Mezzanine Lender all performance and labor and material payment bonds in the possession of the Senior Loan Agent.

(d) Until such time as Senior Loan Satisfaction has occurred, the Mezzanine Lender shall not in any way, manner or respect seek to foreclose or otherwise enforce or realize on the Mezzanine Lien against any of the Collateral described in the Senior Loan Documents, including, without limitation, any foreclosure of the Mezzanine Mortgage against the Premises.

Section 5. Subordination of Mezzanine Loan. (a) Subject to the provisions of paragraph (b) of this Section, the Mezzanine Loan, the Mezzanine Loan Documents executed by the Mortgagor or any Common Guarantor, or both, and the Mezzanine Claims against the Mortgagor and any Common Guarantors, and all of the rights and powers of the Mezzanine Lender thereunder, are and shall be expressly subject and subordinate in all respects to the Senior Loan, the Senior Loan Documents executed by the Mortgagor or any Common Guarantor, or both, and the Senior Claims against the Mortgagor and any Common Guarantors. Subject to the provisions of paragraph (b) of this Section, unless and until Senior Loan Satisfaction has occurred, the Mezzanine Lender shall not take any action to collect, and shall not accept, any payments from the Mortgagor or any Common Guarantor on account of the Mezzanine Loan or the Mezzanine Claims, including, without limitation, any Collateral or proceeds of Collateral provided to the Mezzanine Lender by the Mortgagor or any Common Guarantor, and the Mortgagor and any Common Guarantor shall not make any payments to the Mezzanine Lender on account of the Mezzanine Loan or the Mezzanine Claims. Any payments received by the Mezzanine Lender from the Mortgagor or any Common Guarantor in violation of the foregoing provisions of this Section shall be received and held in trust for the benefit of the Senior Lenders, and shall be paid over or delivered to the Senior Loan Agent, or to its representative, in precisely the form received, except for the endorsement or assignment of the Mezzanine Lender without representation or recourse whenever necessary. In the event of any failure by the Mezzanine Lender to make any such endorsement or assignment within five days after written request by the Senior Loan Agent, the Senior Loan Agent is hereby irrevocably authorized to make same.

(b) Notwithstanding the provisions of paragraph (a) of this Section, the Mezzanine Lender shall have the right to accept, and the Mortgagor and the Common Guarantors shall have the right to pay to the Mezzanine Lender, a service fee with respect to the Mezzanine Loan in an amount not exceeding \$2,187.50 per calendar quarter.

Section 6. Default on Mezzanine Loan. (a) The Mezzanine Lender understands that, subject to the provisions of this Section 6, an Event of Default under the Mezzanine Loan or the Mezzanine Loan Documents will constitute an Event of Default under the Senior Loan Documents.

(b) Notwithstanding anything to the contrary contained in the Senior Loan Documents, the occurrence of a Default under the Mezzanine Loan Documents shall not constitute an Event of Default under the Senior Loan Documents unless and until all applicable notice and cure periods under the Mezzanine Loan Documents have expired and such Default has become an Event of Default under the Mezzanine Loan Documents.

(c) Notwithstanding anything to the contrary contained in the Senior Loan Documents, the occurrence of an Event of Default under the Mezzanine Loan Documents shall not constitute an Event of Default under the Senior Loan Documents if such Event of Default under the Mezzanine Loan Documents is waived by Mezzanine Lender in writing and a copy of such waiver has been received by the Senior Loan Agent prior to a declaration by the Senior Lenders of an Event of Default under the Senior Loan Documents.

(d) Notwithstanding anything to the contrary contained in the Senior Loan Documents or herein, the occurrence of an Event of Default under the Mezzanine Loan Documents shall not constitute an Event of Default under the Senior Loan Documents, provided that (i) written notice of such Event of Default has been given to the Senior Loan Agent by the Mezzanine Lender, (ii) the Mezzanine Lender is diligently pursuing, but has not completed, the exercise of remedies under the Member Guarantor Security Agreement against the Member Guarantor's 100% membership interest in the Mortgagor, and (iii) no other Event of Default under the Senior Loan Documents has occurred and is continuing. Nothing contained in this Section shall be construed to require the Senior Lenders to forbear, during the period that the Mezzanine Lender is exercising remedies under the Member Guarantor Security Agreement, from exercising remedies under the Senior Loan Documents based on any Event of Default under the Senior Loan Documents (excluding an Event of Default under the Senior Loan Documents resulting solely from an Event of Default under the Mezzanine Loan Documents).

(e) If the Mezzanine Lender or its nominee acquires all or any portion of the Member Guarantor's 100% membership interest in the Mortgagor, whether by exercise of remedies under the Member Guarantor Security Agreement or by a transfer of such membership interest in lieu of the exercise of remedies, then notwithstanding anything to the contrary contained in the Senior Loan Documents, such acquisition of such membership interest shall not constitute an Event of Default under the Senior Loan Documents, provided that (i) at the time Mezzanine Lender acquires such membership interest, no other Default or Event of Default exists under the Senior Loan Documents and the Senior Loan is in balance in accordance with the terms of the Senior Loan Documents, and (ii) the Mezzanine Lender has released all Mezzanine Liens against all of the Collateral for the Senior Loan, including, without limitation, the Mezzanine Mortgage and the Mezzanine Assignment of Rents, as required by the provisions of paragraph (f) of this Section. Nothing contained in this Section shall be construed to require the Senior Lenders to forbear after the Mezzanine Lender acquires such membership interest of the Member Guarantor from exercising remedies under the Senior Loan Documents based on any Event of Default under the Senior Loan Documents (excluding an Event of Default under the Senior Loan Documents resulting solely from an Event of Default under the Mezzanine Loan Documents).

(f) If the Mezzanine Lender or its nominee acquires all or any portion of the Member Guarantor's 100% membership interest in the Mortgagor, whether by exercise of remedies under the Member Guarantor Security Agreement or by a transfer of such membership interest in lieu of the exercise of remedies, the Mezzanine Liens in the Collateral described in the Senior Loan Documents, including, without limitation, the Mezzanine Mortgage and the Mezzanine Assignment of Rents encumbering the Premises, shall be automatically



extinguished and be null and void and of no further force and effect, and the Mezzanine Lender shall promptly execute and record such releases or other documents as shall be necessary to release such Mezzanine Liens of record. If the Mezzanine Lender has executed and recorded such releases and other documents, the Mezzanine Lender shall have the right, on the terms, subject to the limitations and with the effect provided for in paragraph (g) of this Section, (i) to pay in full all principal, interest and other amounts due to the Senior Lenders under the Senior Loan Documents, or (ii) to purchase the rights of the Senior Lenders under the Senior Loan Documents, except the Senior Indemnity Agreement, without recourse, by payment in full of all principal, interest and other amounts due to the Senior Lenders under the Senior Loan Documents.

(g) In order to exercise a right granted to the Mezzanine Lender to pay or purchase the Senior Loan, the Mezzanine Lender must give written notice of its election to exercise such right to the Senior Loan Agent, and such notice must be received by the Senior Loan Agent (i) prior to Senior Loan Satisfaction, (ii) not less than two days prior to the date scheduled for any foreclosure or other judicial sale of the Premises, and (iii) prior to the time that the Senior Lenders have entered into any contract to accept a deed in lieu of foreclosure or other transfer of the Premises. If the Mezzanine Lender gives such a notice on a timely basis, the Mezzanine Lender must complete such payment or purchase of the Senior Loan not later than the earlier of the date one day prior to the date scheduled for any foreclosure or other judicial sale of the Premises, or the date 15 days after the Senior Loan Agent's receipt of such notice, and if such payment or purchase is not completed on or before such date, the Mezzanine Lender's exercise of such right of payment or purchase shall be of no further force or effect. If the Mezzanine Lender completes such payment to the Senior Lenders on a timely basis, the Mezzanine Lender shall be subrogated to the rights of the Senior Lenders under all of the Senior Loan Documents except the Senior Indemnity Agreement. If the Mezzanine Lender completes such purchase of the rights of the Senior Lenders under the Senior Loan Documents on a timely basis, the Senior Lenders shall assign all of the Senior Loan Documents except the Senior Indemnity Agreement to the Mezzanine Lender, without recourse, and the Mezzanine Lender shall indemnify the Senior Lenders and hold them harmless from any liability to the Mortgagor or any guarantor thereunder arising from and after the date of such assignment. The right of the Mezzanine Lender to pay or purchase the Senior Loan as provided herein may, at the Mezzanine Lender's election, be exercised by a nominee of the Mezzanine Lender, except that the indemnification provided for above shall be by both such nominee and the Mezzanine Lender.

