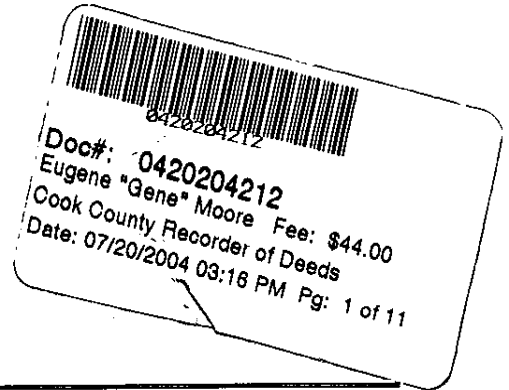


# UNOFFICIAL COPY

RECORDING REQUESTED BY, AND  
WHEN RECORDED MAIL TO:



SONNENSCHN NATH & ROSENTHAL LLP  
8000 Sears Tower  
Chicago, Illinois 60606  
Steven R. Davidson, Esq.



SPACE ABOVE THIS LINE FOR RECORDER'S USE

010411783-26 5 NNN SW

**AMENDMENT TO CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT,  
COLLATERAL ASSIGNMENT OF CONDOMINIUM DOCUMENTS,  
DEPOSITS AND SECURITY AGREEMENT  
AND COLLATERAL ASSIGNMENT OF LEASES AND RENTS**

This Amendment to Construction Mortgage and Security Agreement, Collateral Assignment of Condominium Documents, Deposits and Security Agreement and Collateral Assignment of Leases and Rents (this "**Amendment**"), is executed and delivered as of July 19, 2004 between The Heritage at Millennium Park, LLC, a Delaware limited liability company, having an address at 445 West Erie, Suite 210, Chicago, Illinois 60610 (the "**Borrower**"), and Bank of America, N.A. having an address at 231 S. LaSalle Street, Chicago, Illinois 60604.

**WITNESSETH:**

WHEREAS, the Borrower and MMBC Debt Holdings I, LLC (the "**Prior Mezzanine Lender**") have entered into that certain Construction and Interim Loan Agreement dated as of July 1, 2002 (the "**Existing Loan Agreement**") pursuant to which Prior Mezzanine Lender made loan to the Borrower in the amount of \$27,000,000.00 (the "**Existing Loan**");

WHEREAS, the Existing Loan was evidenced by a Promissory Note dated July 1, 2002 (the "**Existing Note**"), made by Borrower and payable to the order of Prior Mezzanine Lender and was secured, among other things, by a Construction Mortgage and Security Agreement dated as of July 1, 2002 and recorded August 13, 2002, as document number 0020886510 (the "**Existing Mortgage**"), encumbering the Property (as such term is defined in the Existing Loan Agreement), a Collateral Assignment of Condominium Documents, Deposits and Security Agreement dated July 1, 2002 and recorded August 13, 2002, as document number 0020886692 (the "**Existing Assignment of Condominium Documents**") and a Collateral Assignment of Leases and Rents dated July 1, 2002 and recorded August 13, 2002, as document number 0020886511 (the "**Existing Assignment of Leases and Rents**"). The Existing Loan Agreement,

**Near North National Title Corp  
222 North LaSalle Street  
Chicago, Illinois 60601**

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the Existing Note, the Existing Mortgage, and the other documents executed and/or delivered in connection with the Existing Loan are collectively referred to herein as the "**Existing Loan Documents**";

WHEREAS, the Borrower has requested that Lender make available to Borrower a loan in the amount of \$40,000,000, a portion of the proceeds of which will be disbursed by Lender to Prior Mezzanine Lender to purchase the Existing Loan and Existing Loan Documents from Prior Mezzanine Lender and the remainder of which shall be allocated to pay interest accruing in the future on such advance made by Lender;

WHEREAS, concurrently herewith, Prior Mezzanine Lender and Lender have entered into an Assignment of Loan Documents pursuant to which all the Existing Loan Documents, including the Existing Mortgage and Assignments, are being assigned to Lender;

WHEREAS, in connection with Lender's purchase of the Existing Loan, and as a condition thereto, Borrower and Lender have agreed to amend the terms of the Existing Mortgage assigned to the Lender and the Existing Assignments assigned to the Lender (the Existing Mortgage and Assignments as so amended are referred to as the "**Mortgage and Assignments**" or individually as the "**Mortgage**," the "**Assignment of Leases and Rents**" and the "**Assignment of Condominium Documents**"); and

NOW, THEREFORE, in consideration of the premises and agreements herein contained, the parties hereto agree to amend the Mortgage and Assignments as follows:

1. **Defined Terms**. All capitalized terms used herein without definition shall have the same meanings herein as such terms are defined in the Loan Agreement.
2. **Amendments to the Mortgage**. The Mortgage is hereby amended as follows:

2.1 Each reference in the Mortgage to "Mortgagee" shall be deemed to refer to Bank of America, N.A. in its capacity as Mortgagee. Any reference in the Mortgage to "MMBC Debt Holdings I, LLC, a Delaware limited liability company, having an address at c/o David L. Babson & Company Inc., 1500 Main Street, Suite 2100, Springfield, Massachusetts 01115" shall be amended to be "Bank of America, N.A., a national banking association, having an address at 231 S. LaSalle Street, Chicago, Illinois 60604". All references in the Mortgage and Assignments as any of the Loan Documents shall refer to the Loan Documents as amended concurrently herewith and as further amended from time to time.

