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4460 # KP # 97-050076  
COOK COUNTY RECORDER



WHEN RECORDED MAIL TO

Rosenberg & Liebentritt, P.C.  
Two North Riverside Plaza  
Suite 1515  
Chicago, IL 60606  
Attn: Steven E. Firllich

**97050076**

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT

*1/24/97*

*BSD*

THIS AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT (this "Mortgage"), Made as of the 20th day of January, 1997 between AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement dated May 1, 1995 and known as Trust No. 120386-00 (the "NLTC Trust"), ZML-NORTH LOOP/THEATER DISTRICT PARKING LIMITED PARTNERSHIP, an Illinois limited partnership (the "Beneficiary"), c/o Equity Office Holdings, L.L.C., Two North Riverside Plaza, Suite 2200, Chicago, IL 60606 herein (whether one or more in number) called "Mortgagor", and ZELLMERRILL LYNCH REAL ESTATE OPPORTUNITY PARTNERS LIMITED PARTNERSHIP III, an Illinois limited partnership, c/o Equity Office Holdings, L.L.C., Two North Riverside Plaza, Suite 2200, Chicago, Illinois 60606, herein called "Mortgagee":

### WITNESSETH:

WHEREAS, Mortgagor executed that certain Secured Promissory Note (the "Original Note") dated June 9, 1995, payable to the order of Mortgagee in the original principal sum of Forty-Three Million Dollars (\$43,000,000.00) (the "Original Subordinate Loan Amount");

WHEREAS, upon execution of the Original Note, Mortgagee disbursed Twenty-Six Million and No/100 Dollars (\$26,000,000.00) of the Original Subordinate Loan Amount (the "Initial Advance") to or at the direction of Beneficiary;

WHEREAS, to secure, among other things, the obligations of Mortgagor under the Original Note: (i) Mortgagor, as mortgagor thereunder, executed that certain Mortgage, Assignment

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of Leases and Rents and Security Agreement (the "Original Mortgage") dated June 9, 1995, recorded with the Cook County Recorder's Office on June 9, 1995 as Document Number 95377109, encumbering the interest of Mortgagor in the "Property" (defined below) and certain other property described therein; (ii) Beneficiary executed that certain Collateral Assignment of Beneficial Interest dated June 9, 1995 with respect to Beneficiary's ownership of, and power of direction in, the NLTC Trust; and (iii) NLTC Trust and/or Beneficiary executed certain other "Security Instruments" (as defined in the Original Note);

WHEREAS, to address Mortgagee's obligation to disburse all or a portion of the Original Subordinate Loan Amount subsequent to the disbursement of the Initial Advance, Mortgagee and Beneficiary entered into that certain Funding Agreement (the "Funding Agreement") dated June 9, 1995;

WHEREAS, the Funding Agreement provides, *inter alia*, that, subject to the terms, provisions and conditions set forth therein, Mortgagee shall disburse to Beneficiary a sum (the "Second Advance") of up to Sixteen Million Seven Hundred Sixty-Five Thousand Six Hundred Seventeen and 67/100 Dollars (\$16,765,617.67) of the Original Subordinate Loan Amount on the "Lincoln National Maturity Date" (defined in the Funding Agreement) to provide funds to Beneficiary for repayment of the "Lincoln National Loan" (defined in the Funding Agreement), which Lincoln National Loan, prior to the date hereof, was secured by a mortgage encumbering the property and improvements located at the Southeast corner of Dearborn and Lake Streets in the City of Chicago commonly known as the Theater District Self-Park (the "TDSP Property") and legally described on Exhibit "A-2" attached hereto, and, upon disbursement of the Second Advance, Beneficiary and American National Bank and Trust Company of Chicago, not personally but solely as Trustee under Trust Agreement dated May 1, 1995 and known as Trust No. 120387-09 (the "TDSP Trust") are obligated to execute a mortgage in favor of Mortgagee encumbering the TDSP Property;

WHEREAS, Mortgagee has disbursed the Second Advance to Beneficiary prior to the disbursement of the Senior Loan (hereinafter defined);

WHEREAS, The Northwestern Mutual Life Insurance Company ("Senior Lender") has made a loan (the "Senior Loan") of even date herewith in the original principal amount of Thirty Four Million Four Hundred Fifty Thousand and No/100 Dollars (\$34,450,000.00) (the "Senior Loan Amount") to Mortgagor and TDSP Trust secured by the Property and the TDSP Property;

WHEREAS, in connection with the closing of the Senior Loan, the loan evidenced by the Note (the "Subordinate Loan") is being restructured to "wrap" the Senior Loan and the proceeds of such Senior Loan shall be payable to Lender (and not to Borrower) provided that, subject to the provisions of this instrument and the other Loan Documents (defined

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below), the Senior Loan is paid off from funds received by Lender from Borrower's satisfaction of the Subordinate Loan;

WHEREAS, in connection with the execution and disbursement of the Senior Loan, Mortgagor, TDSP Trust and Mortgagee entered into that certain Amended and Restated Secured Promissory Note (together with any restatement, extension or renewal thereof and any amendment thereto, the "Note") of even date herewith in the amount of Forty Two Million Three Hundred Sixty-Seven Thousand One Hundred Ninety-Four and 13/100 Dollars (\$42,367,194.13), which Note amends, restates and replaces the Original Note in its entirety; and

WHEREAS, in order to amend, restate and replace the Original Mortgage in connection with the execution and delivery of the Note, Mortgagor and Mortgagee desire to execute and deliver this Mortgage;

WHEREAS, in connection with the execution and delivery of the Note and the disbursement of the Second Advance, Beneficiary and TDSP have executed that certain Mortgage and Security Agreement (the "TDSP Subordinate Mortgage") of even date herewith in favor of Mortgagee encumbering the TDSP Property.

NOW THEREFORE, Mortgagor, in consideration of the indebtedness herein mentioned, does hereby grant, convey, mortgage and warrant unto Mortgagee forever, with right of entry and possession, the following property (herein referred to as the "Property"), subject, however, to the rights, if any, of Senior Lender under that certain Mortgage and Security Agreement of even date herewith executed by Mortgagor in favor of Senior Lender, encumbering the Property (the "Senior Mortgage"; together with the Senior Note and all other documents, instruments and agreements securing the Senior Loan or executed in connection therewith, the "Senior Loan Documents"):

- A. The land in the City of Chicago, Cook County, Illinois, described in Exhibit "A-1" attached hereto and incorporated herein (the "Land") and all appurtenances thereto commonly known as the North Loop Transportation Center; and
- B. All buildings and improvements now existing or hereafter erected thereon, all waters and water rights, all engines, boilers, elevators and machinery, all heating apparatus, electrical equipment, air-conditioning equipment, water and gas fixtures, and all other fixtures of every description belonging to Mortgagor which are or may be placed or used upon the Land or attached to the buildings or improvements, all of which, to the extent permitted by applicable law, shall be deemed an

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accession to the freehold and a part of the realty as between the parties hereto.