Section 7. Distributions of Assets. (a) Upon any distribution of the assets of the Mortgagor or any Common Guarantor in connection with any dissolution, winding up, liquidation or reorganization of the Mortgagor or such Common Guarantor, whether in a Proceeding, upon an assignment for the benefit of creditors or otherwise, the Senior Lenders shall first be entitled to receive payment in full of all the Senior Claims before the Mezzanine Lender shall be entitled to receive any payment in respect of the Mezzanine Claims. Upon any such dissolution, winding up, liquidation or reorganization, any payment or distribution of assets of the Mortgagor or any Common Guarantor of any kind or character, whether in cash, property or securities, to which the Senior Lenders are entitled shall be made directly to the Senior Loan Agent by the party making such payment or distribution. If the aggregate amount of such payments or distributions on the Senior Claims is insufficient to pay the Senior Claims in full, then the Mezzanine Lender hereby authorizes the party making such payments or distributions to remit promptly to the Senior Loan Agent the lesser of (i) the proceeds the Mezzanine Lender is entitled to receive by reason of any payment or distribution on the Mezzanine Claims, or (ii) the difference between the aggregate amount of the Senior Claims and the proceeds the Senior

Lenders are entitled to receive by reason of any payment or distribution on the Senior Claims. In furtherance of the foregoing, but not by way of limitation thereof, if the Mortgagor or any Common Guarantor is subject to any Proceeding, with the result that the Mortgagor or such Common Guarantor is excused from the obligation to pay all or part of the interest otherwise payable in respect of the Senior Claims during the period subsequent to the commencement of such Proceeding, such interest shall be payable out of payments or distributions in respect of the Mezzanine Claims. Except to the extent otherwise provided by applicable law, nothing provided for in this paragraph shall be deemed to result in a satisfaction, extinguishment or reduction of the Mezzanine Loan, either in whole or in part.

(b) If any payment or distribution of assets of the Mortgagor or any Common Guarantor of any kind or character, whether in cash, property or securities, and whether or not pursuant to any Proceeding, not permitted by or in accordance with the provisions of this Agreement shall be received by the Mezzanine Lender in connection with the Mezzanine Claims, such payment or distribution to the Mezzanine Lender shall be received and held in trust for the benefit of the Senior Lenders, and shall be paid over or delivered to the Senior Loan Agent, in precisely the form received, except for the endorsement or assignment of the Mezzanine Lender without representation or recourse whenever necessary. In the event of any failure by the Mezzanine Lender to make any such endorsement or assignment within five days after written request by the Senior Loan Agent, the Senior Loan Agent is hereby irrevocably authorized to make same.

Section 8. Concerning Proceedings. (a) The Mezzanine Lender shall not contest the validity or enforceability of the Senior Loan, the Senior Claims or the Senior Liens, or any payment or collateral realization received by the Senior Lenders not in violation of this Agreement, in any Proceeding. Subject to the subordination and other limitations and provisions of this Agreement, neither the Senior Loan Agent nor the Senior Lenders shall contest the validity or enforceability of the Mezzanine Loan, the Mezzanine Claims or the Mezzanine Liens, or any payment or collateral realization received by the Mezzanine Lender not in violation of this Agreement, in any Proceeding. The subordination provided for in this Agreement shall apply notwithstanding the fact that the Senior Loan or any claim for the Senior Loan may be subordinated, avoided or disallowed, in whole or in part, in any Proceeding. In any Proceeding, as between the Senior Lenders and the Mezzanine Lender, the Senior Claims shall include all interest accrued on the Senior Loan, in accordance with and at the rates specified in the Senior Loan Documents, both for periods before and for periods after the commencement of such Proceeding, even if the claim for such interest is not allowed in such Proceeding pursuant to applicable law.

(b) Provided that the Senior Lenders are in compliance with the provisions of the second sentence of paragraph (a) of this Section, in any Proceeding, the Mezzanine Lender (i) shall not propose or vote to accept any plan of reorganization, or seek the appointment of a trustee, without the written consent of the Senior Lenders, unless the Senior Lenders propose or vote to accept such plan or seek the appointment of such trustee, which consent may be given or withheld by the Senior Lenders in their sole and absolute discretion, (ii) shall vote to accept any plan of reorganization, or support a request for the appointment of a trustee, or support or oppose a motion for a cash collateral order, if requested in writing to do so by the Senior Lenders, and (iii) shall not object to any motion or petition by the Senior Lenders for relief from the automatic stay.

(c) The Mezzanine Lender shall not commence, or join with any other creditor in commencing, any Proceeding with respect to the Mortgagor or any Common Guarantor without

first obtaining the prior written consent of the Senior Lenders, which consent may be given or withheld by the Senior Lenders in their sole and absolute discretion.

Section 9. Deed in Lieu of Foreclosure. The Mezzanine Lender hereby agrees that the Mezzanine Mortgage, the Mezzanine Assignment of Rents, the other Mezzanine Loan Documents and all of the Mezzanine Liens, shall, without further action of the parties hereto, be automatically extinguished and be null and void and of no further force and effect as encumbrances on the Premises and on any other Collateral that secures both the Senior Loan and the Mezzanine Loan, upon any conveyance or assignment of the Premises or such other Collateral to the Senior Lenders or their designee in lieu of foreclosure, or otherwise. In the event of such a conveyance or assignment, the Mezzanine Lender, upon request by the Senior Lenders, shall promptly execute a release of the Mezzanine Mortgage, the Mezzanine Assignment of Rents, the other Mezzanine Loan Documents and all of the Mezzanine Liens as encumbrances on the Premises or such other Collateral, in form and substance acceptable to the Senior Lenders, but the failure of the Mezzanine Lender to do so shall not render ineffective the automatic extinguishment as an encumbrance of the Mezzanine Mortgage, the Mezzanine Assignment of Rents, the other Mezzanine Loan Documents and the Mezzanine Liens provided for in this Section. Nothing contained in this Section shall be construed to permit the Senior Lenders to accept such a conveyance or assignment without complying with the requirements of Section 12 of this Agreement. Nothing contained in this Agreement shall be construed to extinguish or otherwise affect the obligations of the Mortgagor or any guarantor of the Mezzanine Loan to pay and perform its or his obligations under the Mezzanine Loan Documents following the acceptance by the Senior Lenders of such a conveyance or assignment.

Section 10. Return of Payments. If all or any part of a payment applied by the Senior Lenders to the Senior Claims is or must be returned by the Senior Lenders, or is recovered from the Senior Lenders, for any reason, including, without limitation, by order of any bankruptcy court, this Agreement shall apply as if the prior application had not been made.

Section 11. Other Liens; Waiver of Rights of Subrogation. The Mezzanine Lender shall not acquire by contract, subrogation or otherwise, any lien upon or other estate, right or interest in any of the Collateral that secures the Senior Loan which is or may be prior in right to the Senior Liens. No payment or distribution made by or on behalf of the Mezzanine Lender to the Senior Lenders shall entitle the Mezzanine Lender to any right of subrogation until Senior Loan Satisfaction has occurred.

Section 12. Exercise of Certain Remedies by Senior Lenders. (a) If an Event of Default occurs under any Senior Loan Document, then except as provided below in this paragraph, before filing an action to foreclose the Senior Mortgage or for the appointment of a receiver or mortgagee in possession, or accepting a deed in lieu of foreclosure or other transfer of the Premises or other Collateral that secures both the Senior Loan and the Mezzanine Loan, or exercising any other remedy against the Mortgagor or any Common Guarantor, the Senior Loan Agent shall give the Mezzanine Lender written notice of such Event of Default, and shall permit the Mezzanine Lender to cure such Event of Default within 10 days after such notice, in the case of a monetary Event of Default, and within 60 days after such notice in the case of a non-monetary Event of Default; provided, however, that the foregoing provisions of this sentence shall apply only one time with respect to any particular Event of Default under any of the Senior Loan Documents (but shall apply again with respect to any subsequent Event of Default under the Senior Loan Documents, even if it is of the same nature as a prior Event of Default under the Senior Loan Documents). Notwithstanding the foregoing provisions of this paragraph, the Senior Lenders may at any time make Protective Advances or, if a Proceeding

has been commenced by or against the Mortgagor or any Common Guarantor, exercise any right of setoff against deposits of the Mortgagor or such Common Guarantor, as the case may be, held by any of the Senior Lenders.

