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Cook County Recorder 75.00



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CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT  
WITH ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING

28

THIS CONSTRUCTION MORTGAGE AND SECURITY AGREEMENT WITH ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING ("Mortgage") dated as of October 25, 2001 from FIRSTAR BANK, N.A., not personally but solely as Trustee (the "Trustee") under Trust Agreement dated October 10, 2001, and known as Trust No. 7504 (the "Trust"), with a mailing address of 104 North Oak Park Avenue, Oak Park, Illinois 60301-1387 and ST. GEORGE HOTEL, L.L.C., an Illinois limited liability company ("Beneficiary," and together with Trustee, "Mortgagor"), with a mailing address of c/o MARK IV Realty, 230 N. Michigan Avenue, Chicago, Illinois 60601; Attention: John Marks, to and for the benefit of U.S. BANK NATIONAL ASSOCIATION, a national banking association, its successors and assigns, in its own right and as agent of certain banks pursuant to one or more Assignment and Acceptance Agreements with its office at 701 Lee Street, Des Plaines, Illinois 60016, Attention James J. West (hereinafter referred to as "Mortgagee").

WITNESSETH THAT:

BOX 333-CTI

**This Instrument Prepared by  
and after recording return to:**

**Permanent Index No.:**

Scott M. Lapins  
SCHWARTZ, COOPER, GREENBERGER  
& KRAUSS  
180 North LaSalle Street,  
Suite 2700  
Chicago, Illinois 60601

See Exhibit "A" attached

**Address of Property**

222-230 N. Michigan Ave.  
Chicago, Illinois

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WHEREAS, Mortgagor has executed and delivered to Mortgagee a Promissory Note of even date herewith payable to Mortgagee in the principal amount of \$29,000,000.00, a Promissory Note of even date herewith payable to Midwest Bank and Trust Company in the principal amount of \$14,500,000.00 and a Promissory Note of even date herewith payable to Parkway Bank and Trust Company in the principal amount of \$5,500,000.00 (said Promissory Notes and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements therefor is referred to herein as the "Notes") pursuant to which Mortgagor promises to pay said principal sum (or so much thereof as may be outstanding at the maturity thereof) on the earlier of April 25, 2004 or twenty four (24) months from the initial disbursement under the Notes (subject to three, one year extensions), together with interest on the balance of principal from time to time outstanding and unpaid thereon at the rates (some of which may be variable) and at the times specified in the Notes.

WHEREAS, the Notes has been issued under and subject to the provisions of a Construction Loan Agreement bearing even date herewith between Mortgagor and Mortgagee (such Construction Loan Agreement being hereinafter referred to as the "Loan Agreement"); and

NOW, THEREFORE, to secure (i) the payment when and as due and payable of the principal of and interest on the Notes or so much thereof as may be advanced from time to time under and pursuant to the Loan Agreement, (ii) the payment of all other indebtedness which this Mortgage by its terms secures and (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Loan Agreement, the Notes, the Environmental Indemnity Agreement by Mortgagor and John L. Marks for the benefit of Mortgagee of even date herewith (the "Environmental Indemnity Agreement") and all other instruments or documents securing the Notes (collectively, the "Loan Documents") (all of such indebtedness, obligations and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the "indebtedness hereby secured"), the Mortgagor does hereby grant, sell, convey, mortgage and assign unto the Mortgagee, its successors and assigns and does hereby grant to Mortgagee, its successors and assigns a security interest in all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII and VIII below all of same being collectively referred to herein as the "Mortgaged Premises":

## GRANTING CLAUSE I

That certain real estate lying and being in the County of Cook and State of Illinois, more particularly described in Exhibit "A" attached hereto and made a part hereof.

## GRANTING CLAUSE II

All right, title and interest of Mortgagor in all buildings and all improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I and all materials owned by Mortgagor and intended for construction, reconstruction, alteration and repair of the buildings and improvements now or hereafter erected thereon, all of which materials shall be deemed to be included within the premises immediately upon the delivery thereof to the said real estate, and, all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever owned by Mortgagor and now or hereafter attached to or contained in or used in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including but not

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limited to, all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and other equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property owned by Mortgagor and used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a Security Agreement under the provisions of the Illinois Uniform Commercial Code as may be now or hereafter in effect (the "Uniform Commercial Code") for the purpose of creating hereby a security interest in said property, which is hereby granted by Mortgagor as debtor to Mortgagee as secured party, securing the indebtedness hereby secured. The addresses of Mortgagor (debtor) and Mortgagee (secured party) appear at the beginning hereof. All of the foregoing described property is exclusive of any inventory, supplies, furniture, furnishings or trade fixtures owned and supplied by tenants of the Mortgaged Premises and vans, telephone systems, office equipment and computer systems which may be leased from third parties.