- C. All Mortgagor's right, title and interest in and to that certain Joint Declaration of Easements, Reservations, Covenants and Restrictions dated July 31, 1984 and recorded with the Cook County Recorder on August 3, 1984 as Document No. 27 199 764 as amended by a First Amendment to Joint Declaration of Easements, Reservations, Covenants and Restrictions dated December 19, 1984 and recorded with the Cook County Recorder as Document No. 27397018 (collectively, the "Joint Declaration").

Mortgagor agrees not to sell, transfer, assign or remove anything described in B above now or hereafter located on the Land without prior written consent from Mortgagee unless (i) such action does not constitute a sale or removal of any buildings or improvements or the sale or transfer of waters or water rights and (ii) such action results in the substitution or replacement with similar items of equal value.

Without limiting the foregoing grants and subject to the rights, if any, of Senior Lender under the Senior Loan Documents, Mortgagor hereby pledges to Mortgagee, and grants to Mortgagee a security interest in, all of Mortgagor's present and hereafter acquired right, title and interest in and to the Property and any and all:

- D. cash and other funds now or at any time hereafter deposited by or for Mortgagor on account of tax, special assessment, replacement or other reserves required to be maintained pursuant to the Loan Documents (as hereinafter defined) with Mortgagee or a third party, or otherwise deposited with, or in the possession of, Mortgagee pursuant to the Loan Documents; and
- E. surveys, soils reports, environmental reports, architect's contracts, construction contracts, drawings and specifications, applications, permits, surety bonds and other contracts relating to the acquisition, design, development, construction and operation of the Property; and
- F. subject to the provisions following the captions entitled, "Insurance" and "Condemnation" below, present and future rights to condemnation awards, insurance proceeds or other proceeds at any time payable to or received by Mortgagor on

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account of the Property or any of the foregoing personal property.

- G. of the following property of Mortgagor, whether now owned or hereafter acquired: all accounts (as defined in the Illinois Uniform Commercial Code), accounts receivable, contract rights, chattel paper, instruments evidencing any right to payment for goods sold or leased or for services rendered at the Property, including, without limitation, all fees, charges, accounts or other payments for parking in or on the Property, including all products and proceeds thereof.

All personal property hereinabove described is hereinafter referred to as the "Personal Property".

If any of the Property is of a nature that a security interest therein can be perfected under the Uniform Commercial Code, this instrument shall constitute a security agreement and financing statement if permitted by applicable law, subject and subordinate to the interest, if any, of the Senior Lender in such Property, and Mortgagor agrees to join with Mortgagee in the execution of any financing statements and to execute any other instruments that may be required for the perfection or renewal of such security interest under the Uniform Commercial Code.

TO HAVE AND TO HOLD the same unto Mortgagee for the purpose of securing:

(a) Payment of the indebtedness evidenced by the Note, with final maturity no later than May 31, 2005 and with interest as therein expressed, it being recognized that the funds may not have been fully advanced as of the date hereof but may be advanced in the future in accordance with the terms of a written contract; and

(b) Payment of all sums that may become due Mortgagee under the provisions of, and the performance of each agreement of Mortgagor contained in, the Loan Documents.

As used herein, "Loan Documents" means this instrument, the Note, the TDSP Subordinate Mortgage, that certain Absolute Assignment of Leases and Rents of even date herewith between Mortgagor, as assignor, and Mortgagee, as assignee (the "NLTC Absolute Assignment"), that certain Absolute Assignment of Leases and Rents of even date herewith between TDSP Trust and Beneficiary, as assignor, and Mortgagee, as assignee, and any other agreement entered into by Mortgagor and/or TDSP Trust and delivered to Mortgagee in connection with the indebtedness evidenced by the Note, except for any separate environmental indemnity agreement(s), as any of the foregoing may be amended from time to time.

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TO PROTECT THE SECURITY OF THIS MORTGAGE, MORTGAGOR COVENANTS AND AGREES:

**Payment of Debt.** Mortgagor agrees to pay the indebtedness hereby secured (the "Indebtedness") promptly and in full compliance with the terms of the Loan Documents.

**Ownership.** Mortgagor represents that it owns the Property and has good and lawful right to convey the same and that the Property is free and clear from any and all encumbrances whatsoever, except for the Senior Mortgage and as appears in the title evidence accepted by Mortgagee. Mortgagor does hereby forever warrant and shall forever defend the title and possession thereof against the lawful claims of any and all persons whomsoever.

**Maintenance of Property and Compliance with Laws.** Mortgagor agrees to keep, and to use reasonable efforts to cause its tenants to keep, the buildings and other improvements now or hereafter erected on the Land in good condition and repair, not to commit or suffer any waste; to comply with all laws, rules and regulations affecting the Property; and to permit Mortgagee to enter at all reasonable times for the purpose of inspection and of conducting, in a reasonable and proper manner, such tests as Mortgagee determines to be necessary in order to monitor Mortgagor's compliance with applicable laws and regulations regarding hazardous materials affecting the Property; provided, however, Mortgagee shall not conduct, or cause to be conducted, any physically intrusive tests on the Property unless Mortgagee has reasonable cause to believe that an environmental condition exists on the Property which is in violation of such environmental laws or any activity involving hazardous materials is occurring on the Property in violation of environmental laws or legal requirements or has reasonable cause to believe that a situation exists which could create a liability under the Environmental Indemnity Agreement.

**Insurance.** Subject to the provisions of the Joint Declaration and related agreements with the owner of the 203 North LaSalle Office Building, Mortgagor agrees to keep the Property insured for the protection of Mortgagee in such manner, in such amounts and in such companies as Senior Lender may from time to time require, or as Mortgagee may from time to time approve, and to keep the policies therefor, properly endorsed, on deposit with Mortgagee; that insurance loss proceeds (less expenses of collection) shall, at Mortgagee's option and subject to the rights, if any, of the Senior Lender under the Senior Loan Documents, be applied on the Indebtedness, whether due or not, or to the restoration of the Property, or be released to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents. If Mortgagee elects to apply the insurance loss proceeds on the Indebtedness, a prepayment privilege fee as described in the Note shall be due thereon.

