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20163909.2
07-12-04



Doc#: 0420204214
Eugene "Gene" Moore Fee: \$70.00
Cook County Recorder of Deeds
Date: 07/20/2004 03:18 PM Pg: 1 of 24

AMENDMENT TO SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS AMENDMENT TO SUBORDINATION AND INTERCREDITOR AGREEMENT dated as of July 19, 2004, by and between BANK OF AMERICA, N.A., a national banking association ("BOA"), 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, MMBC DEBT HOLDINGS I, LLC, a Delaware limited liability company ("MMBC"), as Mezzanine Lender, and the Senior Loan Agent, on its own behalf and as agent for the Senior Lenders, heretofore entered into the Subordination and Intercreditor Agreement dated as of July 1, 2002 (the "Intercreditor Agreement"), recorded in the Office of the Recorder of Deeds of Cook County, Illinois, August 13, 2002 as Document No. 0020886694; and

WHEREAS, the Intercreditor Agreement relates to the real estate described in Exhibit A attached hereto; and

WHEREAS, contemporaneously with the execution and delivery of this Agreement, the Mezzanine Loan and Mezzanine Loan Documents referred to in the Intercreditor Agreement are being assigned by MMBC to BOA, and the Mezzanine Loan Documents and Senior Loan Documents referred to in the Intercreditor Agreement are being modified and amended; and

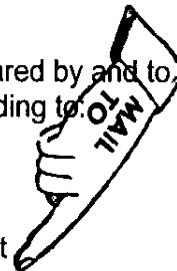
Permanent Tax Index Numbers and Address:

See Exhibit A

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

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

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



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WHEREAS, BOA and the Senior Loan Agent desire to make certain modifications and amendments to the Intercreditor Agreement in order to substitute BOA for MMBC as the Mezzanine Lender under the Intercreditor Agreement and to conform the Intercreditor Agreement to the modifications and amendments being made to the said Mezzanine Loan Documents and Senior Loan Documents, all as more fully provided for 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. Recitals Part of Agreement; Defined Terms. (a) The foregoing recitals are hereby incorporated into and made a part of this Agreement.

(b) All capitalized terms used and not otherwise defined in this Agreement shall have the meanings set forth in the Intercreditor Agreement.

Section 2. Consents to Assignment of Mezzanine Loan and Modification of Loan Documents. (a) The Senior Loan Agent hereby consents to the assignment of the Mezzanine Loan and the Mezzanine Loan Documents by MMBC to BOA. Both MMBC and BOA shall have the right to rely on the foregoing consent by the Senior Loan Agent to the assignment of the Mezzanine Loan and the Mezzanine Loan Documents by MMBC to BOA.

(b) The Senior Loan Agent hereby consents to the modifications and amendments to the Mezzanine Loan Documents that are provided for in the amendment documents described in Exhibit C to this Agreement.

(c) BOA hereby consents to the modifications and amendments to the Senior Loan Documents that are provided for in the Modification Agreement described in Exhibit B to this Agreement.

Section 3. Substitution of BOA as Mezzanine Lender. (a) BOA is hereby substituted for MMBC as the Mezzanine Lender party to the Intercreditor Agreement, and all references in the Intercreditor Agreement to the "Mezzanine Lender" shall be deemed to be references to BOA, and the Intercreditor Agreement is hereby modified and amended accordingly. Without limitation on the generality of the foregoing provisions of this Section, the defined term "Mezzanine Lender" in Section 2 of the Intercreditor Agreement is hereby modified and amended to read as follows:

"Mezzanine Lender" means Bank of America, N.A., a national banking association.

(b) BOA hereby joins in the Intercreditor Agreement as the Mezzanine Lender party thereto and hereby agrees to, and agrees to be bound by, all of the provisions of the Intercreditor Agreement, as modified and amended by this Agreement.

Section 4. Amendments to Intercreditor Agreement. (a) the following defined terms contained in Section 1.1 of the Loan Agreement are hereby modified and amended to read as follows:

"Member Guarantor Security Agreement" means the Ownership Interests Pledge and Security Agreement dated as of July 1, 2002, from the Member

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Guarantor to the Mezzanine Lender, creating a security interest in the Member Guarantor's 100% membership interest in the Mortgagor, as modified and amended by the Amendment to Ownership Interests Pledge and Security Agreement dated as of July 19, 2004, from the Member Guarantor to the Mezzanine Lender.