## GRANTING CLAUSE III

All right, title and interest of Mortgagor now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements licenses, franchises, appurtenances and royalties, mineral, oil and water rights belonging or in any way appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Mortgagor in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent or for security) under any and all leases and renewals thereof or under any contracts or options for the sale of all or any part of said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), including, without limitation, all revenues, receipts, income, receivables and accounts relating to or arising from rentals, rent equivalent income, income and profits from guest rooms, meeting rooms, food and beverage facilities, vending machines, telephone and television systems, guest laundry, the provision or sale of other goods and services, and any other items of revenue, receipts or other income as identified in the Uniform System of Accounts for Hotels, 8th Edition, International Association of Hospitality Accountants (1986), as from time to time amended), profits, revenues, receipts, royalties, bonuses, rights, accounts, contract rights, general intangibles and benefits and guarantees under any and all leases, tenancies, licenses or other use agreements or arrangements now existing or hereafter created of the Premises or any part thereof (including any business conducted thereon), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the indebtedness hereby secured and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair

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or diminish the obligations of Mortgagor under the provisions of such leases or other agreements nor shall such obligations be imposed upon Mortgagee. By acceptance of this Mortgage, Mortgagee agrees that until an Event of Default (as hereinafter defined) shall occur giving Mortgagee the right to foreclose this Mortgage, Mortgagor may collect, receive (but not more than 30 days in advance) distribute and enjoy such rents.

## GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation hereafter made resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvements now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets (collectively "Condemnation Awards").

## GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter by installation or writing of any kind, be subjected to the lien hereof.

## GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Mortgagor and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

## GRANTING CLAUSE VII

All of the Mortgagor's "general intangibles" (as defined in the Uniform Commercial Code) now owned or hereafter acquired and related to the Mortgaged Premises, including, without limitation, all right, title and interest of the Mortgagor in and to: (i) all agreements, leases, licenses and contracts to which each Mortgagor is or may become a party relating to the Mortgaged Premises or improvements thereon; (ii) all obligations or indebtedness owing to the Mortgagor (other than accounts) or other rights to receive payments of money from whatever source arising relating to the Mortgaged Premises; (iii) all tax refunds and tax refund claims; (iv) all intellectual property; and (v) all causes in action and causes of action.

All of Mortgagor's "accounts" (as defined in the Uniform Commercial Code) now owned or hereafter created or acquired as relates to the Mortgaged Premises, including, without limitation, all of the following now owned or hereafter created or acquired by Mortgagor: (i) accounts receivable, contract rights, book debts, Notes, drafts, and other obligations or indebtedness owing to the

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Mortgagor arising from the sale, lease or exchange of goods or other property and/or the performance of services, (ii) the Mortgagor's rights in, to and under all purchase orders for goods, services or other property, (iii) the Mortgagor's rights to any goods, services or other property represented by any of the foregoing, (iv) monies due to become due to the Mortgagor under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of the Mortgagor), (v) uncertificated securities, and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing. All warranties, guarantees, permits and licenses received by Mortgagor in respect to the Mortgaged Premises.

## GRANTING CLAUSE VIII

TO HAVE AND TO HOLD the Mortgaged Premises and the properties, rights and privileges hereby granted, bargained, sold, conveyed, mortgaged, pledged and assigned, and in which a security interest is granted, unto Mortgagee, its successors and assigns, forever; provided, however, that this instrument is upon the express condition that if the principal of and interest on the Notes shall be paid in full and all other indebtedness hereby secured shall be fully paid and performed and any commitment to advance funds contained in the Loan Agreement shall have been terminated, then this instrument and the estate and rights hereby granted shall cease, determine and be void and this instrument shall be released by Mortgagee upon the written request of Mortgagor.

Mortgagor hereby covenants and agrees with Mortgagee as follows:

1. Payment of the Indebtedness. The indebtedness hereby secured will be promptly paid as and when the same becomes due.
2. Representation of Title and Further Assurances. Mortgagor will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purpose of this instrument and, without limiting the foregoing, to make subject to the lien hereof any property agreed to be subjected hereto or covered by the Granting Clauses hereof or intended so to be. At the time of delivery of these presents, the Mortgagor is well seized of an indefeasible estate in fee simple in the portion of the Mortgaged Premises which constitutes real property subject only to the matters set forth in Exhibit "B" attached hereto and hereby made a part hereof (the "Permitted Exceptions"), and Mortgagor has good right, full power and lawful authority to convey, mortgage and create a security interest in the same, in the manner and form aforesaid; except for the Permitted Exceptions set forth in Exhibit "B" hereto, the same is free and clear of all liens, charges, easements, covenants, conditions, restrictions and encumbrances whatsoever, including the personal property and fixtures, security agreements, conditional sales contracts and anything of a similar nature, and the Mortgagor shall and will forever defend the title to the Mortgaged Premises against the claims of all persons whomsoever.
3. Mortgage Constitutes Construction Mortgage. This Mortgage, in part, secures an obligation for the construction of improvements on the real property herein described, and constitutes a construction mortgage for the purpose of Article Nine of the Uniform Commercial Code and is entitled to all of the benefits afforded construction mortgages thereunder.