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Notwithstanding the foregoing provision, Mortgagee agrees that if the insurance loss proceeds are less than the unpaid principal balance of the Note and one of the two following facts is true: (i) the casualty occurs prior to the last year of the term of the Note, or (ii) the casualty occurs during the last year of the term of the Note but the estimated cost of Restoration related to such casualty is equal to or less than \$1,000,000, then and in such event and subject to the rights, if any, of the Senior Lender under the Senior Loan Documents, the insurance loss proceeds (less expenses of collection) shall be applied to restoration of the Property to its condition prior to the casualty ("Restoration"), subject to satisfaction of the following conditions:

- (a) There is no existing Event of Default at the time of casualty, and if there shall occur any Event of Default after the date of the casualty, Mortgagee shall have no further obligation to release insurance loss proceeds hereunder.
- (b) The casualty insurer has not denied liability for payment of insurance loss proceeds as a result of any act, neglect, use or occupancy of the Property by Mortgagor or any tenant of the Property.
- (c) Mortgagee shall be satisfied that all insurance loss proceeds so held, together with supplemental funds received from Mortgagor, shall be sufficient to complete the restoration of the Property. Any remaining insurance loss proceeds may, at the option of Mortgagee, be applied on the Indebtedness, whether or not due and without a prepayment fee, or be released to Mortgagor.
- (d) Mortgagee shall release casualty insurance proceeds as restoration of the Property progresses provided that Mortgagee is furnished satisfactory evidence of the costs of restoration and if, at the time of such release, there shall exist no Event of Default under the Loan Documents. If the estimated cost of restoration exceeds \$250,000.00, the drawings and specifications for the restoration shall be reasonably approved by Mortgagee in writing prior to commencement of the restoration.
- (e) Prior to each release of funds, Mortgagor shall obtain for the benefit of Mortgagee an endorsement to Mortgagee's title insurance policy insuring against any liens arising from the restoration.
- (f) Mortgagor shall pay all costs and expenses incurred by Mortgagee, including, but not limited to, outside legal fees, title insurance costs, third-party disbursement fees, third-party engineering reports and inspections deemed necessary by Mortgagee.

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- (g) All reciprocal easement and operating agreements, if any, shall remain in full force and effect between the parties thereto on and after restoration of the Property.

**Condemnation.** Mortgagor hereby assigns to Mortgagee, subject to the rights, if any, of the Senior Lender under the Senior Loan Documents (i) any award and any other proceeds resulting from damage to, or the taking of, all or any portion of the Property in connection with condemnation proceedings or the exercise of any power of eminent domain and (ii) the proceeds from any sale or transfer in lieu thereof; and subject to the provisions of the Joint Declaration and related agreements, grants Mortgagee the right, at its option, to apply such award and other proceeds (less expenses of collection) on the Indebtedness (including any prepayment privilege fee), whether due or not, or to the restoration of the Property or to release all or any portion thereof to Mortgagor, but such application or release shall not cure or waive any default under any of the Loan Documents.

If Mortgagee elects to apply any condemnation award or other proceeds on the Indebtedness, a prepayment privilege as described in the Note shall be due thereon.

**Taxes and Special Assessments.** Mortgagor agrees to pay before delinquency all taxes and special assessments of any kind that have been or may be levied or assessed against the Property, this instrument, the Note or the Indebtedness, or upon the interest of Mortgagee in the Property, this instrument, the Note or the Indebtedness, and to procure and deliver to Mortgagee the official receipt of the proper officer showing timely payment of all such taxes and assessments; provided, however, that Mortgagor shall not be required to pay any such taxes or special assessments if the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and funds sufficient to satisfy the contested amount have been deposited in an escrow satisfactory to Mortgagee.

**Personal Property.** With respect to the Personal Property, Mortgagor hereby represents, warrants and covenants as follows:

- (a) Except for the security interest granted hereby and the interest, if any, granted by the Senior Loan Documents, Mortgagor is, and as to portions of the Personal Property to be acquired after the date hereof will be, the sole owner of the Personal Property, free from any lien, security interest, encumbrance or adverse claim thereon of any kind whatsoever except for leases of personal property disclosed to Mortgagee and any lien, security interest, encumbrance or adverse claim created by the Senior Loan Documents. Mortgagor shall notify Mortgagee of, and shall indemnify and defend Mortgagee and the Personal Property against, all claims and demands of all persons at any time claiming the Personal Property or any part thereof or any interest therein.

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(b) Except as otherwise provided above, Mortgagor shall not lease, sell, convey or in any manner transfer the Personal Property without the prior consent of Mortgagee.

(c) Mortgagor presently maintains a place of business at the address set forth above in this instrument, and Mortgagor shall immediately notify Mortgagee in writing of any change in its place of business.

(d) At the request of Mortgagee, Mortgagor shall join Mortgagee in executing one or more financing statements and continuations and amendments thereof pursuant to the Uniform Commercial Code of the jurisdiction in which the Property is located in form satisfactory to Mortgagee, and Mortgagor shall pay the cost of filing the same in all public offices wherever filing is deemed by Mortgagee to be necessary or desirable.

**Other Liens.** Mortgagor agrees to keep the Property free from all other mortgage liens and from all liens prior to the lien created hereby other than any liens in favor of Senior Lender created by the Senior Mortgage or any other Senior Loan Documents. The creation of any other mortgage lien (other than the Senior Mortgage), whether or not prior to the lien created hereby, the creation of any prior lien or the assignment or pledge by Mortgagor of its revocable license to collect, use and enjoy rents and profits from the Property (other than any assignment or pledge to Senior Lender in connection with the Senior Loan) shall constitute a default under the terms of this instrument. The term "mortgage" includes a mortgage, deed of trust, deed to secure debt or any other security interest in the Property.

**Cross-Default.** Notwithstanding anything to the contrary, an Event of Default under the TDSP Subordinate Mortgage shall also be an Event of Default under this instrument and Mortgagee may, at its option, may declare the Indebtedness due and collectible at once, and may exercise or cause to be exercised all its rights and remedies under this instrument and the TDSP Subordinate Mortgage concurrently or separately and in such order as Mortgagee may determine.

**Leases.** Mortgagor represents and warrants that, with the exception of that certain Absolute Assignment of Leases and Rents of even date herewith (the "Senior NLTC Absolute Assignment") executed by Mortgagor in favor of Senior Lender, there is no assignment or pledge of any leases of, or rentals or income from, the Property now in effect; and covenants that, until the Indebtedness is fully paid, it (i) shall not make any such assignment or pledge to anyone other than Mortgagee or Senior Lender if made to secure the obligations of Mortgagor under the Senior Loan, (ii) shall not, unless expressly permitted under another provision in this instrument, make any assignment or pledge to anyone of its hereinafter described revocable license to collect, use and enjoy the rents and profits (except in connection with Senior Loan), and (iii) shall not, without the prior written approval of Mortgagee, consent to a cancellation or surrender of any of said leases of 15,000 square feet

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or more having at the time an unexpired term of more than two years or to a release or reduction of the liability of any party to such a lease.