"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 August 13, 2002, as Document No. 0020886511, as modified and amended by the Amendment to Construction Mortgage and Security Agreement, Collateral Assignment of Condominium Documents, Deposits and Security Agreement and Collateral Assignment of Leases and Rents dated as of July 19, 2004, between the Mortgagor and the Mezzanine Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on July 20, 2004, as Document No. 0420204212.

"Mezzanine Loan" means a loan by the Mezzanine Lender to the Mortgagor pursuant to the Mezzanine Loan Documents in the original principal amount of \$40,000,000, and future modifications, amendments, increases, renewals, extensions and refinancings of such loan that are accomplished in accordance with the provisions of this Agreement.

"Mezzanine 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 August 13, 2002, as Document No. 0020886510, as modified and amended by the Amendment to Construction Mortgage and Security Agreement, Collateral Assignment of Condominium Documents, Deposits and Security Agreement and Collateral Assignment of Leases and Rents dated as of July 19, 2004, between the Mortgagor and the Mezzanine Lender, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on July 20, 2004, as Document No. 0420204212.

"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 August 13, 2002, as Document No. 0020886508, as modified and amended by the Modification Agreement dated as of July 19, 2004, by and among the Mortgagor, the Initial Common Guarantors and the Senior Lenders, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on July 20, 2004, as Document No. 0420204213.

"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 August 13, 2002, as Document No. 0020886507, as modified and amended by the Modification Agreement dated as of July 19, 2004, by and among the Mortgagor, the Initial Common Guarantors and the Senior Lenders, recorded in the Office of the Recorder of Deeds of Cook County, Illinois, on July 20, 2004, as Document No. 0420204213.

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(b) Exhibit B and Exhibit C to the Intercreditor Agreement are hereby modified and amended to read as set forth in Exhibit B and Exhibit C to this Agreement, respectively.

(c) Subclause (E) in clause (i) in Section 16 of the Intercreditor Agreement is hereby modified and amended to read as follows:

(E) modify Unit release prices, or the sharing of Unit release prices between the Senior Lenders and the Mezzanine Lender,

Section 5. Amendment to Escrow Agreement. Reference is made to the Escrow Agreement with Near North National Title Corporation that is provided for in Section 15(c) of the Intercreditor Agreement. Contemporaneously with the execution and delivery of this Agreement, BOA and the Senior Loan Agent shall enter into an amendment to such Escrow Agreement in the form attached to this Agreement as Exhibit D, and from and after the date of this Agreement, all references in the Intercreditor Agreement to such Escrow Agreement shall be deemed to be references to such Escrow Agreement as so amended. Contemporaneously with the execution and delivery of this Agreement, BOA shall deposit partial releases in escrow as provided in such Escrow Agreement in substitution for the partial releases deposited by MMBC.

Section 5. Notices Section 23 of the Intercreditor Agreement is hereby modified and amended by changing the address for notices to the Mezzanine Lender to read as follows:

If to the Mezzanine Lender: Bank of America, N.A.
IL1-231-02-55
231 S. LaSalle Street
Chicago, IL 60604

Attention: John S. Wayland

With copies to:

Sonnenschein Nath & Rosenthal LLP
8000 Sears Tower
Chicago, IL 60606-6404

Attention: Steven R. Davidson

Section 6. Representations, Warranties and Confirmations. (a) The Senior Loan Agent represents and warrants to BOA that it has authority to execute this Agreement as agent for the other Senior Lenders.

(b) The Senior Loan Agent represents and warrants to BOA 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) BOA represents and warrants to the Senior Lenders that (i) the Mezzanine Loan and the Mezzanine Loan Documents have been assigned by MMBC to BOA; (ii) that BOA is the sole owner of the Mezzanine Loan and the Mezzanine Loan Documents; and (iii) Exhibit C to this Agreement contains an accurate and complete listing of all currently existing

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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.

(d) The Senior Loan Agent confirms that the principal balance outstanding on the Senior Loan is \$126,303,154.13, and that no Default or Event of Default under any of the Senior Loan Documents has occurred and is continuing.

