

UNOFFICIAL COPY



This document prepared by and
after recording return to:

William J. Lapelle, Esq.
Levenfeld Pearlstein, LLC
2 North LaSalle Street
Suite 1300
Chicago, Illinois 60602

Doc#: 0728915117 Fee: \$36.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 10/16/2007 10:27 AM Pg: 1 of 7

JUNIOR MORTGAGE (CONDOMINIUM)

THIS JUNIOR MORTGAGE ("Junior Mortgage") is dated as of August 10, 2007. The mortgagors are 910 South Michigan Avenue Limited Partnership and Chicago Title Land Trust Company, as Successor to Chicago Trust Company's Trustee Agreement dated May 27, 1997 and known as Trust No. 103307 (collectively "the Developer") whose address is 101 Burr Ridge Parkway, Burr Ridge, Illinois. This Junior Mortgage is given to Michigan Avenue Lofts Condominium Association ("Association"), whose address is 910 S. Michigan Avenue, Chicago, Illinois 60605.

This Junior Mortgage is given in favor of Association to secure the payment of \$250,000 which includes amounts due under that certain SETTLEMENT AGREEMENT AND MUTUAL RELEASE dated January 4, 2007 made by Developer in favor of Association ("Developer's Liabilities").

For this purpose, and in consideration of Ten Dollars (\$10.00), in hand paid, the receipt and sufficiency whereof is hereby acknowledged, Developer does hereby mortgage, grant and convey to Association the property located at 910 S. Michigan Avenue, Unit 1903, Chicago, Illinois 60605, (the "Property") which is legally described on EXHIBIT A to this Junior Mortgage together with all the improvements now or hereafter erected on said Property, and all easements, appurtenances, and fixtures now or hereafter a part of said Property, including the undivided interest in the common elements of the Association.

DEVELOPER REPRESENTS AND COVENANTS that Developer holds fee simple title to the Property, free and clear of any and all liens and encumbrances (except as approved by Association, which shall specifically include the security interest of AmeriMark Bank (the "Senior Lender") in the Property) and Developer has the right to mortgage, grant and convey the Property. Developer warrants and will defend generally the title to the Property against all claims and demands.

COVENANTS. Developer and Association covenant and agree as follows:

1. Application of Payments. Unless applicable law provides otherwise, all payments received by Association shall be applied: first, to any amounts advanced by Association pursuant to this Junior Mortgage and next to any charges due under Developer's Liabilities.

UNOFFICIAL COPY

2. **Charges; Liens.** Developer shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Junior Mortgage. Developer shall pay these obligations on time directly to the person owed payment. Developer shall promptly discharge any other lien (other than the Senior Junior Mortgage) which has priority over this Junior Mortgage. Notwithstanding the foregoing, Developer shall have the right to contest the validity, priority, amount or other matter related to the aforementioned taxes, assessments, charges, fines and impositions provided the following conditions are met: (a) Developer provides Association with all other information relating thereto which is reasonably requested by Association; (b) Developer uses its diligent efforts to contest such taxes, assessments, charges, fines and impositions; and (c) Developer provides Association with suitable protection of its interests granted hereunder.

3. **Property Insurance.** The improvements now existing or hereafter erected on the Property are insured against loss by fire and other hazards by the Association. In the event of a distribution of property insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit or to common elements of the Association, any proceeds in excess of the Senior Mortgage payable to Developer are hereby assigned and shall be paid to the Association for application to the sums secured by this Junior Mortgage whether or not then due, with the excess, if any, paid to Developer.

4. **Preservation, Maintenance and Protection of the Property.** Developer shall maintain or cause to be maintained the Property in good repair, working order, and condition and make or cause to be made, when necessary, all repairs, renewals, and replacements, structural, non-structural, exterior, interior, ordinary and extraordinary. Developer shall refrain from and shall not permit the commission of waste in or about the Property.