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4. Compliance with Loan Agreement. Mortgagor will abide by and comply with and be governed and restricted by all of the material terms, covenants, provisions, restrictions and agreements contained in the Loan Agreement, and in each and every supplement thereto or amendment thereof which may at any time or from time to time be executed and delivered by the parties thereto or their successors and assigns.

5. Provisions of Loan Agreement. The proceeds of the Notes are to be disbursed by the Mortgagee in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Mortgagor covenants that any and all monetary disbursements made in accord with the Loan Agreement shall constitute adequate consideration to Mortgagor for the enforceability of this Mortgage and the Notes, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Notes, shall be secured by this Mortgage up to a maximum of \$100,000,000.00. Upon the occurrence of an Event of Default under the Loan Agreement, the Mortgagee may (but need not): (i) declare the entire principal indebtedness and interest thereon due and payable and pursue all other remedies conferred upon Mortgagee by this Mortgage or by law upon a default; or (ii) complete the construction of the improvements described in the Loan Agreement and enter into the necessary contracts therefor. All monies so expended shall be so much additional indebtedness secured by this Mortgage and shall be payable on demand with interest at the Default Interest Rate (as defined in the Notes). Mortgagee may exercise either or both of the aforesaid remedies. The provisions, rights, powers and remedies contained in the Loan Agreement are in addition to, and not in substitution for, those contained herein.

6. Uniform Commercial Code Security Agreement. This instrument is intended to be a security agreement pursuant to the Uniform Commercial Code for any of the items specified above as part of the Mortgaged Premises which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Mortgagor hereby grants and conveys to Mortgagee a first and prior security interest in all of the Mortgaged Premises that constitutes personal property within the meaning of the Uniform Commercial Code and other applicable law, whether now owned or hereafter acquired, and any replacements, substitutions, additions, proceeds or products thereof. Any reproduction of this Mortgage or of any other security agreement or financing statement shall be sufficient as a financing statement. Mortgagor authorizes Mortgagee to file such financing statement or statements relating to the Mortgage Premises without Mortgagor's signature as Mortgagee at its option may deem appropriate. In addition, to the extent reasonably required by Mortgagee, Mortgagor agrees to execute and deliver to Mortgagee, upon Mortgagee's request, any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Mortgage in such form as Mortgagee may require to perfect a security interest with respect to the foregoing items. Mortgagor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all costs and expenses of any record searches for financing statements Mortgagee may require. Without the prior written consent of Mortgagee, Mortgagor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in said items, including replacements and additions thereto. Upon the occurrence of an Event of Default, including the covenants to pay when due all sums secured by this Mortgage, Mortgagee shall have the remedies of a secured party under the Uniform Commercial Code, and Mortgagee may also invoke the remedies provided in Section 23 of this Mortgage as to such items. In exercising any of said remedies Mortgagee may proceed against

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the items of real property and any items of personal property specified above separately or together and in any order whatsoever, without in any way affecting the availability of Mortgagee's remedies under the Uniform Commercial Code or of the remedies provided in Section 23 of this Mortgage. Within ten (10) days following any request therefor by Mortgagee, Mortgagor shall prepare and deliver to Mortgagee a written inventory specifically listing all of the personal property covered by security interest herein granted, which inventory shall be certified by Mortgagor as being true, correct and complete. This Mortgage is intended to be a financing statement within the purview of Section 9-402(6) of the Code with respect to the Mortgaged Premises and the goods described herein, which goods are or may become fixtures relating to the Premises. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are hereinbelow set forth. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or counties where the Premises are located. Mortgagor is the record owner of the Mortgaged Premises.

7. Payment of Taxes. Mortgagor shall pay before any penalty attaches all general taxes and all special taxes, special assessments, water, drainage and sewer charges and all other charges, of any kind whatsoever, ordinary or extraordinary, which may be levied, assessed, imposed or charged on or against the Mortgaged Premises or any part thereof and which, if unpaid, might by law become a lien or charge upon the Mortgaged Premises or any part thereof, and shall exhibit to Mortgagee official receipts evidencing such payments, except that, unless and until foreclosure, distraint, sale or other similar proceedings shall have been commenced, no such tax, assessment charge or claim need be paid if being contested (except to the extent any full or partial payment shall be required by law), after notice to Mortgagee, by appropriate proceedings which shall operate to prevent the collection thereof or the sale or forfeiture of the Mortgaged Premises or any part thereof to satisfy the same, conducted in good faith and with due diligence and if Mortgagor shall have furnished such security, if any, as may be required in the proceedings or required by Mortgagee's title insurer to insure over the lien of such taxes.