(b) At any time after receiving a notice under paragraph (a) of this Section of an Event of Default under the Senior Loan Documents, the Mezzanine Lender shall have the right, on the terms, subject to the limitations and with the effect provided for in Section 6(g) of this Agreement, (i) to pay in full all principal, interest and other amounts due to the Senior Lenders under the Senior Loan Documents, or (ii) to purchase the rights of the Senior Lenders under the Senior Loan Documents, except the Senior Indemnity Agreement, without recourse, by payment in full of all principal, interest and other amounts due to the Senior Lenders under the Senior Loan Documents.

(c) The provisions of this Section shall no longer apply if the Mezzanine Lender or its nominee acquires all or any portion of the Member Guarantor's 100% membership interest in the Mortgagor, whether by exercise of remedies under the Member Guarantor Security Agreement or by a transfer of such membership interest in lieu of the exercise of remedies.

Section 13. No Partnership; Responsibilities. The execution of this Agreement shall not create or be construed as creating a partnership, joint venture or other joint enterprise between the Senior Lenders and the Mezzanine Lender. Except as expressly provided in this Agreement, nothing in this Agreement shall be construed to constitute the Senior Lenders or the Mezzanine Lender as trustee or other fiduciary for the other, or to impose on either of them any duty, responsibility or obligation other than those expressly provided for herein. The Senior Lenders and the Mezzanine Lender have, independently and without reliance on the other and based on such documents and information as they have deemed appropriate, made their own credit analysis of the Mortgagor and any Common Guarantors and shall, independently and without reliance upon the other, and based on such documents and information as they shall deem appropriate at the time, continue to make their own independent analysis and decisions in taking or not taking action under this Agreement or the Senior Loan Documents or the Mezzanine Loan Documents, respectively. Among other things, the Senior Lenders and the Mezzanine Lender shall obtain their own inspections, appraisals and other reports relating to the Mortgagor, any Common Guarantors and the Premises, and will not rely upon inspections, appraisals and other reports produced by or for the other, except as expressly authorized in writing by the party preparing same. Neither the Senior Lenders nor the Mezzanine Lender shall be required to keep themselves informed as to the performance or observance by the Mortgagor or any other party of the loan documents of the other lenders or lender. The Senior Lenders shall not have any responsibility to the Mezzanine Lender with respect to satisfaction of the requirements of the Senior Loan Documents relating to disbursements of the Senior Loan, or with respect to compliance by the Mortgagor or any other party with the terms and conditions of the Senior Loan Documents. The Mezzanine Lender shall not have any responsibility to the Senior Lenders with respect to satisfaction of the requirements of the Mezzanine Loan Documents relating to disbursements of the Mezzanine Loan, or with respect to compliance by the Mortgagor or any other party with the terms and conditions of the Mezzanine Loan Documents.

Section 14. Beneficiaries. The provisions of this Agreement define the relative rights of the Mezzanine Lender and the Senior Lenders and nothing contained in this Agreement is intended to or shall impair the obligations of the Mortgagor, any Common Guarantor or the Member Guarantor, which are unconditional and absolute, to pay the Senior Claims and the Mezzanine Claims as and when the same shall become due and payable in

accordance with their respective terms, or to affect the relative rights of creditors of the Mortgagor other than the relative rights of the Senior Lenders and the Mezzanine Lender. Without limiting the generality of the foregoing, it is specifically understood and agreed that the provisions of this Agreement are not for the benefit of, and may not be enforced by, the Mortgagor or any guarantor of the Senior Loan or the Mezzanine Loan.

Section 15. Sales of Units. (a) Notwithstanding anything to the contrary contained in the Mezzanine Loan Documents --

(i) Prior to the time that Senior Loan Satisfaction has occurred, the consent of the Mezzanine Lender to closings of sales of Units shall not be required; and

(ii) Until such time as Senior Loan Satisfaction has occurred, or the Mezzanine Lender or its nominee acquires all or any portion of the Member Guarantor's 100% membership interest in the Mortgagor, whether by exercise of remedies under the Member Guarantor Security Agreement or by a transfer of such membership interest in lieu of the exercise of remedies, or the Senior Lenders accept a deed in lieu of foreclosure or other transfer of the Premises after complying with the provisions of Section 12 of this Agreement, all sales of Units shall be at the release prices provided for in the Senior Loan Documents and all proceeds from sales of Units shall be paid, held and applied, and deposited in collateral accounts held by the Senior Loan Agent, as provided in the Senior Loan Documents.

(b) The Mezzanine Lender hereby agrees that, at such time as there has been recorded in the Office of the Recorder of Deeds, of Cook County, Illinois, a release executed by the Senior Loan Agent of a Unit from the lien of the Senior Mortgage, the Senior Assignment of Rents and any other Senior Loan Documents that encumber such Unit, the Mezzanine Mortgage, the Mezzanine Assignment of Rents, the other Mezzanine Loan Documents and all of the Mezzanine Liens, shall, without further action of the parties hereto, be automatically extinguished and be null and void and of no further force and effect as encumbrances on such Unit.

(c) Contemporaneously with the execution and delivery of this Agreement, the Mezzanine Lender and the Senior Loan Agent shall enter into an Escrow Agreement with Near North National Title Corporation in the form attached to this Agreement as Exhibit D, and the Mezzanine Lender shall deposit partial releases in escrow as provided in such Escrow Agreement. The failure of a release to be delivered out of the escrow created under such Escrow Agreement with respect to a Unit, regardless of the reason that such release is not delivered out of such escrow, shall not render ineffective the automatic extinguishment of the Mezzanine Mortgage, the Mezzanine Assignment of Rents, the other Mezzanine Loan Documents and the Mezzanine Liens provided for in this Section with respect to such Unit.

Section 16. Modification of Senior Loan Documents. The Senior Lenders at any time, without the consent of the Mezzanine Lender, may do any one of the following:

(i) Modify, amend, increase, renew, extend or refinance the Senior Loan or the Senior Loan Documents, except that prior to the time that the Mezzanine Lender or its nominee acquires all or any portion of the Member Guarantor's 100% membership interest in the Mortgagor, whether by exercise of remedies under the Member Guarantor Security Agreement or by a transfer of such membership interest in lieu of the exercise of remedies, or the Senior Lenders accept a deed in lieu of foreclosure or other transfer

of the Premises after complying with the provisions of Section 12 of this Agreement, the Senior Lenders shall not (A) increase the principal amount of the Senior Loan, or the principal amount that may be outstanding thereon at any time, above \$190,000,000, or increase the aggregate amount of the advances under the Senior Loan above \$215,000,000, in each case other than by the amount of Protective Advances and any other payments made pursuant to the terms of the Senior Loan Documents to protect the collateral position of the Senior Lenders, (B) increase the rate of interest on, or provide for the payment of additional interest on, the Senior Loan other than in accordance with the Senior Loan Documents as in effect on the date of this Agreement, (C) shorten the maturity date of the Senior Loan or provide for additional principal payments, (D) provide for additional or different events of default on the Senior Loan, (E) modify Unit release prices, or (F) modify any financial covenant.

(ii) After complying with the requirements of Section 12 hereof if applicable, settle or compromise any Senior Claim or any security therefor or any liability directly or indirectly incurred in respect thereof and apply any sums by whomsoever paid and however realized to any Senior Claim in any manner or order.

It is the intention of the parties that the Senior Loan Agent will give the Mezzanine Lender prior written notice of any such action, but the failure to give such notice shall not affect the validity of any such action or subject the Senior Loan Agent or the Senior Lenders to any liability to the Mezzanine Lender.

**Section 17. Assignment by Senior Lenders.** As between the Senior Lenders and the Mezzanine Lender, the Senior Lenders from time to time, in their sole and absolute discretion and without notice to the Mezzanine Lender or the Mortgagor or any other party, may assign or transfer any or all of the Senior Loan, the Senior Claims, the Senior Loan Documents, or any interest therein, and notwithstanding any such assignment or transfer or subsequent assignment or transfer thereof, the Senior Loan, the Senior Claims, the Senior Liens and the Senior Loan Documents shall be and remain the Senior Loan, the Senior Claims, the Senior Liens and the Senior Loan Documents for the purposes of, and entitled to the benefit of, this Agreement.