(e) BOA confirms that no Default or Event of Default under any of the Mezzanine Loan Documents has occurred and is continuing.

Section 7. Intercreditor Agreement to Remain in Effect; Confirmation of Obligations. The Intercreditor Agreement shall remain in full force and effect as originally executed and delivered by the parties thereto, except as expressly modified and amended herein. BOA and the Senior Loan Agent hereby (i) confirm and reaffirm all of their obligations under the Intercreditor Agreement, as modified and amended herein; and (ii) acknowledge that they do not have any defense, set-off or counterclaim to the performance of any of their obligations under the Intercreditor Agreement, as modified and amended herein.

Section 8. 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 9. 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 10. 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 11. 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 12. 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) BOA and the Senior Loan Agent, and their respective legal counsel, have participated in the drafting of this Agreement, and accordingly the general rule of construction to

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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.

Section 13. Execution of Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14. Governing Law. This Agreement is prepared and entered into with the intention that the law of the State of Illinois shall govern its construction and enforcement.

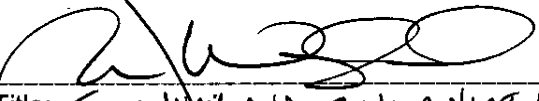
[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]

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

BANK OF AMERICA, N.A.

By 
Title: JOHN WAYLAND, SENIOR VICE PRESIDENT

LASALLE BANK NATIONAL ASSOCIATION

By _____
Title: _____

Property of Cook County Clerk's Office

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

BANK OF AMERICA, N.A.

By _____
Title:

LASALLE BANK NATIONAL ASSOCIATION

By *Jarvis M. Cantelmo*
Title: *FVP*

Property of Cook County Clerk's Office

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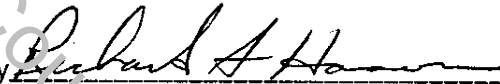
JOINDER OF BORROWER AND COMMON GUARANTORS


The undersigned THE HERITAGE AT MILLENNIUM PARK, LLC, a Delaware limited liability company (being the Mortgagor as defined in the Intercreditor Agreement referred to above), MATTHEW M. WALSH, DANIEL J. WALSH and RICHARD A. HANSON (being the Initial Common Guarantors as defined in the Intercreditor Agreement), and THE HERITAGE AT MILLENNIUM PARK MEZZANINE LLC, a Delaware limited liability company (being the Member Guarantor as defined in the Intercreditor Agreement), hereby (i) consent to the provisions of the foregoing Agreement, (ii) agree that the Joinder of Borrower and Common Guarantors contained in the Intercreditor Agreement shall remain in full force and effect with respect to the Intercreditor Agreement, as modified and amended by the foregoing Agreement, (iii) confirm and reaffirm all of their obligations under the said Joinder of Borrower and Common Guarantors, and (iv) acknowledge that they do not have any defense, set-off or counterclaim to the performance of any of their obligations under the said Joinder of Borrower and Common Guarantors.

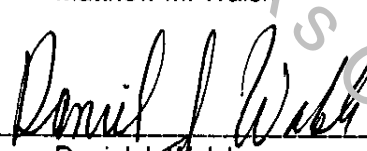
THE HERITAGE AT MILLENNIUM PARK, LLC

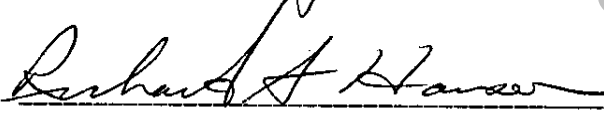
By The Heritage at Millennium Park Mezzanine LLC,
Manager

By Mesa MPT LLC, Manager

By 
Richard A. Hanson
Manager


Matthew M. Walsh


Daniel J. Walsh


Richard A. Hanson

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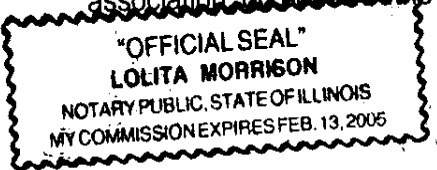
STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of July, 2004, by _____ of LaSalle Bank National Association, a national banking association, on behalf of the association.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 13th day of July, 2004, by JOHN S. WAYLAND of Bank of America, N.A., a national banking association, on behalf of the association.