In consideration of the Indebtedness, Mortgagor, pursuant to the NLTC Absolute Assignment, has assigned to Mortgagee, subject to the rights, if any, of the Senior Lender under the Senior NLTC Absolute Assignment, all of Mortgagor's right, title and interest in said leases, including Mortgagor's right to collect, use and enjoy the rents and profits therefrom. Mortgagee has, in the NLTC Absolute Assignment, granted to Mortgagor a license to collect, use and enjoy said rents and profits, subject to the provisions of the Senior NLTC Absolute Assignment. Such license is revocable by Mortgagee pursuant to the terms of the NLTC Absolute Assignment.

Notwithstanding anything contained herein or in any of the Loan Documents to the contrary, Mortgagor shall be permitted, without the consent of Mortgagee, to enter into amendments to the existing lease with Standard Parking, L.P., with respect to the setting or adjustment of rent payable thereunder.

**Costs, Fees and Expenses.** Mortgagor agrees to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee hereunder; to pay all costs and expenses, including the cost of obtaining evidence of title and reasonable attorney's fees, incurred in connection with any such action or proceeding; and to pay any and all attorney's fees and expenses of collection and enforcement in the event the Note is placed in the hands of an attorney for collection, enforcement of any of the Loan Documents is undertaken or suit is brought thereon.

**Failure of Mortgagor to Act.** If Mortgagor fails to make any payment or do any act as herein provided, Mortgagee may, without obligation so to do, without notice to or demand upon Mortgagor and without releasing Mortgagor from any obligation hereof: (i) make or do the same in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof, Mortgagee being authorized to enter upon the Property for such purpose; (ii) appear in and defend any action or proceeding purporting to affect the security hereof, or the rights or powers of Mortgagee; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Mortgagee appears to be prior or superior hereto; and (iv) in exercising any such powers, pay necessary expenses, employ counsel and pay its reasonable fees. Sums so expended shall be payable by Mortgagor ten (10) business days after demand with interest from date of expenditure until the due date at the Interest Rate (as defined in the Note) and thereafter at the Default Rate (as defined in the Note). All sums so expended by Mortgagee and the interest thereon shall be included in the Indebtedness and secured by the lien of this instrument. In no event shall the maximum amount secured hereby exceed three hundred percent (300%) of the principal amount of the Note.

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**Event of Default.** Any default by Mortgagor in making any required payment of the Indebtedness or any default in any provision, covenant, agreement or warranty contained in any of the Loan Documents shall, except as provided in the two immediately succeeding paragraphs, constitute an "Event of Default".

**Notice of Default.** A default in the payment of principal and interest required in the Note or any other Loan Document (a "Monetary Default") shall not constitute an Event of Default unless Mortgagee shall have given a written notice of such Monetary Default to Mortgagor and Mortgagor shall not have cured such Monetary Default by payment of all amounts in default (including payment of interest at the Default Rate, as defined in the Note, if and to the extent required under the Note) within five (5) business days after the date on which Mortgagee shall have given such notice to Mortgagor.

Any other default under the Note or under any other Loan Document (a "Non-Monetary Default") shall not constitute an Event of Default unless Mortgagee shall have given a written notice of such Non-Monetary Default to Mortgagor and Mortgagor shall not have cured such Non-Monetary Default within thirty (30) days after the date on which Mortgagee shall have given such notice of default to Mortgagor (or, if the Non-Monetary Default is not curable within such 30-day period, Mortgagor shall not have diligently undertaken and continued to pursue the curing of such Non-Monetary Default).

For purposes of this provision, written notice may be delivered personally or sent by certified mail or reputable courier service with charges prepaid, by telecopier or by such other method whereby the receipt thereof may be confirmed. Notice shall be deemed given on the date received. Any notice which is rejected, the acceptance of which is refused or which is incapable of being delivered for any reason shall be deemed received as of the date of attempted delivery.

If any Non-Monetary Default is not cured and if such cure is not diligently undertaken and pursued during any applicable notice and cure period, interest at the Default Rate shall be due from the expiration of any applicable notice or grace period.

**Appointment of Receiver.** Upon commencement of any proceeding to enforce any right under this instrument, including foreclosure thereof, Mortgagee (without limitation or restriction by any present or future law, without regard to the solvency or insolvency at that time of any party liable for the payment of the Indebtedness, without regard to the then value of the Property, whether or not there exists a threat of imminent harm, waste or loss to the Property and or whether the same shall then be occupied by the owner of the equity of redemption as a homestead) shall have the absolute right to the appointment of a receiver of the Property and of the revenues, rents, profits and other income therefrom, and said receiver shall have (in addition to such other powers as the court making such appointment may confer) full power to collect all such income and, after paying all necessary expenses

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of such receivership and of operation, maintenance and repair of said Property, to apply, subject to the provisions of the Senior Loan Documents, the balance to the payment of any of the Indebtedness then due.

**Foreclosure.** Upon the occurrence of an Event of Default, the entire unpaid Indebtedness shall, at the option of Mortgagee, become immediately due and payable for all purposes without any notice or demand, except as required by law, (ALL OTHER NOTICE OF THE EXERCISE OF SUCH OPTION, OR OF THE INTENT TO EXERCISE SUCH OPTION, BEING HEREBY EXPRESSLY WAIVED), and Mortgagee may, in addition to exercising any rights it may have with respect to the Personal Property under the Uniform Commercial Code of the jurisdiction in which the Property is located, institute proceedings in any court of competent jurisdiction to foreclose this instrument as a mortgage, or to enforce any of the covenants hereof, or Mortgagee may, either personally or by agent or attorney in fact, enter upon and take possession of the Property and may manage, rent or lease the Property or any portion thereof upon such terms as Mortgagee may deem expedient, and collect, receive and receipt for all rentals and other income therefrom and apply the sums so received to the Indebtedness, including all sums advanced or expended by Mortgagee or the legal holder of the Indebtedness, with interest from date of advance or expenditure at the Default Rate (as defined in the Note), rendering the excess, if any, as provided by law; such foreclosure shall be a perpetual bar, both in law and equity, against Mortgagor, the heirs, successors and assigns of Mortgagor, and all other persons claiming the Property aforesaid, or any part thereof, by, from, through or under Mortgagor. The legal holder of the Indebtedness may purchase the Property or any part thereof, and it shall not be obligatory upon any purchaser at any such sale to see to the application of the purchase money.