**Section 18. Modification of Mezzanine Loan Documents.** Unless and until Senior Loan Satisfaction has occurred, the Mezzanine Lender shall not (i) increase the amount of the Mezzanine Loan, other than by the amount of Protective Advances and any other payments made pursuant to the terms of the Mezzanine Loan Documents to protect the collateral position of the Mezzanine Lender; (ii) modify the Mezzanine Loan Documents so as to (A) increase the rate of interest on, or provide for the payment of additional interest on, the Mezzanine Loan, (B) provide for any payment of interest, or any additional fees, on the Mezzanine Loan prior to the maturity date thereof, (C) shorten the maturity date of the Mezzanine Loan or provide for additional principal payments, (D) provide for additional or different events of default on the Mezzanine Loan, or (E) modify any financial covenant; or (iii) ask for, demand or receive from the Mortgagor or any Common Guarantor any security for the Mezzanine Claims other than as described in the Mezzanine Loan Documents as in effect on the date of this Agreement. Any modification, amendment, increase, renewal, extension or refinance of the Mezzanine Loan that is not prohibited by the foregoing provisions of this Section shall be permitted, and it is the intention of the parties that the Mezzanine Lender will give the Senior Loan Agent prior written notice of any such action, but the failure to give such notice shall not affect the validity of any such action or subject the Mezzanine Lender to any liability to the Senior Loan Agent or the Senior Lenders.

Section 19. Assignment by Mezzanine Lender. With the exception of sales of participations in the Mezzanine Loan on terms that do not give the participant any contractual relationship with the Mortgagor or any Common Guarantor, or any right to deal with the Senior Loan Agent or the other Senior Lenders concerning this Agreement, the Mezzanine Lender represents and warrants to and covenants with the Senior Lenders that the Mezzanine Lender has not assigned, sold or otherwise transferred the Mezzanine Loan Documents or any interest therein to any person or entity, and that the Mezzanine Lender will make no such assignment, sale or transfer unless and until (i) any such assignee, buyer or transferee, other than a participant under a participation on the terms described above, has been approved in writing by the Senior Loan Agent, which approval shall not be unreasonably withheld or delayed, and (ii) any such assignee, buyer or transferee agrees, in writing, in form acceptable to the Senior Loan Agent in its reasonable judgment, to be bound by the provisions of this Agreement. Furthermore, the Mezzanine Lender shall cause all promissory notes evidencing the Mezzanine Loan to contain the following legend:

"This note is subordinated to indebtedness now or hereafter owed by maker to LaSalle Bank National Association and other Senior Lenders as provided in the Subordination and Intercreditor Agreement dated as of July \_\_\_\_\_, 2002."

Without limitation on clause (i) above, if the Mezzanine Lender requests approval of an assignee, buyer or transferee, the Senior Loan Agent shall promptly and diligently pursue a decision with respect to such request from the other Senior Lenders.

Section 20. Confirmations. Upon the written request of Mezzanine Lender at any time, the Senior Loan Agent shall promptly provide a written statement as to whether or not Senior Loan Satisfaction has occurred, or as to whether or not a Default or Event of Default under any of the Senior Loan Documents has occurred and is continuing. Upon the written request of the Senior Loan Agent at any time, the Mezzanine Lender shall promptly provide a written statement as to whether or not a Default or Event of Default under any of the Mezzanine Loan Documents has occurred and is continuing.

Section 21. Conflicts. As between the Senior Lenders and the Mezzanine Lender, in the event of any conflict between the provisions of this Agreement and the provisions of either the Mezzanine Loan Documents or the Senior Loan Documents, the provisions of this Agreement shall govern. The Senior Lenders and the Mezzanine Lender further agree that (i) until such time as the Mezzanine Loan and the Mezzanine Claims have been fully paid and performed, as between the Senior Lenders and the Mortgagor and any Common Guarantors, in the event of any conflict between this Agreement and the Senior Loan Documents, this Agreement shall control, and (ii) until such time as Senior Loan Satisfaction has occurred, as between the Mezzanine Lender and the Mortgagor and any Common Guarantors, in the event of any conflict between this Agreement and the Mezzanine Loan Documents, this Agreement shall control.

Section 22. Representations and Warranties. (a) The Senior Loan Agent represents and warrants to the Mezzanine Lender that it has authority to execute this Agreement as agent for the other Senior Lenders.

(b) The Senior Loan Agent represents and warrants to the Mezzanine Lender that Exhibit B to this Agreement contains an accurate and complete listing of all currently existing Senior Loan Documents, excluding certificates and other subsidiary documents that do

not create material obligations in addition to those contained in the documents listed in Exhibit B hereto.

(c) The Mezzanine Lender represents and warrants to the Senior Lenders that Exhibit C to this Agreement contains an accurate and complete listing of all currently existing Mezzanine Loan Documents, excluding certificates and other subsidiary documents that do not create material obligations in addition to those contained in the documents listed in Exhibit C hereto.

Section 23. Notices. The Mezzanine Lender shall send to the Senior Loan Agent a copy of all notices of Defaults and Events of Default with respect to the Mezzanine Loan at the time same are sent to the Mortgagor. The Senior Loan Agent shall send to the Mezzanine Lender a copy of all notices of Defaults and Events of Default with respect to the Senior Loan at the time same are sent to the Mortgagor. All communications provided for in this Agreement shall be in writing and shall be deemed to be given or made when served personally or by a commercial delivery service, or two business days after deposit in the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

If to the Mezzanine Lender: MMBC Debt Holdings I, LLC  
c/o David L. Babson & Company Inc.  
1500 Main Street, Suite 2100  
Springfield, Massachusetts 01115

Attention: Victor Woolridge

and

Boston Capital Institutional Advisors LLC  
One Boston Place, Suite 2100  
Boston, Massachusetts 02108-4406

Attention: William H. Kremer

If to the Senior Loan Agent: LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, Illinois 60603

Attention: Commercial Real Estate

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

Section 24. Execution of Additional Documents. The Mezzanine Lender, the Mortgagor and the Initial Common Guarantors shall execute such additional documents and instruments and take such additional actions as the Senior Loan Agent may reasonably request from time to time to carry out the intent and purposes of this Agreement, including, but not limited to, executing and delivering such documents as the Senior Loan Agent may reasonably request upon any modification, amendment, renewal or extension of the Senior Loan or any Senior Loan Document; provided, however, that the failure or refusal of the Mezzanine Lender or the Mortgagor or any Common Guarantor to execute any such document shall not in any manner render any of the provisions of this Agreement ineffective. The Senior Loan Agent, the



Mortgagor and the Initial Common Guarantors shall execute such additional documents and instruments and take such additional actions as the Mezzanine Lender may reasonably request from time to time to carry out the intent and purposes of this Agreement, including, but not limited to, executing and delivering such documents as the Mezzanine Lender may reasonably request upon any modification, amendment, renewal or extension of the Mezzanine Loan or any Mezzanine Loan Document; provided, however, that the failure or refusal of the Senior Loan Agent, the Mortgagor or the Initial Common Guarantors to execute any such document shall not in any manner render any of the provisions of this Agreement ineffective.

Section 25. Jurisdiction; Process; Venue. (a) EACH OF THE MEZZANINE LENDER AND THE SENIOR LOAN AGENT FOR ITSELF AND AS AGENT FOR THE OTHER SENIOR LENDERS HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN CHICAGO, ILLINOIS, IN WHICH ANY JUDICIAL PROCEEDING MAY BE COMMENCED OR PENDING RELATING IN ANY MANNER TO THIS AGREEMENT.

(b) EACH OF THE MEZZANINE LENDER AND THE SENIOR LOAN AGENT FOR ITSELF AND AS AGENT FOR THE OTHER SENIOR LENDERS AGREES THAT PROCESS IN ANY LEGAL PROCEEDING RELATING IN ANY MANNER TO THIS AGREEMENT MAY BE SERVED ON IT AT ANY LOCATION WHATSOEVER AS PERMITTED BY APPLICABLE LAW.