2.2 Section A under "Obligations" in the definitions section is amended in its entirety and as amended shall read as follows:

"A. The payment of the principal sum, interest, charges and indebtedness evidenced by an Amended and Restated Note dated as of July 19, 2004 (together with any extensions, renewals, modifications, amendments, allonges and replacements thereof, the "Note") dated as of even date herewith, including any extensions, renewals, replacements,

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modifications and amendments thereof, in the principal amount of Forty Million (\$40,000,000.00) DOLLARS given by Mortgagor to the order of Mortgagee, and shall be due and payable on the scheduled maturity date thereof.”

2.3 Section 38 of the Mortgage is amended in its entirety and as so amended shall read as follows:

“38. Governing Laws. This Mortgage, shall in all respects be governed, construed, applied and enforced in accordance with the internal laws of the State of Illinois.”

2.4 All references in the Existing Mortgage to the “Mortgage” shall refer to such document as amended hereby and as further amended from time to time.

3. Amendments to the Assignments. The Assignments are hereby amended as follows:

3.1 Each reference in the Assignments to “Lender” shall be deemed to refer to Bank of America, N.A. in its capacity as Lender. Any reference in the Assignments to “MMBC Debt Holdings I, LLC, a Delaware limited liability company, having an address at c/o David L. Babson & Company Inc., 1500 Main Street, Suite 2100, Springfield, Massachusetts 01115” shall be amended to be “Bank of America, N.A., a national banking association, having an address at 231 S. LaSalle Street, Chicago, Illinois 60604”. All references in the Mortgage and Assignments to any of the Loan Documents shall refer to the Loan Documents as amended concurrently herewith and as further amended from time to time.

3.2 Section 2.2.1 of the Assignment of Condominium Documents and Section 3(A) of the Assignment of Leases and Rents are amended in their entirety and as amended shall read as follows:

“The payment of the principal sum, interest, charges and indebtedness evidenced by an Amended and Restated Note dated as of July 1<sup>st</sup>, 2004 (together with any extensions, renewals, modifications, amendments, allonges and replacements thereof, the “Note”) dated as of even date herewith, including any extensions, renewals, replacements, modifications and amendments thereof, in the principal amount of Forty Million (\$40,000,000.00) DOLLARS given by Mortgagor to the order of Mortgagee, and shall be due and payable on the scheduled maturity date thereof.”

3.3 Section 6.12 of the Assignment of Leases and Rents and Section 6.5 of the Assignment of Condominium Documents are amended in their entirety and as so amended shall read as follows:

“6.12 Governing Law. This Assignment shall in all respects be governed, construed, applied and enforced in accordance with the internal laws of the State of Illinois.”

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3.4 Section 6.11 of the Assignment of Condominium Documents is amended in its entirety and as amended shall read as follows:

“6.11 Consent to Jurisdiction. The Guarantor hereby irrevocably submits to the nonexclusive personal jurisdiction of any Illinois State or any Federal Court sitting in Illinois over any suit, action or proceeding arising out of or relating to this Guaranty. Guarantor hereby agrees and consents that in addition to any methods of service of process provided for under applicable law, all service of process in any such suit, action or proceeding in any Illinois State or Federal Court sitting in Illinois may be made by certified or registered mail, return receipt requested, directed to the Guarantor at the address indicated in Section 7 above and service so made shall be deemed completed five (5) days after the same shall have been so mailed.”

3.5 All references in the Existing Assignments to the “Assignment” shall refer to such documents as amended hereby and as further amended from time to time.

4. Reaffirmation. The Borrower hereby ratifies and affirms all of its obligations, liabilities, duties, covenants and agreements under the Mortgage and Assignments as amended hereby for the benefit of the Lender. The Borrower reaffirms all warranties and representations contained in the Mortgage and Assignments as of the date hereof.

5. Miscellaneous.

5.1 This Amendment has been delivered and accepted and shall be governed by and construed in accordance with the internal laws of the State of Illinois.

5.2 Except as modified hereby, the Mortgage and Assignments shall continue in full force and effect in accordance with its original terms, and Borrower represents and warrants that it has no existing defenses, set-off rights or counterclaims in connection with the performance of its obligations under the Mortgage and Assignments. Reference to this Amendment need not be made in the Loan Agreement, any Loan Document or any other instrument or document, or in any certificate, letter or communication issued or made pursuant to or with respect to the Mortgage and Assignments, any reference in any of such items to the Mortgage and Assignments being sufficient to refer to the Mortgage and Assignments as modified hereby.