Lolita Morrison

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of July, 2004, 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.

Notary Public

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 14th day of July, 2004, by Jason M. Costello, FVP of LaSalle Bank National Association, a national banking association, on behalf of the association.



Preeti Saini
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of July, 2004, by _____ of Bank of America, N.A., a national banking association, on behalf of the association.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of July, 2004, 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.

Notary Public

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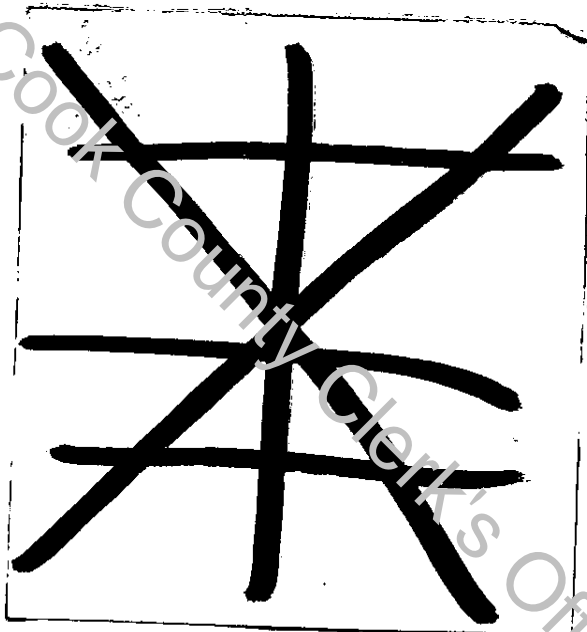
THE HERITAGE AT MILLENNIUM PARK MEZZANINE
LLC

By Mesa MPT LLC, Manager

By *Richard A. Hanson*

Richard A. Hanson
Manager

Property of Cook County Clerk's Office



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of July, 2004, by _____, _____ of LaSalle Bank National Association, a national banking association, on behalf of the association.

Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this _____ day of July, 2004, by _____, _____ of Bank of America, N.A., a national banking association, on behalf of the association.

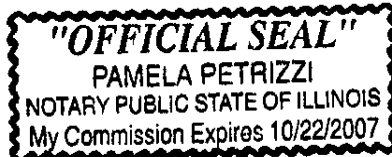
Notary Public

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 17 day of July, 2004, 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.

Pamela Petrizzi

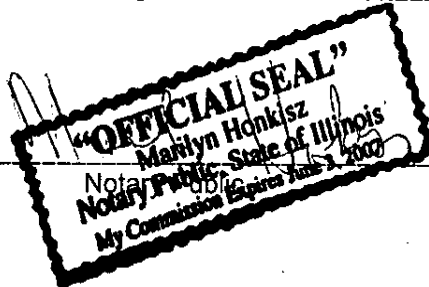
Notary Public



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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 17th day of July, 2004, by Matthew M. Walsh.



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

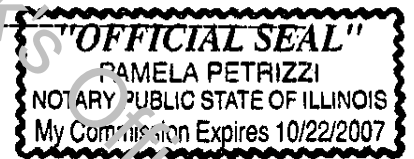
The foregoing instrument was acknowledged before me this 17th day of July, 2004, by Daniel J. Walsh.



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 17th day of July, 2002, by Richard A. Hanson.

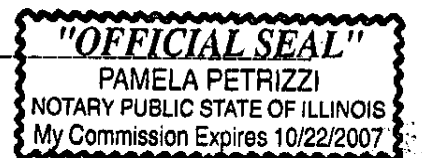
Pamela Petrizzi
Notary Public



STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

The foregoing instrument was acknowledged before me this 17th 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.

Pamela Petrizzi
Notary Public



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EXHIBIT A

LEGAL DESCRIPTION OF THE PREMISES

Parcel 1:

THE WEST ½ OF LOT 1 IN BLOCK 12 IN FORT DEARBORN ADDITION TO CHICAGO IN THE SOUTHWEST FRACTIONAL 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.