(c) EACH OF THE MEZZANINE LENDER AND THE SENIOR LOAN AGENT FOR ITSELF AND AS AGENT FOR THE OTHER SENIOR LENDERS AGREES THAT ANY LEGAL PROCEEDING RELATING IN ANY MANNER TO THIS AGREEMENT MAY BE BROUGHT AGAINST IT IN ANY STATE OR FEDERAL COURT LOCATED IN CHICAGO, ILLINOIS. EACH OF THE MEZZANINE LENDER AND THE SENIOR LOAN AGENT FOR ITSELF AND AS AGENT FOR THE OTHER SENIOR LENDERS WAIVES ANY OBJECTION TO VENUE IN ANY SUCH COURT AND WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE FROM ANY SUCH COURT.

(d) THE MEZZANINE LENDER AGREES THAT IT WILL NOT COMMENCE ANY LEGAL PROCEEDING AGAINST THE SENIOR LOAN AGENT RELATING IN ANY MANNER TO THIS AGREEMENT IN ANY COURT OTHER THAN A STATE OR FEDERAL COURT LOCATED IN CHICAGO, ILLINOIS.

Section 26. Waiver of Jury Trial. EACH OF THE MEZZANINE LENDER AND THE SENIOR LOAN AGENT FOR ITSELF AND AS AGENT FOR THE OTHER SENIOR LENDERS HEREBY WAIVES TRIAL BY JURY IN ANY JUDICIAL PROCEEDING RELATING IN ANY MANNER TO THIS AGREEMENT.

Section 27. Entire Agreement. This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this Agreement other than as are herein set forth.

Section 28. Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

Section 29. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 30. Amendments, Changes and Modifications. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

Section 31. Construction. (a) The words "hereof," "herein," and "hereunder," and other words of a similar import refer to this Agreement as a whole and not to the individual Sections in which such terms are used.

(b) References to Sections and other subdivisions of this Agreement are to the designated Sections and other subdivisions of this Agreement as originally executed.

(c) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(d) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

(e) Each party to this Agreement and legal counsel for each party have participated in the drafting of this Agreement, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Agreement.

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

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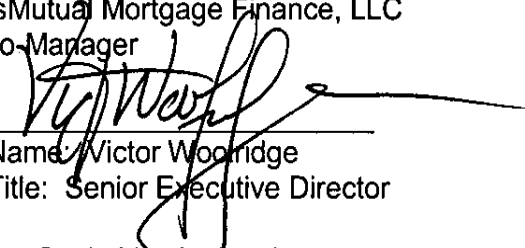
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

MMBC DEBT HOLDINGS I, LLC,  
a Delaware limited liability company

By: MASSMUTUAL/BOSTON CAPITAL MEZZANINE  
PARTNERS, L.P.  
Its Sole Member

By: Boston Mass LLC  
Its General Partner

By: MassMutual Mortgage Finance, LLC  
Its Co-Manager

By:   
Name: Victor Woodridge  
Title: Senior Executive Director

By: Boston Capital Institutional  
Advisors LLC  
Its Co-Manager

By: \_\_\_\_\_  
Name: William H. Kremer  
Title: Managing Director

Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

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a Delaware limited liability company

By: MASSMUTUAL/BOSTON CAPITAL MEZZANINE  
PARTNERS, L.P.  
Its Sole Member

By: Boston Mass LLC  
Its General Partner

By: MassMutual Mortgage Finance, LLC  
Its Co-Manager

By: \_\_\_\_\_  
Name: Victor Woolridge  
Title: Senior Executive Director

By: Boston Capital Institutional  
Advisors LLC  
Its Co-Manager

By:   
Name: William H. Kremer  
Title: Managing Director

Property of Cook County Clerk's Office

LASALLE BANK NATIONAL ASSOCIATION, on its own behalf and as Agent for the other Senior Lenders

By *James M. [Signature]*  
Title: *Vice President*

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JOINDER OF BORROWER AND COMMON GUARANTORS

The undersigned THE HERITAGE AT MILLENNIUM PARK, LLC, a Delaware limited liability company (being the Mortgagor as defined in the foregoing Agreement), and MATTHEW M. WALSH, DANIEL J. WALSH and RICHARD A. HANSON (being the Initial Common Guarantors as defined in the foregoing Agreement), hereby join in the foregoing Agreement, consent to the provisions thereof, agree not to make any payment, or cause or permit any act to occur, that is inconsistent with the provisions of said Agreement, agree that until such time as the Mezzanine Loan and the Mezzanine Claims have been fully paid and performed, as between the undersigned and the Senior Lenders, in the event of any conflict between said Agreement and the Senior Loan Documents, said Agreement shall control, and agree that until such time as Senior Loan Satisfaction has occurred, as between the undersigned and the Mezzanine Lender, in the event of any conflict between said Agreement and the Mezzanine Loan Documents, said Agreement shall control.

The Mortgagor hereby irrevocably authorizes and directs the Senior Loan Agent, (i) to deliver to the Mezzanine Lender, at such time as Senior Loan Satisfaction has occurred, any amounts then held in the accounts referred to in Section 3 of the foregoing Agreement and any Earnest Money Letters of Credit then held by the Senior Loan Agent, and (ii) to remit to the Mezzanine Lender any proceeds of Earnest Money Letters of Credit that are paid the Senior Loan Agent after Senior Loan Satisfaction has occurred.

The undersigned THE HERITAGE AT MILLENNIUM PARK MEZZANINE LLC, a Delaware limited liability company (being the Member Guarantor as defined in the foregoing Agreement), consents to the provisions of said Agreement.

THE HERITAGE AT MILLENNIUM PARK, LLC

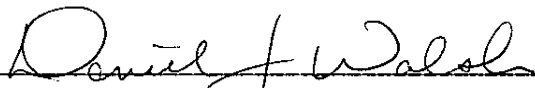
By The Heritage at Millennium Park Mezzanine LLC,  
Manager

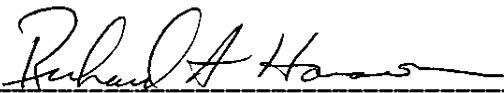
By Mesa MPT LLC, Manager

By Richard A. Hanson  
Richard A. Hanson  
Manager

Matthew M. Walsh  
Matthew M. Walsh

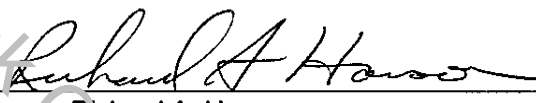
(not including the Letter of Credit Proceeds Cash Collateral Account)  
and performance and labor and material payment bonds

  
\_\_\_\_\_  
Daniel J. Walsh

  
\_\_\_\_\_  
Richard A. Hanson

THE HERITAGE AT MILLENNIUM PARK MEZZANINE  
LLC

By Mesa MPT LLC, Manager

By   
\_\_\_\_\_  
Richard A. Hanson  
Manager

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## COMMONWEALTH OF MASSACHUSETTS

Hampden County, ss. Springfield

July 24, 2002

Then personally appeared before me the above-named Victor Woolridge, the Senior Executive Director of MassMutual Mortgage Finance, LLC, Co-Manager of Boston Mass LLC, General Partner of MASSMUTUAL/BOSTON CAPITAL MEZZANINE PARTNERS, L.P., the sole Member of MMBC DEBT HOLDINGS I, LLC and acknowledged the foregoing instrument to be such person's free act and deed and the free act and deed of MMBC DEBT HOLDINGS I, LLC.



Notary Public

My Commission Expires:

**VANESSA M. CHAPMAN WORTHINGTON**

Notary Public

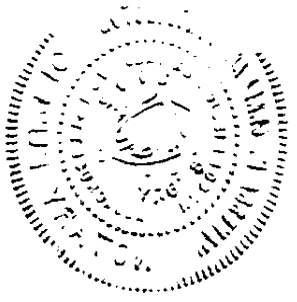
My Commission Expires Aug. 9, 2002



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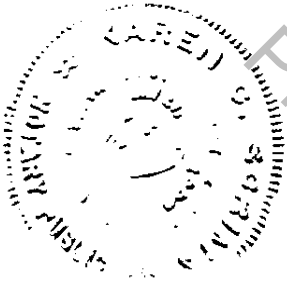
0020886694

## COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

July 24, 2002

Then personally appeared before me the above-named William H. Kremer, the Managing Director of Boston Capital Institutional Advisors LLC, Co-Manager of Boston Mass LLC, General Partner of MASSMUTUAL/BOSTON CAPITAL MEZZANINE PARTNERS, L.P., the sole Member of MMBC DEBT HOLDINGS I, LLC and acknowledged the foregoing instrument to be such person's free act and deed and the free act and deed of MMBC DEBT HOLDINGS I, LLC.