5.3 If any provision contained herein is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be severed herefrom and such invalidity or unenforceability shall not affect any other provision hereof, the balance of which shall remain in and have its intended full force and effect; provided, however, if such invalid or unenforceable provision shall be modified so as to be valid and enforceable as a matter of law, such provision shall be deemed to have been modified so as to be valid and enforceable to the maximum extent permitted by law.

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5.4 This Amendment may be executed in any number of counterparts, and by different parties hereto on separate counterpart signature pages, each of which when so executed shall be an original but all of which to constitute one and the same instrument.

[Signature Page on the following page]

Property of Cook County Clerk's Office

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**IN WITNESS WHEREOF**, in its capacity as Mortgagor and Assignor, the undersigned has caused this Amendment to be duly executed and delivered at as a sealed instrument as of the date first written above.

**BORROWER:**

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

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

BY: MESA MPT LLC, a Delaware limited liability company

BY: Richard A. Hanson  
Name: Richard A. Hanson  
Title: Manager

Accepted and agreed to as of the day and year first above written:

**LENDER:**

**BANK OF AMERICA, N.A.**, as the Mortgagee and Lender

BY: \_\_\_\_\_  
Name: John S. Wayland  
Its: Senior Vice President

Property of Cook County Clerk's Office

# UNOFFICIAL COPY

**IN WITNESS WHEREOF**, in its capacity as Mortgagor and Assignor, the undersigned has caused this Amendment to be duly executed and delivered at as a sealed instrument as of the date first written above.

**BORROWER:**

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

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

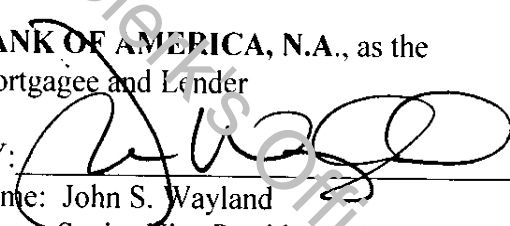
BY: MESA MPT LLC, a Delaware limited liability company

BY: \_\_\_\_\_  
Name: Richard A. Hanson  
Title: Manager

Accepted and agreed to as of the day and year first above written:

**LENDER:**

**BANK OF AMERICA, N.A.**, as the Mortgagee and Lender

BY:   
Name: John S. Wayland  
Its: Senior Vice President

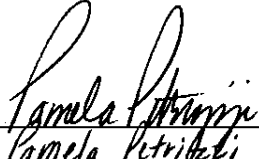
Property of Cook County Clerk's Office

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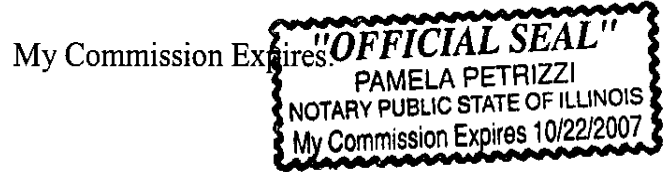
STATE OF ILLINOIS )  
 ) SS  
 COUNTY OF COOK )

July 12, 2004

Then personally appeared before me the above-named Richard A. Hanson the Manager of MESA MPT LLC, the sole member/manager of THE HERITAGE AT MILLENNIUM PARK, LLC and acknowledged the foregoing instrument to be such person's free act and deed and the free act and deed of such Borrower.

  
 \_\_\_\_\_  
 Pamela Petrizzi, Notary Public

My Commission Expires



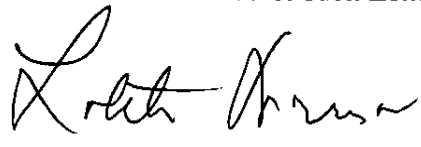


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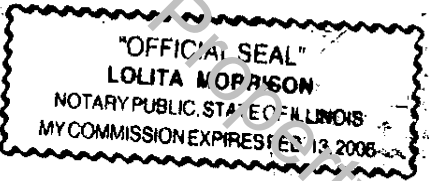
STATE OF ILLINOIS )  
                              ) SS  
COUNTY OF COOK )

July 13<sup>th</sup>, 2004

Then personally appeared before me the above-named JOHN S. WALLAND  
a SENIOR VICE PRESIDENT of BANK OF AMERICA, N.A. and acknowledged the foregoing  
instrument to be such person's free act and deed and the free act and deed of such Lender.



\_\_\_\_\_, Notary Public



My Commission Expires: 2/13/2005

Notary of Cook County Clerk's Office

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## EXHIBIT B

### LEGAL DESCRIPTION OF PROPERTY

Parcel 1:

THE WEST ½ OF LOT 1 IN BLOCK 12 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL ¼ 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 ¼ 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 ¼ 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 ¼ 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 ¼ 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 ¼ 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 FRACTION  $\frac{1}{4}$  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 East Randolph Street  
and North Wabash Avenue  
Chicago, Illinois

Property of Cook County Clerk's Office