Parcel 7:

LOT 6 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 8:

EASEMENTS FOR THE BENEFIT OF PARCELS 1 THROUGH 7 OF THE LAND CREATED UNDER THE EASEMENT AGREEMENT DATED OCTOBER 25, 2002 AND RECORDED

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NOVEMBER 27, 2002 AS DOCUMENT NUMBER 0021314742 BY AND BETWEEN THE HERITAGE AT MILLENNIUM PARK, LLC, A DELAWARE LIMITED LIABILITY COMPANY AND GARLAND OFFICE, LLC, AN ILLINOIS LIMITED LIABILITY COMPANY OVER THE FOLLOWING DESCRIBED LAND:

GARLAND PARCEL:

LOTS 7 AND 8 IN BLOCK 12 IN FORT DEARBORN ADDITION TO CHICAGO IN FRACTIONAL SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF 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

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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, as amended by Amendment to 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
11. Modification Agreement

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EXHIBIT C

MEZZANINE LOAN DOCUMENTS

1. Construction and Interim Loan Agreement
2. Amended and Restated Note dated as of July 15, 2004
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, as assigned to Bank of America, N.A.
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. Consent and Agreement of the Contractor
17. Consent and Agreement of the Architect
18. Architect's Initial Certification RE Plans and Specifications and Legal Requirements
19. Subordination And Intercreditor Agreement by and between Bank of America, N.A. (as assignee of MMBC Debt Holdings I, LLC), and LaSalle Bank National Association.
20. UCC Financing Statements by The Heritage at Millennium Park, LLC with: (a) Delaware Secretary of State, and (b) Cook County Recorder of Deeds.

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21. UCC Financing Statements by The Heritage at Millennium Park Mezzanine LLC to be filed with Delaware Secretary of State.

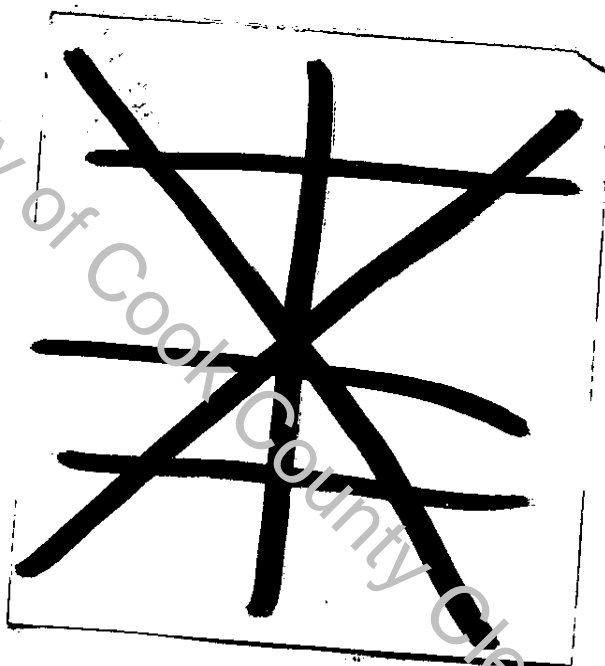
All documents (unless otherwise noted) dated as of July 1, 2002, and assigned to Bank of America and amended as of July 19, 2004.

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EXHIBIT D

FORM OF AMENDMENT TO ESCROW AGREEMENT



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20163916.2
07-12-04

Escrow No. 01011089

AMENDMENT TO ESCROW AGREEMENT

This Amendment amends the Escrow Agreement dated as of August 9, 2002 (the "Escrow Agreement"), by and among MMBC DEBT HOLDINGS I, LLC, a Delaware limited liability company ("MMBC"), and LASALLE BANK NATIONAL ASSOCIATION, a national banking association (the "Senior Loan Agent"), on its own behalf and as agent for other Lenders, and NEAR NORTH NATIONAL TITLE CORPORATION, an Illinois corporation, as Escrowee (the "Escrowee"). The parties to this Amendment are BANK OF AMERICA, N.A., a national banking association ("BOA"), the Senior Loan Agent and the Escrowee.

1. Capitalized terms used and not otherwise defined in this Amendment shall have the same meanings as in the Escrow Agreement.