Karen C. Scrima  
Notary Public  
My Commission Expires:

Karen C. Scrima  
NOTARY PUBLIC  
My commission expires May 23, 2004

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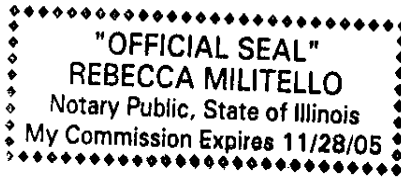
0020886694

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of August, 2002, by Tom M. Costello, vice President of LaSalle Bank National Association, a national banking association, on behalf of the association.

Rebecca Militto  
Notary Public

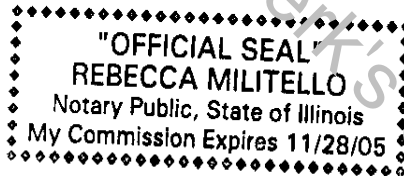
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )



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

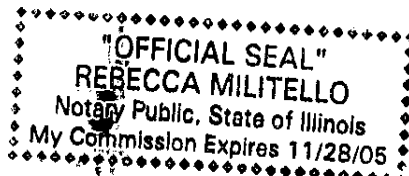
Rebecca Militto  
Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )



The foregoing instrument was acknowledged before me this 30 day of July, 2002, by Matthew M. Walsh.

Rebecca Militto  
Notary Public



# UNOFFICIAL COPY

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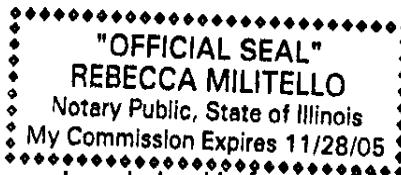
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 30 day of July, 2002, by Daniel J. Walsh.

*Rebecca Militello*

Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )



The foregoing instrument was acknowledged before me this 30 day of July, 2002, by Richard A. Hanson.

*Rebecca Militello*

Notary Public

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )



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

*Rebecca Militello*

Notary Public



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## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

Parcel 1:

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

Parcel 2:

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

Parcel 3:

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

Parcel 4:

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

Parcel 5:

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

Parcel 6:

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

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Parcel 7:

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

Permanent Tax Index Numbers:

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

Address of Premises:

Southeast corner of Randolph Street  
and Wabash Avenue  
Chicago, Illinois

Property of Cook County Clerk's Office

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## EXHIBIT B

### SENIOR LOAN DOCUMENTS

1. Construction Loan Agreement
2. Construction Loan Mortgage Note
3. Construction Loan Mortgage and Security Agreement
4. Construction Loan Assignment of Rents and Leases
5. Assignment of Plans, Permits and Contracts
6. Construction Loan Indemnity Agreement
7. Construction Loan Guaranty of Payment and Performance
8. Subordination and Intercreditor Agreement
9. Uniform Commercial Code Financing Statements for filing with Delaware Secretary of State and Cook County Recorder of Deeds
10. Construction Loan Escrow Agreement

Property of Cook County Clerk's Office



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EXHIBIT C

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## MEZZANINE LOAN DOCUMENTS

1. Construction and Interim Loan Agreement
2. Promissory Note
3. Non-Recourse Carve-Out Guaranty of Key Principles: By Richard Hanson
4. Non-Recourse Carve-Out Guaranty of Key Principles: By Daniel Walsh
5. Non-Recourse Carve-Out Guaranty of Key Principles: By Matthew Walsh
6. Environmental Compliance and Indemnity Agreement
7. Completion Guaranty: By Richard Hanson
8. Completion Guaranty: By Daniel Walsh
9. Completion Guaranty: By Matthew Walsh
10. Construction Mortgage and Security Agreement from The Heritage at Millennium Park, LLC to MMBC Debt Holdings I, LLC
11. Guaranty from The Heritage at Millennium Park Mezzanine LLC
12. Ownership Interest Pledge and Security Agreement given by The Heritage at Millennium Park Mezzanine LLC
13. Collateral Assignment of Leases and Rents
14. Collateral Assignment and Security Agreement in respect of Contracts, Licenses and Permits
15. Collateral Assignment of Condominium Documents, Deposits and Security Agreement
16. Subordination And Intercreditor Agreement by and between MMBC Debt Holdings I, LLC, and LaSalle Bank National Association.
17. UCC Financing Statements by The Heritage at Millennium Park, LLC to be filed with: (a) Delaware Secretary of State, and (b) Cook County Recorder of Deeds.
18. UCC Financing Statements by The Heritage at Millennium Park Mezzanine LLC to be filed with Delaware Secretary of State.

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Escrow No. \_\_\_\_\_

## ESCROW AGREEMENT

THIS ESCROW AGREEMENT dated as of August \_\_\_\_\_, 2002, by and among MMBC DEBT HOLDINGS I, LLC, a Delaware limited liability company (the "Mezzanine Lender"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association (the "Senior Loan Agent"), on its own behalf and as agent for the Lenders (as defined in the Senior Mortgage referred to below), and NEAR NORTH NATIONAL TITLE CORPORATION, an Illinois corporation, as Escrowee (the "Escrowee");

### WITNESSETH:

WHEREAS, The Heritage at Millennium Park, LLC, a Delaware limited liability company (the "Mortgagor"), is the owner of the real estate described in Exhibit A attached to this Agreement and all improvements now or hereafter located thereon (the "Premises"); and

WHEREAS, the Premises are encumbered by the following (the "Senior Mortgage Documents"):

(i) Construction Loan Mortgage and Security Agreement dated as of July 1, 2002 (the "Senior Mortgage"), from the Mortgagor to the Senior Loan Agent, on its own behalf and as agent for the Lenders referred to therein, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on \_\_\_\_\_, 2002, as Document No. \_\_\_\_\_;

(ii) Construction Loan Assignment of Rents and Leases dated as of July 1, 2002 (the "Senior Assignment of Rents"), from the Mortgagor to Senior Loan Agent, on its own behalf and as agent for the Lenders referred to therein, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on \_\_\_\_\_, 2002, as Document No. \_\_\_\_\_;

(iii) Uniform Commercial Code Financing Statement naming the Mortgagor as Debtor and the Senior Loan Agent as Secured Party, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on \_\_\_\_\_, 2002, as Document No. \_\_\_\_\_ (the "Cook County Senior UCC"); and

(iv) Uniform Commercial Code Financing Statement naming the Mortgagor as Debtor and the Senior Loan Agent as Secured Party, filed in the Office of the Delaware Secretary of State, on \_\_\_\_\_, 2002, as Document No. \_\_\_\_\_ (the "Delaware Senior UCC"); and

WHEREAS, the Premises are also encumbered by the following (the "Mezzanine Mortgage Documents"):

(i) Construction Mortgage and Security Agreement dated as of July 1, 2002 (the "Mezzanine Mortgage"), by the Mortgagor in favor of the Mezzanine Lender, recorded in

the Office of the Recorder of Deeds of Cook County, Illinois, on \_\_\_\_\_, 2002, as Document No. \_\_\_\_\_;

(ii) Collateral Assignment of Leases and Rents dated as of July 1, 2002 (the "Mezzanine Assignment of Rents"), by the Mortgagor in favor of the Mezzanine Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on \_\_\_\_\_, 2002, as Document No. \_\_\_\_\_;

(iii) Uniform Commercial Code Financing Statement naming the Mortgagor as Debtor and the Mezzanine Lender as Secured Party, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on \_\_\_\_\_, 2002, as Document No. \_\_\_\_\_ (the "Cook County Mezzanine UCC"); and

(iv) Uniform Commercial Code Financing Statement naming the Mortgagor as Debtor and the Mezzanine Lender as Secured Party, filed in the Office of the Delaware Secretary of State, on \_\_\_\_\_, 2002, as Document No. \_\_\_\_\_ (the "Delaware Mezzanine UCC"); and

WHEREAS, the Mortgagor intends to develop a portion of the Premises as a residential condominium containing condominium residential units and parking units (each a "Unit"), to submit such portion of the Premises to the condominium form of ownership under the applicable provisions of Illinois law, and to sell and convey the Units from time to time to purchasers thereof; and

WHEREAS, the Mortgagor has made arrangements for the Escrowee to issue title insurance policies and provide agency closing services in connection with the sales and conveyances of Units to purchasers thereof; and

WHEREAS, the parties desire to make provision for partial releases of the Mezzanine Mortgage Documents and the Senior Mortgage Documents in connection with such sales and conveyances of Units to purchasers thereof, as provided herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. Deposit of Partial Releases by Mezzanine Lender. (a) On the date of the execution and delivery of this Agreement, the Mezzanine Lender has deposited in escrow with the Escrowee (i) 360 executed and acknowledged partial releases of the Mezzanine Mortgage and the Mezzanine Assignment of Rents, (ii) 360 Uniform Commercial Code Financing Statement Amendments in the form of Partial Releases of the Cook County Mezzanine UCC, and (iii) 360 Uniform Commercial Code Financing Statement Amendments in the form of Partial Releases of the Delaware Mezzanine UCC. Each of such documents has been prepared without a legal description and in such a form that a legal description can be added to it as an exhibit. The deposit of such documents in escrow by the Mezzanine Lender is irrevocable.