**Waiver of Redemption.** To the extent permitted by law, Mortgagor releases and waives all rights to retain possession of the Property after any Event of Default in payment or breach of any of the obligations, covenants, undertakings or agreements herein or in the note and after the expiration of any applicable cure period; Mortgagor hereby releases and waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on its own behalf and, if Mortgagor is a trust, on behalf of the Beneficiary of Mortgagor, and each and every person, except decree and judgment creditors of the Mortgagor, including any and all persons acquiring any interest in or title to the Property or any beneficial interest in Mortgagor. Mortgagor shall not, and will not, apply for or avail itself of any appraisal, valuation, stay, extension or exemption law, or so-called "Moratorium Laws" now existing or hereinafter enacted, in order to prevent or hinder the enforcement of foreclosure of this Mortgage, but hereby waives the benefit of such laws. Mortgagor for itself and all who may claim through or under it waives any and all right to have the Property, and any estates comprising the Property, marshalled upon any foreclosure of the lien hereon and agree that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. If Mortgagor is a trust, no provision of this

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paragraph or of this Mortgage shall prevent the Beneficiary of Mortgagor from bidding at any foreclosure sale of the Property.

**Due on Sale.** The present ownership and management of the Property is a material consideration to Mortgagee in making the loan secured by this instrument, and Mortgagor shall not (i) convey title to all or any part of the Property, (ii) enter into any contract to convey (land contract/installment sales contract/contract for deed), title to all or any part of the Property which gives a purchaser possession of, or income from, the Property prior to a transfer of title to all or any part of the Property ("Contract to Convey") or (iii) cause or permit a change in the proportionate ownership of Mortgagor or the conversion of Mortgagor to a limited liability company or any other limited liability entity. Except if resulting from the death or legal incompetency of any individual, any conveyance, entering into a Contract to Convey, change in the proportionate ownership of Mortgagor or the conversion of Mortgagor to a limited liability company or any other limited liability entity shall constitute a default under the terms of this instrument.

For purposes of this instrument, a "change in the proportionate ownership of Mortgagor" means a change in the beneficial ownership of the TDSP Trust or the NLTC Trust and/or a change in the ownership of the general partnership interests of ZML-North Loop/Theater District Parking Limited Partnership, an Illinois limited partnership.

Notwithstanding the above, provided the Loan is not in default in the payment of principal or interest and no Event of Default has occurred and provided that such transfer is permitted under the Senior Loan Documents, upon the prior written request from Mortgagor, Mortgagee shall not withhold its consent to a one-time transfer of the ownership interest of Mortgagor to a limited liability company (the "LLC"), provided:

- (i) Mortgagee shall be given an opportunity to review and approve the LLC agreement, with such approval not to be unreasonably withheld;
- (ii) such transfer to the LLC does not result in an entity or entities which are controlled by Equity Group Investments, Inc. owning, directly or indirectly, less than a \$10,000,000 interest in Mortgagor;
- (iii) Equity Group Investments, Inc. continues to control the management of the Mortgagor and the Property;
- (iv) Mortgagor agrees to pay any and all out-of-pocket costs, including but not limited to the cost of title work, title endorsements, and recordation fees;
- (v) in addition to the out-of-pocket costs, Mortgagor agrees to pay a \$5,000 processing fee to Mortgagee; and

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- (vi) Mortgagor agrees to execute any and all documentation reasonably requested by Mortgagee in order to document the change and insure that Mortgagee's interests are adequately protected.

Notwithstanding the above, the following transfers shall be permitted provided that such transfers are permitted under the Senior Loan Documents:

(A) Mortgagor shall have the right to sell, transfer or assign in whole or in part its interest in the Property, or any direct or indirect interest in Mortgagee may be sold, transferred or assigned in whole or in part and in one transaction or series of transactions, provided the ultimate transferee of any such interest in the Property or in Mortgagee is a public or private real estate investment trust (a "REIT") (or an "umbrella partnership" of which a REIT is the sole general partner [an "Operating Partnership"]), corporation or limited liability company and further provided:

- (i) there is no notice from Mortgagee of a default in the payment of principal or interest and no Event of Default has occurred which remains uncured at the time of the transfer;
- (ii) such trust, partnership, corporation or limited liability company has a net worth which is at least \$10,000,000 as determined in accordance with generally accepted accounting principles;
- (iii) at the time of such sale, transfer or assignment, such trust, corporation or limited liability company is affiliated with Equity Group Investments, Inc. For purposes of this subpart (iii), a trust, partnership, corporation or limited liability company shall be considered an affiliate of Equity Group Investment, Inc. if an entity or entities which are directly or indirectly controlled by, controlling or under common control with Equity Group Investments, Inc., have at least a substantial economic interest in such trust, partnership, corporation or limited liability company;
- (iv) at least 20 days prior to such a transfer, Mortgagor must provide Mortgagee with all of the material provisions of such transfer including without limitation the proposed date of transfer, and the name, net worth, background and address of the proposed transferee and the purchase price;
- (v) the proposed transferee expressly assumes such obligations under the Loan Documents, including but not limited to the Environmental Indemnity Agreement, if any, as the transferor of any interests so transferred may have pursuant to the Loan Documents pursuant to an assumption document

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reasonably satisfactory to Mortgagee; provided, that such assumption document shall not (a) increase the financial obligations of, or personal recourse to, the transferee relative to the obligations of the transferor under the Loan Documents, or (b) otherwise modify the provisions of the Loan Documents, other than the inclusion of representations and warranties relating to the requirements of this provision and covering customary matters relating to the transferee such as due organization, existence, good standing, and authority and the validity and enforceability of the assumption document and the Loan Documents as against the transferee;

- (vi) after such sale, assignment or transfer, the Property shall continue to be managed by an organization which, at the time of such transfer, is managed and operated by substantially the same persons who then manage and operate the management firm which managed the Property prior to such sale, assignment or transfer (which organization is hereby approved by Mortgagee) or such other professional management firm reasonably acceptable to Mortgagee.

(B) Subsequent to any such sale or transfer to an entity referred in (A) above, any transfer of interests in such entity or transfers of interests in the Operating Partnership (other than the interests held by such entity) shall also be permitted transfers under the Loan Documents which may be made without the written consent of Mortgagee.

**Financial Statements.** Upon the request of Mortgagee, Mortgagor agrees to furnish to Mortgagee, at Mortgagor's expense and within 100 days after the close of each fiscal year ("Financial Statements Due Date"), annual financial statements on the Property, including

- (a) a balance sheet; and
- (b) a statement of operations with a detailed line item breakdown of all operating expenses, including a listing of the capitalized costs associated with tenant improvements, lease commissions and capital improvements (collectively referred to herein as the "Statements").