2. BOA represents and warrants that MMBC has assigned the Mezzanine Mortgage Documents and its position under the Escrow Agreement to BOA. BOA is hereby substituted for MMBC as the Mezzanine Lender party to the Escrow Agreement, and all references in the Escrow Agreement to the "Mezzanine Lender" shall be deemed to be references to BOA, and the Escrow Agreement is hereby modified and amended accordingly. BOA hereby joins in the Escrow Agreement as the Mezzanine Lender party thereto and hereby agrees to, and agrees to be bound by, all of the provisions of the Escrow Agreement, as modified and amended by this Amendment.

3. Reference is made to Section 1 of the Escrow Agreement, pursuant to which MMBC delivered partial releases to the Escrowee. The Escrowee is hereby directed to deliver those partial releases to BOA. On the date of the execution and delivery of this Amendment, the BOA has deposited in escrow with the Escrowee, in substitution for the partial releases referred to above, (i) 360 executed and acknowledged partial releases of the Mezzanine Mortgage, the Mezzanine Assignment of Rents and the Mezzanine Security Agreement, (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 BOA is irrevocable. All references in the Escrow Agreement to partial releases by the Mezzanine Lender shall be deemed to be references to the partial releases deposited by BOA as described above, and the Escrow Agreement is hereby modified and amended accordingly.

4. The Escrowee by signing below acknowledges receipt of the documents referred to in paragraph 3 above. The Escrowee further acknowledges and agrees that each such document that has been deposited by BOA is in a form which, when the Escrowee is authorized to use same under the terms of the Escrow Agreement, and the legal description of one or more Units has been attached thereto as an exhibit, will be 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.

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5. Paragraph E in Section 3 of the Escrow Agreement is hereby modified and amended to read as follows:

E. The Escrowee is prepared to make payments in accordance with this paragraph E. For purposes of this paragraph E, the "Release Price" for each Unit is 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 Escrowee shall 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. 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 payment to the Senior Loan Agent, all as shown in the payoff letter issued by the Senior Loan Agent with respect to such Unit or Units. If the Release Price for a Unit is greater than the payoff amount set forth in the Senior Loan Agent's payoff letter, the Escrowee shall pay the amount of the excess to the Mezzanine Lender.

6. Section 8 of the Escrow Agreement is hereby modified and amended by changing the address for notices to the Mezzanine Lender to read as follows:

If to the Mezzanine Lender: Bank of America, N.A.
IL1-231-02-55
231 S. LaSalle Street
Chicago, IL 60604

Attention: John S. Wayland

7. The Escrow Agreement shall remain in full force and effect as originally executed and delivered by the parties thereto, except as expressly modified and amended herein.

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

9. This Amendment shall inure to the benefit of and shall be binding upon the parties and their respective successors, assigns and legal representatives.

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BANK OF AMERICA, N.A.

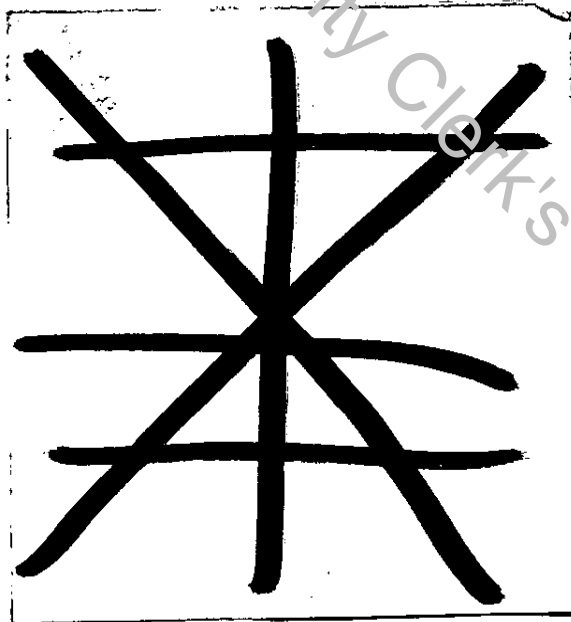
By _____
Title:

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

11. This Amendment may be amended, changed, modified, altered or terminated only by a written instrument executed by all of the parties hereto.

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

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

(c) The headings of this Amendment 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 Amendment and legal counsel for each party have participated in the drafting of this Amendment, 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 Amendment.

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