(b) The Escrowee by signing below acknowledges receipt of the documents referred to in paragraph (a) of this Section. The Escrowee further acknowledges and agrees that each such document that has been deposited by the Mezzanine Lender is in a form which, when the legal description of one or more Units has been attached thereto as an exhibit, will be

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sufficient for the Escrowee as title insurer to remove from a policy of title insurance in favor of the purchaser of such Unit or Units any and all exceptions for the Mezzanine Mortgage Documents.

Section 2. Deposits by Senior Loan Agent. In conjunction with each closing of the sale of a Unit or Units, the Senior Loan Agent will deposit with the Escrowee (i) an executed and acknowledged partial release of the Senior Mortgage and the Senior Assignment of Rents with respect to such Unit or Units, (ii) a Uniform Commercial Code Financing Statement Amendment in the form of a Partial Release of the Cook County Senior UCC with respect to such Unit or Units, and (iii) a Uniform Commercial Code Financing Statement Amendment in the form of a Partial Release of the Delaware Senior UCC with respect to such Unit or Units. Each such document deposited by the Senior Lender shall be in a form sufficient for the Escrowee as title insurer to remove from a policy of title insurance in favor of the purchaser of the Unit or Units to which such document relates, any and all exceptions for the Senior Mortgage Documents. In addition, in conjunction with each closing of the sale of a Unit or Units, the Senior Loan Agent will deposit with the Escrowee a payoff letter setting forth the amount required to be paid to the Senior Loan Agent in connection with the closing of the sale of such Unit or Units. Nothing contained in this Section or in any other provision of this Agreement shall be construed to change the terms under which the Senior Loan Agent is required to release Units from the lien of the Senior Mortgage Documents as provided in the Loan Agreement (as defined in the Senior Mortgage).

Section 3. Recording and Filing of Partial Releases. At such time as all of the conditions set forth below have been satisfied with respect to a Unit or Units, the Escrowee shall attach the legal description of such Unit or Units to partial releases by the Mezzanine Lender of the Mezzanine Mortgage, the Mezzanine Assignment of Rents, the Cook County Mezzanine UCC and the Delaware Mezzanine UCC, and shall record and file such partial releases in the Offices of the Cook County Recorder of Deeds and the Delaware Secretary of State. The conditions referred to above are as follows:

A. The Senior Loan Agent has deposited with the Escrowee partial releases and a payoff letter with respect to such Unit or Units conforming to the requirements of Section 2 of this Agreement, and the Escrowee has delivered copies thereof to the Mezzanine Lender by facsimile.

B. All conditions to the authorization to the Escrowee from the Senior Loan Agent to record and file the partial releases referred to in A above have been satisfied.

C. The Mortgagor and the purchaser of such Unit or Units have signed, and the Escrowee has delivered to the Mezzanine Lender by facsimile a copy of, a Closing Statement relating to the sale of such Unit or Units, which Closing Statement shall set forth the base price of such Unit or Units, the price of any option, upgrades and extras, and the amount of any broker commissions, and shall otherwise be in customary form and detail.

D. The Escrowee has received evidence that any broker commissions set forth on the Closing Statement for the sale of such Unit or Units have been paid or the Escrowee is prepared to pay the same in conjunction with the closing of the sale of such Unit or Units.

E. The Escrowee is prepared to pay to the Senior Loan Agent with respect to such Unit or Units, the payoff amount set forth in the payoff letter deposited by the Senior Loan Agent with respect to such Unit or Units, but which payoff amount must in all events be an amount not less than the greater of the following two amounts:

(I) 94% of the minimum sale price for such Unit or Units set forth in the Schedule of Minimum Sale Prices attached to this Agreement as Attachment 1.

(II) 94% of the actual gross sale price of such Unit or Units, not including the price of options, extras and upgrades, all as shown on the Closing Statement for the sale of such Unit or Units.

The amount to be paid to the Senior Loan Agent by the Escrowee shall be reduced by the amount of any Unit purchaser earnest money on deposit with the Senior Loan Agent that is to be applied directly to make the required payments described above, all as shown in the payoff letter issued by the Senior Loan Agent with respect to such Unit or Units. The Escrowee should note that the amounts set forth above establish the minimum payoff amount for each Unit and that the actual payoff amount shown in the Senior Loan Agent's payoff letter for a particular Unit may be greater than the aforesaid minimum amount, in which case such greater payoff amount shall be controlling.

F. Provisions satisfactory to the Escrowee have been made for the payment of all recording and filing fees required to be paid in connection with the recordings and filings referred to above in this Section.

The Escrowee is authorized for its own convenience and to minimize recording charges to include Units from multiple closings in a single partial release.

Section 4. Return of Remaining Mezzanine Lender Deposits. The Senior Loan Agent agrees with the Mezzanine Lender that at such time as Senior Loan Satisfaction (as defined in the Subordination and Intercreditor Agreement of even date herewith by and between said parties) has occurred, it will promptly deliver to the Escrowee a signed Notice in the form attached hereto as Attachment 2. Promptly after the receipt by the Escrowee of such signed Notice from the Senior Loan Agent, the Escrowee shall return to the Mezzanine Lender, c/o Boston Capital Institutional Advisors LLC at the address set forth below, all remaining partial releases deposited by the Mezzanine Lender in escrow hereunder.

Section 5. Escrowee's Fees. The Escrowee acknowledges to the Senior Loan Agent and to the Mezzanine Lender that the Escrowee has received payment in full of all fees due and to become due to it for serving as escrowee under this Agreement.

Section 6. No Benefit to Third Parties. This Agreement is for the sole and exclusive benefit of the parties hereto and neither the Mortgagor nor any other person shall under any circumstances be deemed to be a beneficiary of this Agreement.

Section 7. Recitals. The foregoing recitals are hereby incorporated into and made a part of this Agreement.

Section 8. Notices. All communications provided for in this Agreement shall be in writing and shall be deemed to be given or made when served personally or by a commercial

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delivery or courier service at the following addresses, or in the case of notice to the Mezzanine Lender that is to be sent by facsimile in accordance with the terms of this Agreement, to the facsimile number set forth below:

If to the Mezzanine Lender: MMBC Debt Holdings I, LLC  
c/o David L. Babson & Company Inc.  
1500 Main Street, Suite 2100  
Springfield, Massachusetts 01115

Attention: Victor Woolridge

Facsimile: 413-846-5065

and

Boston Capital Institutional Advisors LLC  
One Boston Place, Suite 2100  
Boston, Massachusetts 02108-4406

Attention: William H. Kremer

Facsimile: 617-624-8399

If to the Senior Loan Agent: LaSalle Bank National Association  
135 South LaSalle Street  
Chicago, Illinois 60603

Attention: Commercial Real Estate

If to the Escrowee: Near North National Title Corporation  
222 North LaSalle Street  
Chicago, Illinois 60601

Attention: \_\_\_\_\_

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

**Section 9. Entire Agreement.** This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings of the parties relating to the subject matter of this Agreement, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them relating to the subject matter of this Agreement other than as are herein set forth.

**Section 10. Successors.** This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

**Section 11. Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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Section 12. Amendments, Changes and Modifications. This Agreement may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

Section 13. Construction. (a) The words "hereof," "herein," and "hereunder," and other words of a similar import refer to this Agreement as a whole and not to the individual Sections in which such terms are used.