Upon the request of Mortgagee, Mortgagor also agrees to provide Mortgagee by the Financial Statements Due Date a current rent roll, listing tenant sales, sales per square foot and/or percentage rents for all retail spaces, if such information is to be provided by tenants under their lease (the "Rent Roll") and a certification (the "Certification") by a senior officer of the general partner of Beneficiary stating that the Statements and Rent Roll are true and correct and the Statements have been prepared in accordance with modified cash basis accounting principles. Mortgagor acknowledges that Mortgagee may require such

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Statements, Rent Roll and Certification in order to record accurately the value of the Property for financial and/or regulatory reporting.

If Mortgagor does not furnish, or cause to be furnished, the Statements, Rent Roll and Certification to Mortgagee by the Financial Statements Due Date, within 30 days after Mortgagee shall have given written notice to Mortgagor that the Statements, Rent Roll and/or Certification have not been received as required, such failure shall constitute an Event of Default hereunder and under the other Loan Documents.

Notwithstanding the foregoing, Mortgagee shall have the right to conduct an independent audit at its own expense if (i) Mortgagee has a reasonable belief that the financial statements are inaccurate, or (ii) such audit is required by Mortgagee's governing documents, the terms of any financing to which Mortgagee is subject, any laws, regulations to which Mortgagee or its parent or majority or controlling owner is subject.

**Business Loan Compliance.** The Indebtedness constitutes a business loan as defined under 4c of Chapter 74 of Illinois Revised Statutes.

**Deposits by Mortgagor.** To assure the timely payment of real estate taxes and special assessments, Mortgagee shall, subject to the rights, if any, of the Senior Lender under the Senior Loan Documents, have the option in the event of the occurrence of any Event of Default to require Mortgagor to deposit funds with Mortgagee, in monthly or other periodic installments in amounts estimated by Mortgagee from time to time sufficient to pay real estate taxes and special assessments as they become due. If at any time the funds so held by Mortgagee, or in such other account, shall be insufficient to pay any of said expenses, Mortgagor shall, upon receipt of notice thereof, immediately deposit such additional funds as may be necessary to remove the deficiency. All funds so deposited shall be irrevocably appropriated to Mortgagee to be applied to the payment of such real estate taxes and special assessments and, at the option of Mortgagee after an Event of Default, the Indebtedness.

**Liens Discharged by Proceeds.** Mortgagee shall, subject to the rights of the Senior Lender, be subrogated to the lien of any and all prior encumbrances, liens or charges paid and discharged from the proceeds of the Note, and even though said prior liens have been released of record, the repayment of the Note shall be secured by such liens on the portion of the Property affected thereby to the extent of such payments, respectively.

**Senior Loan.** This Mortgage is a wraparound mortgage and is subject and subordinate to the Senior Note, the Senior Mortgage and all of the other Senior Loan Documents. In connection therewith, it is further agreed as follows:

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(a) Mortgagor shall comply strictly with all of the terms and conditions of the Senior Loan Documents. Mortgagor shall not suffer or permit any default or breach to occur under the Senior Loan Documents and shall not, without the prior written consent of Mortgagee, cause any renewal, extension, modification, amendment, or substitution to be made in any of the Senior Loan Documents. Mortgagor shall promptly notify Mortgagee in writing of any default under or breach of any of the provisions of the Senior Loan Documents. Any Event of Default under the Senior Loan Documents shall constitute an Event of Default under this Mortgage, whereupon Mortgagee, at its option, may, as provided above and without notice, declare all of the Indebtedness hereby secured to be immediately due and payable, and Mortgagee may foreclose this Mortgage as in the case of any other Event of Default under this Mortgage, without regard to whether the Senior Mortgage is then being foreclosed. Mortgagor's agreement to comply with the terms and conditions of the Senior Loan Documents and not to suffer or permit any default or breach to occur thereunder is being made solely for the benefit of Mortgagee and not for the benefit of the holder of the Senior Note or any other person or entity.

(b) Mortgagor hereby authorizes Mortgagee, at the option of Mortgagee, to perform any covenants, do any acts, and make any payments required under the Senior Loan Documents that have not been performed, done, or paid by Mortgagor when required thereunder. All expenses incurred and sums paid pursuant to the foregoing authority, with interest thereon at the Default Rate, shall be secured by this Mortgage and shall be payable to Mortgagee on demand. Mortgagee may exercise its option to perform any of such covenants, do any of such acts, or make any of such payments as aforesaid prior to, simultaneously with, or subsequent to any exercise by Mortgagee of its option to declare all Indebtedness hereby secured to be immediately due and payable. The curing by Mortgagee of any default or breach under any of the Senior Loan Documents shall not be deemed to constitute the curing of such default by Mortgagor or the curing of the resulting default under this Mortgage, and in such event, Mortgagee shall be entitled to pursue its remedies under this Mortgage as in the case of any other default, whether or not any default then exists under the Senior Loan Documents.

(c) Mortgagor agrees that, to the extent Mortgagee pays any sums evidenced or secured by the Senior Loan Documents, Mortgagee shall become entitled to a lien on the Property equal in rank and priority to the Senior Loan Documents against which such payment is applied and, in addition, to the extent necessary to make effective such rank and priority: (i) Mortgagee shall become subrogated to, receive and enjoy all of the rights, liens, powers and privileges granted to the holder of the Senior Note under the Senior Mortgage or otherwise, and (ii) the Senior Mortgage shall remain in existence for the benefit of and to further

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secure the debt and other sums secured, or that hereafter become secured, under this Mortgage.

(d) By accepting this Mortgage, Mortgagee agrees, but only so long as Mortgagor is not in default under the Note and this Mortgage, and only until the earlier of the Maturity Date or the date on which the unpaid principal balance of the Note is prepaid in accordance with the terms and conditions of the Note, to pay to the holders of the Senior Note the regularly scheduled periodic installments of principal and interest then due and payable, without material delay after receipt by Mortgagee of Mortgagor's payments under the Note for the months in which the payments under the Senior Note are due. Mortgagee does not hereby assume any of the obligations under the Senior Loan Documents required to be performed by Mortgagor hereunder, except with respect to such payments of principal and interest as aforesaid. Mortgagee's agreement to make such payments of principal and interest is being made solely for the benefit of Mortgagor and not for the benefit of the holders of the Senior Note or any other person or entity.

(e) In addition to making payments of principal and interest under the Note, Mortgagor agrees to pay to Mortgagee any and all amounts required to be paid to the holder of the Senior Loan Documents, other than payments of principal and interest due thereunder, not later than fifteen (15) days prior to the date on which such amounts are required to be paid thereunder. So long as Mortgagor is not in default under the Note and this Mortgage, Mortgagee agrees to remit such amounts received from Mortgagor to the holders of the Senior Note without material delay.