5. **Protection of Association's Rights in the Property.** If Developer fails to perform the covenants and agreements contained in this Junior Mortgage, or there is a legal proceeding that may significantly affect Association's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Association may take such action that is reasonably necessary to protect Association's interest in the Property. Association's actions may include paying any sums secured by a lien which has priority over this Junior Mortgage, appearing in court, paying reasonable attorneys' fees, maintaining insurance coverage for the Property and entering on the Property to make repairs. Although Association may take action under this Paragraph 5, Association does not have to do so. **ANY AMOUNTS DISBURSED BY ASSOCIATION UNDER THIS PARAGRAPH 5 SHALL BECOME THE ADDITIONAL DEBT OF DEVELOPER SECURED BY THIS JUNIOR MORTGAGE. UNLESS DEVELOPER AND ASSOCIATION AGREE TO OTHER TERMS OF PAYMENT, THESE AMOUNTS SHALL BEAR INTEREST FROM THE DATE OF DISBURSEMENT AT THE RATE OF TEN PERCENT (10%) PER ANNUM AND SHALL BE PAYABLE UPON NOTICE FROM ASSOCIATION TO DEVELOPER REQUESTING PAYMENT.**

6. **Inspection.** Association or its agent may make reasonable entries upon and inspections of the Property. Association shall give Developer notice prior to an inspection specifying reasonable cause for the inspection.

UNOFFICIAL COPY

7. **Condemnation.** Developer shall promptly give notice to Association of any condemnation or eminent domain proceeding affecting the Property. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Association and held by Association in escrow until all amounts secured hereunder are repaid to Association, with any excess paid to Developer. Provided, however, that Association may at its option, allow Developer to use such award, or any part thereof, as Association may deem appropriate in its reasonable discretion.

8. **Transfer of the Property.** If all or any part of the Property or any interest in it is sold or transferred without Association's prior written consent other than in accordance with the Settlement Agreement (hereinafter a "Prohibited Transfer"), Association may, at its option, require immediate payment in full of all of Developer's Liabilities. If a Prohibited Transfer occurs and Association exercises its right to accelerate the payment of Developer's Liabilities, Association shall give Developer notice of acceleration. The notice shall provide a period of not less than five (5) days from the date the notice is delivered or mailed within which Developer must pay all of Developer's Liabilities. If Developer fails to pay these sums prior to the expiration of this period, Association may invoke any remedies permitted by this Junior Mortgage without further notice or demand on Developer.

9. **Hazardous Substances.** Developer shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. Developer shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any applicable environmental law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential maintenance of the Property. If Developer is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary Developer shall promptly take all necessary remedial actions in accordance with applicable environmental law. As used herein, "Hazardous Substances" are those substances defined as toxic or hazardous substances under any federal, state or local law, rule or regulation that relate to health, safety or environmental protection.

10. **Condominium Obligations.** Developer shall perform all of Developer's obligations under the Condominium Association's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Association; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Developer shall promptly pay, when due, all dues and assessments imposed pursuant to the Constituent Documents.

11. **Default.** Any of the following occurrences or acts shall constitute an event of default (a "Default") under this Junior Mortgage:

(a) the occurrence of a default under the Settlement Agreement which is not cured within any applicable cure, notice or grace period; and

UNOFFICIAL COPY

(b) if Developer fails or neglects to perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Junior Mortgage, which is required to be performed, kept or observed by Developer and Developer shall fail to remedy such within ten (10) days of being served with written notice from Association in accordance with Paragraph 14 below; provided, however, that if Developer commences efforts to cure such default within the initial ten (10) day period and is diligently pursuing such cure, Developer shall be granted such additional time as may be reasonably required to effect a cure of such default.

12. Remedies; Acceleration. If any such Default shall have occurred then Association shall give notice to Developer prior to acceleration following Developer's default under this Junior Mortgage. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date not less than ten (10) days from the date the notice is given to Developer, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Junior Mortgage, foreclosure by judicial proceeding and sale of the Property. If the default is not cured on or before the date specified in the notice, Association, at its option, may require immediate payment in full of all of Developer's Liabilities without further demand and may foreclose this Junior Mortgage by judicial proceeding. Association shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Paragraph 12, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

13. Remedies Cumulative and Non-Exclusive. The lien and remedies granted to Association in this Junior Mortgage are in addition to and exclusive of any other liens or security interests granted to Association in any other agreement now or from time to time given to Association to secure the repayment of the Developer's Liabilities. Association is under no obligation to seek enforcement of any other security interest or lien prior to its enforcement of the remedies accorded to Association under this Junior Mortgage.

14. Notices. Any notice required hereunder shall be sent to Developer via hand delivery, nationally recognized overnight mail service or registered or certified U.S. mail, return receipt requested, sent to the address listed in the opening paragraph (or any different address specified by Developer in writing to Association) and shall be deemed served on the date hand delivered, one (1) business day after deposit with an overnight mail service or two (1) days after mailing the notice if served by registered or certified mail.