(b) References to Sections and other subdivisions of this Agreement are to the designated Sections and other subdivisions of this Agreement as originally executed.

(c) The headings of this Agreement are for convenience only and shall not define or limit the provisions hereof.

(d) Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders.

(e) Each party to this Agreement and legal counsel for each party have participated in the drafting of this Agreement, and accordingly the general rule of construction to the effect that any ambiguities in a contract are to be resolved against the party drafting the contract shall not be employed in the construction and interpretation of this Agreement.

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

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

MMBC DEBT HOLDINGS I, LLC,  
a Delaware limited liability company

By: MASSMUTUAL/BOSTON CAPITAL MEZZANINE  
PARTNERS, L.P.  
Its Sole Managing member

By: Boston Mass LLC  
Its General Partner

By: MassMutual Mortgage Finance, LLC  
Its Manager

By \_\_\_\_\_  
Victor Woolridge  
Senior Executive Director

By: Boston Capital Institutional Advisors LLC  
Its Manager

By: \_\_\_\_\_  
William H. Kremer  
Managing Director

Property of Cook County Clerk's Office



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LASALLE BANK NATIONAL ASSOCIATION, on its own  
behalf and as Agent for other Lenders

By \_\_\_\_\_  
Title:

NEAR NORTH NATIONAL TITLE CORPORATION,  
Escrowee

By \_\_\_\_\_  
Title:

Property of Cook County Clerk's Office

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ATTACHMENT 1

## SCHEDULE OF MINIMUM SALE PRICES

The minimum sale prices of Residential Units are set forth on the attached pages.

The minimum sale price of a Parking Unit is the actual gross sale price of such Parking Unit.

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**Penthouse**

	A	B	C
57	\$2,612,500	\$2,755,000	
56	\$2,137,500	\$1,900,000	\$2,660,000
55	\$2,137,500		\$2,660,000

**Skyline Tower Colonnade**

	1	2	3	4
54	\$1,876,250	\$649,325	\$1,876,250	\$897,750
53	\$1,876,250	\$649,325	\$1,876,250	\$897,750
52	\$1,876,250	\$649,325	\$1,425,000	\$897,750

**Skyline Tower**

	1	2	3	4	5
51	\$926,725	\$637,925	\$826,025	\$877,325	\$974,225
50	\$974,225	\$637,925	\$826,025	\$877,325	\$974,225
49	\$974,225	\$637,925	\$747,175	\$877,325	\$974,225
48	\$957,125	\$625,575	\$840,275	\$818,425	\$957,125
47	\$957,125	\$625,575	\$948,575	\$859,275	\$957,125
46	\$957,125	\$625,575	\$940,975	\$859,275	\$957,125
45	\$940,025	\$614,175	\$707,275	\$849,775	\$1,256,375
44	\$940,025	\$614,175	\$837,425	\$849,775	\$940,025
43	\$940,025	\$614,175	\$964,725	\$847,875	\$940,025
42	\$922,925	\$601,825	\$693,025	\$847,875	\$922,925
41	\$922,925	\$601,825	\$693,025	\$835,525	\$922,925
40	\$922,925	\$601,825	\$933,375	\$824,125	\$922,925
39	\$905,825	\$589,475	\$726,275	\$806,075	\$905,825
38	\$905,825	\$589,475	\$933,375	\$816,075	\$905,825
37	\$905,825	\$589,475	\$690,175	\$806,075	\$905,825
36	\$888,725	\$544,825	\$712,025	\$788,025	\$888,725
35	\$793,725	\$544,825	\$712,025	\$788,025	\$888,725
34	\$888,725	\$577,125	\$925,775	\$788,025	\$888,725
33	\$826,025	\$533,425	\$650,275	\$766,175	\$871,625

Property of Cook County

32	\$871,625	\$533,425	\$925,775	\$766,175	\$871,625
31	\$871,625	\$565,725	\$661,675	\$766,175	\$1,225,975
30	\$759,525	\$553,375	\$636,025	\$748,125	\$854,525
29	\$759,525	\$522,025	\$918,175	\$748,125	\$854,525
28	\$854,525	\$550,525	\$636,025	\$831,250	\$781,375

**Park Plaza Colonnade**

	1	2	3	4	5	6	7	8	9	10	11	12
27	\$571,425	\$380,475	\$891,575	\$332,025	\$1,140,000	\$418,475	\$536,675	\$305,425	\$650,275	\$279,775	\$1,206,500	\$341,525
26	\$700,625	\$399,475	\$891,575	\$348,175	\$1,140,000	\$439,375	\$547,675	\$291,175	\$495,425	\$310,175	\$1,206,500	\$341,525
25	\$700,625	\$388,075	\$910,575	\$322,525	\$1,140,000	\$407,075	\$678,725	\$256,025	\$640,775	\$310,175	\$1,045,000	\$330,125

**Park Plaza**

24	\$560,025	\$369,075	\$877,325	\$322,525	\$692,075	\$407,075	\$536,675	\$256,025	\$650,275	\$279,775	\$859,275	\$345,325
23	\$548,625	\$357,675	\$637,925	\$313,025	\$628,425	\$395,675	\$547,675	\$246,525	\$495,425	\$310,175	\$842,175	\$333,925
22	\$677,825	\$357,675	\$863,075	\$329,175	\$609,425	\$395,675	\$678,725	\$271,225	\$640,775	\$310,175	\$842,175	\$333,925
21	\$666,425	\$383,325	\$626,525	\$318,725	\$588,525	\$422,225	\$688,275	\$289,275	\$640,775	\$299,725	\$816,525	\$322,525
20	\$666,425	\$383,325	\$626,525	\$318,725	\$617,025	\$422,225	\$560,025	\$289,275	\$484,025	\$299,725	\$816,525	\$322,525
19	\$543,875	\$377,625	\$854,525	\$313,975	\$667,375	\$378,575	\$688,275	\$269,325	\$617,025	\$280,725	\$799,425	\$365,275
18	\$655,025	\$377,625	\$834,575	\$313,975	\$634,125	\$317,525	\$524,970	\$269,325	\$472,625	\$280,725	\$799,425	\$316,825
17	\$643,625	\$334,875	\$603,725	\$309,225	\$565,725	\$411,825	\$678,775	\$238,925	\$489,725	\$275,975	\$744,325	\$359,575
16	\$643,625	\$334,875	\$679,725	\$309,225	\$535,725	\$411,825	\$669,275	\$251,275	\$617,025	\$290,225	\$782,325	\$359,575
15	\$497,325	\$329,175	\$807,025	\$303,525	\$769,025	\$385,225	\$473,575	\$245,575	\$449,825	\$271,225	\$722,475	\$305,425
14	\$632,225	\$329,175	\$592,325	\$303,525	\$769,025	\$404,225	\$659,775	\$234,175	\$607,525	\$271,225	\$765,225	\$353,875
13	\$620,825	\$359,575	\$590,425	\$237,500	\$552,425	\$361,475	\$640,775	\$229,425	\$438,425	\$213,750	\$748,125	\$347,225
12	\$620,825	\$359,575	\$628,425	\$265,225	\$769,025	\$308,750	\$650,275	\$218,025	\$490,675	\$266,475	\$748,125	\$299,725
11	\$617,025	\$353,875	\$674,025	\$237,500	\$612,275	\$308,750	\$640,775	\$213,275	\$427,025	\$213,750	\$731,025	\$341,525
10	\$617,025	\$353,875	\$788,025	\$217,500	\$541,025	\$308,750	\$450,775	\$236,075	\$498,275	\$213,750	\$731,025	\$341,525
9	\$522,025	\$465,975	\$555,275			\$450,775	\$335,825	\$486,875	\$498,275			

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[DATE]

## NOTICE TO ESCROWEE

To: Near North National Title Corporation, Escrowee

Re: Escrow No. \_\_\_\_\_

This Notice is delivered to you pursuant to Section 4 of the Escrow Agreement dated as of \_\_\_\_\_, 2002.

Please be advised that the undersigned Senior Loan Agent has no objection to your returning all remaining deposits made with you as Escrowee by the Mezzanine Lender (as defined in said Escrow Agreement), to the Mezzanine Lender.

Date \_\_\_\_\_

LASALLE BANK NATIONAL ASSOCIATION

By \_\_\_\_\_  
Title:

Property of Cook County Clerk's Office