(f) Mortgagee shall not be required to make any prepayments of principal or interest under the Senior Note. Mortgagor shall not make any prepayments of principal or interest under the Senior Note, and shall not enter into any agreement with the holders of the Senior Note, or any of them, amending any of the provisions thereof dealing with the payment of principal or interest, without the prior written consent of Mortgagee.

(g) Upon any Event of Default, or upon the maturity of the Senior Note, or any of them, Mortgagee is authorized and empowered (but not obligated) to disburse such portion of the principal amount evidenced by the Note and secured by this Mortgage as is sufficient to pay in full the indebtedness secured by any one or more of the Senior Mortgage, as the case may be, together with any prepayment premium thereon and to apply the same to such payment.

(h) Upon payment of the indebtedness secured by the Senior Mortgage as provided in (g) above, Mortgagee shall be and is hereby subrogated to all rights, liens and privileges which before such payment were held by and vested in the

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holder(s) of the Senior Mortgage(s), and upon such payment, this Mortgage, to the extent of such payment, shall be a valid lien, subrogated and with the priority as provided in (c) above, upon the Property.

(i) If and when requested by Mortgagee, and if and when Mortgagee acquires the Senior Mortgage, Mortgagor may be required by Mortgagee to evidence the unpaid balance owing to Mortgagee. Mortgagor's failure to furnish such statement within seven (7) days after service of Mortgagee's request therefor shall be deemed and treated as an acknowledgment by Mortgagor that no off-sets or defenses exist against Mortgagor's indebtedness under the Note and, except as otherwise claimed by Mortgagee, that all regular installment payments thereunder and no other payments have been made.

(j) Mortgagor shall send promptly to Mortgagee a copy of each and every notice or other communication received by it from the holder of any of the Senior Loan Documents. Any notice of default or acceleration of maturity of the indebtedness thereunder shall be sent via hand delivery, recognized overnight courier or by facsimile transmission (with a copy sent by recognized overnight courier) on the day on which it is received. Within five (5) days after the due date therefor, Mortgagor shall provide Mortgagee with evidence acceptable to Mortgagee that each payment required to be made other than principal and interest under the Senior Loan Documents was made in a timely fashion.

(k) If for any reason, the Senior Loan is accelerated or the Property or any part thereof which is subject to the Senior Loan is sold or attempted to be sold pursuant to the terms thereof, or any remedial action or proceeding is taken or instituted with respect to the Property or the Senior Loan, Mortgagor shall indemnify, defend (with counsel acceptable to Mortgagee) and hold Mortgagee harmless from and against any loss, cost or expense incurred by Mortgagee, including, without limitation, attorneys' fees (i) in contesting any such action or proceeding taken or instituted or in attempting to reinstate the Senior Loan, or (ii) on account of the acceleration of the Senior Loan, the sale of the Premises or any portion thereof or Mortgagee's purchase of the Senior Loan.

**Amended and Restated Mortgage.** This Mortgage amends, restates and supersedes in its entirety the Original Mortgage.

**Modification of Terms.** Without affecting the liability of Mortgagor or any other person (except any person expressly released in writing) for payment of the Indebtedness or for performance of any obligation contained herein and without affecting the rights of Mortgagee with respect to any security not expressly released in writing, Mortgagee may, at any time and from time to time, either before or after the maturity of the Note, without

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notice or consent: (i) release any person liable for payment of all or any part of the Indebtedness or for performance of any obligation; (ii) make any agreement extending the time or otherwise altering the terms of payment of all or any part of the Indebtedness, or modifying or waiving any obligation, or subordinating, modifying or otherwise dealing with the lien or charge hereof; (iii) exercise or refrain from exercising or waive any right Mortgagee may have; (iv) accept additional security of any kind; (v) release or otherwise deal with any property, real or personal, securing the Indebtedness, including all or any part of the Property.

**Exercise of Options.** Whenever, by the terms of this instrument, of the Note or any of the other Loan Documents, Mortgagee is given any option, such option may be exercised when the right accrues or at any time thereafter, and, except as provided in the Note, no acceptance by Mortgagee of payment of Indebtedness in default shall constitute a waiver of any default then existing and continuing or thereafter occurring.

**Nature and Succession of Agreements.** Each of the provisions, covenants and agreements contained herein are joint and several, and shall inure to the benefit of, and be binding on, the heirs, executors, administrators, successors, grantees, lessees and assigns of the parties hereto, respectively, and the term "Mortgagee" shall include the owner and holder of the Note.

**Legal Enforceability.** No provision of this instrument, the Note or any other Loan Documents shall require the payment of interest or other obligation in excess of the maximum permitted by law. If any such excess payment is provided for in any Loan Documents or shall be adjudicated to be so provided, the provisions of this paragraph shall govern and Mortgagor shall not be obligated to pay the amount of such interest or other obligation to the extent that it is in excess of the amount permitted by law.

**Captions.** The captions contained herein are for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect this instrument.

**Governing Law.** This instrument, the interpretation hereof and the rights, obligations, duties and liabilities hereunder shall be governed and controlled by the laws of the state in which the Property is located.

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IN WITNESS WHEREOF, this instrument has been executed as of the day and year first above written.

This instrument is executed by American National Bank and Trust Company of Chicago, not personally, but as Trustee, in the exercise of the power and authority conferred upon and vested in it as such Trustee, (said Trustee hereby warrants that it possesses full power and authority to execute this instrument); nothing contained herein or in the Note shall be construed as creating any personal liability on said Trustee to pay the indebtedness evidenced by the Note or secured by this instrument or to perform any covenants contained in this instrument, either express or implied, all such liability being expressly waived; provided, however, that this waiver shall in no way affect the personal liability of any other maker, endorser or guarantor of the Note. Notwithstanding any provision contained herein or in this instrument or the Note to the contrary, Mortgagee agrees that, in the event it shall take action to enforce the collection of the Indebtedness against said Trustee, its remedy shall be limited to the Property or the proceeds from the sale of the Property and the proceeds realized by Mortgagee in exercising any of its rights and remedies (i) under the Absolute Assignment, (ii) under any other agreements given in connection with the Indebtedness, and (iii) in any other collateral securing the Indebtedness. If such proceeds are insufficient to pay the Indebtedness, Mortgagee will never institute any action, suit, claim or demand in law or in equity against said Trustee for or on account of such deficiency, provided, however, that the provisions contained in this paragraph shall not in any way affect or impair the validity or enforceability of the Indebtedness nor the lien created by this instrument.