15. Developer Not Released; Forbearance By Association Not a Waiver. Extension of the time for payment or modification of amortization of Developer's Liabilities granted by Association to Developer shall not operate to release the liability of Developer. Any forbearance by Association in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

16. Governing Law; Severability. This Junior Mortgage shall be governed by the laws of the State of Illinois. In the event that any provision or clause of this Junior Mortgage conflicts with applicable law, such conflict shall not affect other provisions of this Junior Mortgage which can be given effect without the conflicting provision. To this end, the

UNOFFICIAL COPY

provisions of this Junior Mortgage and the SETTLEMENT AGREEMENT AND MUTUAL RELEASE are declared to be severable.

17. Release. Upon payment of all of Developer's Liabilities, Association shall release this Junior Mortgage without charge to Developer.

18. Modification, Waiver, etc. No modification, waiver, estoppel, amendment, discharge or change of this Junior Mortgage or any related instrument shall be valid unless the same is in writing and signed by Developer and Association.

19. Subordination. Notwithstanding anything to the contrary contained herein, the liens, rights and remedies granted or created by this Junior Mortgage are junior, subject and subordinate to those granted or created by that certain Mortgage dated June 7, 2006, executed by Developer, as mortgagor, in favor of Senior Lender (the "Senior Junior Mortgage") and recorded in the Office of the Recorder of Deeds of Cook County, Illinois on July 17, 2006, as Document Number 0619808112, as may hereafter amended from time to time. If there is any conflict or inconsistency between any requirements or obligations set forth in this Junior Mortgage and any requirements or obligations set forth in the Senior Mortgage, the requirements and obligations of the Senior Mortgage shall govern, and compliance by Developer with such requirements and obligations shall not be deemed a default hereunder.

BY SIGNING BELOW, Developer accepts and agrees to the terms and covenants contained in this Junior Mortgage.

DEVELOPER:

910 South Michigan Avenue Limited Partnership:

By: [Signature]
Name: GANESHAN VISVAGHARATHY
Title: PRESIDENT OF CORPORATE GENERAL PARTNER

This instrument is executed by the undersigned Land Trustee, not personally but solely as Trustee in the exercise of the power and authority conferred upon and vested in it as such Trustee. It is expressly understood and agreed that all the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee are undertaken by it solely in its capacity as Trustee and are not personal. No personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee on account of any warranty, indemnity, representation, covenant, undertaking or agreement of the Trustee in this instrument.

Chicago Title Land Trust Company, as Successor to Chicago Trust Company's Trustee Agreement dated May 27, 1997 and known as Trust No. 1103307:

By: [Signature]
Name: LIDIA MARINCA
Title: Trust Officer



STATE OF ILLINOIS)
)

UNOFFICIAL COPY

COUNTY OF COOK)

I, the undersigned, a Notary Public, in and for said County, in the State aforesaid, DO HEREBY CERTIFY that LIDIA MARINCA, as Trust Officer of CHICAGO TITLE LAND TRUST COMPANY, and _____, individually, are personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged before me that they signed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 10th day of August, 2007.

Janice M. Pucci
Notary Public



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

PARCEL 1:

UNIT #1903 IN MICHIGAN AVENUE LOFTS CONDOMINIUM, AS DELINEATED ON THE SURVEY OF CERTAIN LOTS OR PARTS THEREOF IN ASSESSORS DIVISION, BEING A SUBDIVISION IN SECTION 15, TOWNSHIP 39, NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH SURVEY IS ATTACHED AS EXHIBIT "D" TO THE DECLARATION OF CONDOMINIUM OWNERSHIP RECORDED AUGUST 31, 1998 AS DOCUMENT 98774537, AND AS AMENDED BY AMENDMENT RECORDED MARCH 30, 2004 AS DOCUMENT NUMBER 0409031038, AS CORRECTED BY DOCUMENT RECORDED JUNE 23, 2004 AS DOCUMENT NUMBER 0417519099, IN COOK COUNTY, ILLINOIS, TOGETHER WITH ITS UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS APPURTENANT TO SAID UNIT, AS SET FORTH IN SAID DECLARATION.

PIN: 17-15-307-036-1263

COMMON ADDRESS: 910 S. Michigan Avenue
Unit 1903
Chicago, Illinois