## MORTGAGOR:

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement dated May 1, 1995 and known as Trust No. 120386-00

By: David Rosenfeld

Attest: \_\_\_\_\_  
Attestation not required by American National Bank and Trust Company of Chicago by Law

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

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(SIGNATURES CONTINUED FROM PRECEDING PAGE)

ZML-NORTH LOOP/THEATER DISTRICT PARKING  
LIMITED PARTNERSHIP, an Illinois limited  
partnership

By: ZML-Chicago Parking Limited  
Partnership, a Delaware limited  
partnership, general partner

By: ZML-Chicago Parking, Inc., an  
Illinois corporation, general  
partner

By:   
Donald S. Lieberherr  
Vice President

(SIGNATURES CONTINUED ON FOLLOWING PAGE)

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## MORTGAGEE:

ZELL/MERRILL LYNCH REAL ESTATE OPPORTUNITY PARTNERS LIMITED PARTNERSHIP III, an Illinois limited partnership


By: ZML Partners Limited Partnership III, an Illinois limited partnership, its general partner

By: ZM Investors Limited Partnership III, an Illinois limited partnership, its general partner

By: Zell/Merrill III, Inc., an Illinois corporation, its general partner

By:

Its:

  
Donald J. Liebentritt  
Vice President

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STATE OF ILLINOIS )  
 )  
 ) ss.  
COUNTY OF COOK )

I, CYNTHIA K. HARRIS a Notary Public in and for said County and State, do hereby certify that David Rosenfeld and \_\_\_\_\_ personally known to me to be the same persons whose names are subscribed to the foregoing instrument as \_\_\_\_\_ and \_\_\_\_\_ respectively, of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not personally but solely as Trustee under Trust Agreement dated May 1, 1995 and known as Trust No. 120386-00, the corporation named as Mortgagor therein, and known to me to be such officers, appeared before me this day in person and severally acknowledged that they signed and delivered the said instrument and caused the corporate seal of said corporation to be affixed thereto by authority of its Board of \_\_\_\_\_, as their free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth, as Trustee as aforesaid.

Given under my hand and notarial seal this 22 day of JANUARY, 1997.

My commission expires:

Cynthia K. Harris  
Notary Public



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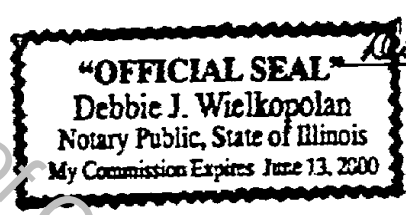


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STATE OF ILLINOIS )  
 )  
 ) SS.  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of January, 1997, by Ronald J. Liebertritt the Vice President of ZML Chicago Parking, Inc., an Illinois corporation, general partner of ZML-Chicago Parking Limited Partnership Limited, a Delaware limited partnership, which is the general partner of ZML-NORTH LOOP/THEATER DISTRICT PARKING LIMITED PARTNERSHIP, an Illinois limited partnership and acknowledged the execution of the foregoing instrument as the act and deed of said corporation.

My commission expires:

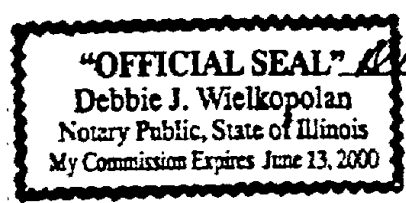


Debbie J. Wielkopolan  
Notary Public

STATE OF ILLINOIS )  
 )  
 ) SS.  
COUNTY OF COOK )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of January, 1997, by Ronald J. Liebertritt the Vice President of ZELL/MERRILL III, INC., an Illinois corporation, general partner of ZM INVESTORS LIMITED PARTNERSHIP III, an Illinois limited partnership, general partner of ZML PARTNERS LIMITED PARTNERSHIP III, an Illinois limited partnership, which is the general partner of ZELL/MERRILL LYNCH REAL ESTATE OPPORTUNITY PARTNERS LIMITED PARTNERSHIP III, an Illinois limited partnership, and acknowledged the execution of the foregoing instrument as the act and deed of said corporation.

My commission expires:



Debbie J. Wielkopolan  
Notary Public

This instrument was prepared by:

Steven E. Ehrlich, Esq.  
Rosenberg & Liebenritt, P.C.  
Two North Riverside Plaza  
Suite 1515  
Chicago, Illinois 60606

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## EXHIBIT "A-1" Description of Property

### "NLTC Property"

#### PARCEL 1:

LOT 27 (TRANSPORTATION CENTER) IN LOOP TRANSPORTATION CENTER SUBDIVISION, BEING A RESUBDIVISION OF PART OF BLOCK 18 IN THE ORIGINAL TOWN OF CHICAGO, IN THE SOUTH EAST 1/4 OF SECTION 9, TOWNSHIP 09 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PURSUANT TO THE LEGAL DESCRIPTION CREATED BY THE LOOP TRANSPORTATION CENTER SUBDIVISION RECORDED MARCH 11, 1986 AS DOCUMENT NUMBER 86095944, LOT 27 CONTAINS ALL THAT VOLUME, INCLUDING AIR RIGHTS AND SUBTERRANEAN RIGHTS, THAT IS NOT CONTAINED IN LOTS 1 TO 26.

#### PARCEL 2:

EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THAT CERTAIN JOINT DECLARATION OF EASEMENTS, RESERVATIONS, COVENANTS AND RESTRICTIONS DATED JULY 31, 1984 AND RECORDED AUGUST 3, 1984 AS DOCUMENT NUMBER 27199764.

#### PARCEL 3:

EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THAT CERTAIN JOINT DECLARATION IN ESTABLISHING EASEMENTS, RESERVATIONS, RIGHTS, COVENANTS AND RESTRICTIONS DATED MAY 29, 1990 AND RECORDED MAY 29, 1990 AS DOCUMENT NUMBER 90249524.

#### PARCEL 4:

EASEMENT FOR THE BENEFIT OF PARCEL 1 AS CREATED BY THAT CERTAIN PEDESTRIAN BRIDGE CONSTRUCTION AND CROSS EASEMENT AGREEMENT (CLARK STREET BRIDGE) DATED OCTOBER 22, 1991 AND RECORDED MARCH 25, 1992 AS DOCUMENT NUMBER 92199746.

PROPERTY ADDRESS: 203 NORTH LASALLE STREET, CHICAGO, ILLINOIS  
60601

PIN: 17-09-420-044-0000

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## EXHIBIT "A-2" Description of Property

### "TDSP Property"

LOTS 3 AND 4 IN BLOCK 36 IN THE ORIGINAL TOWN OF CHICAGO, IN THE SOUTH EAST QUARTER OF SECTION 9, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Property Address: Southeast corner of Dearborn and Lake, Chicago, Illinois

PIN: 17-09-438-004  
17-09-438-005

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