8. Payment of Taxes on Notes, Mortgage or Interest of Mortgagee. Mortgagor agrees that if any tax, assessment or imposition upon this Mortgage or the indebtedness hereby secured or the Notes or the interest of Mortgagee in the Mortgaged Premises or upon Mortgagee by reason of any of the foregoing (but excepting therefrom any income tax on interest payments on the principal portion of the indebtedness hereby secured imposed by the United States or any State or any corporate privilege, franchise and excise taxes,) is levied, assessed or charged, then, unless all such taxes are paid by Mortgagor to, for or on behalf of Mortgagee as they become due and payable (which Mortgagor agrees to do upon demand of Mortgagee, to the extent permitted by law), or Mortgagee is reimbursed for any such sum advanced by Mortgagee, all sums hereby secured shall become immediately due and payable, at the option of Mortgagee upon thirty (30) days' notice to Mortgagor, notwithstanding anything contained herein or in any law heretofore or hereafter enacted, including any provision thereof forbidding Mortgagor from making any such payment. Mortgagor agrees to provide to Mortgagee, within thirty (30) days after the due date, official receipts showing payment of all taxes and charges which Mortgagor is required to pay hereunder.

9. Tax and Insurance Deposits. Upon Mortgagee's request, Mortgagor covenants and agrees to deposit with Mortgagee, on the first day of each month following such request until the indebtedness secured by this Mortgage is fully paid, a sum equal to (i) one-twelfth (1/12th) of the annual taxes and assessments (general and special) on the Mortgaged Premises (unless said taxes are based upon assessments which exclude improvements thereon now constructed or to be constructed,



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in which event the amount of such deposits shall be based upon Mortgagee's reasonable estimate as to the amount of taxes and assessments to be levied and assessed) and (ii) one-twelfth (1/12th) of the annual premiums payable for the insurance required to be maintained in accordance with Paragraph 11 hereof. All of such deposits shall be held in an interest bearing account with Mortgagee which is pledged to Mortgagee. If prior deposits are insufficient, immediately following an Event of Default (as hereinafter defined), Mortgagor shall deposit with Mortgagee an amount of money which, together with the aggregate of the monthly deposits made or to be made pursuant to (i) above as of one month prior to the date on which the total annual taxes and assessments for the current calendar year become due, shall be sufficient to pay in full the total annual taxes and assessments estimated by Mortgagee to become due and payable with respect to the Mortgaged Premises for the current calendar year, and an amount of money which, together with the aggregate deposits made or to be made pursuant to (ii) above as of one month prior to the date on which the next annual insurance premium becomes due, shall be sufficient to pay in full the total annual insurance premium estimated by Mortgagee to next become due and payable with respect to the Mortgaged Premises. Such deposits are to be used for the payment of taxes and assessments (general and special) and insurance premiums, respectively, on the Mortgaged Premises next due and payable when they become due. Mortgagee may, at its option, itself pay such taxes, assessments and insurance premiums when the same become due and payable (upon submission of appropriate bills therefor from Mortgagor) or shall release sufficient funds to Mortgagor for payment of such taxes, assessments and insurance premiums. If the funds so deposited are insufficient to pay any such taxes, assessments (general or special) and premiums for any year when the same shall become due and payable, Mortgagor shall within ten (10) days after receipt of demand therefor, deposit additional funds as may be necessary to pay such taxes, assessments (general and special) and premiums in full. If the funds so deposited exceed the amount required to pay such taxes, assessments (general and special) and premiums for any year, the excess shall be applied on a subsequent deposit or deposits. Said deposits need not be kept separate and apart from any other funds of Mortgagee.

10. Mortgagee's Interest In and Use of Deposits. Upon the occurrence of an Event of Default under this Mortgage, the Notes, the Loan Agreement or any other document securing the Notes, the Mortgagee may at its option, without being required so to do, apply any monies at the time on deposit pursuant to Paragraph 9 hereof to the performance of any of Mortgagor's obligations hereunder or under the Notes or Loan Agreement, in such order and manner as Mortgagee may elect. When the indebtedness secured hereby has been fully paid, any remaining deposits shall be paid to Mortgagor. Such deposits are hereby pledged as additional security for the indebtedness hereunder and shall be irrevocably applied by Mortgagee for the purposes for which made hereunder and shall not be subject to the direction or control of Mortgagor; provided, however, that Mortgagee shall not be liable for any failure to apply to the payment of taxes, assessments and insurance premiums any amount so deposited unless Mortgagor, while not in default hereunder, shall have requested Mortgagee in writing to make application of such funds to the payment of which they were deposited, accompanied by the bills for such taxes, assessments and insurance premiums. Mortgagee shall not be liable for any act or omission taken in good faith.

11. Recordation and Payment of Taxes and Expenses Incident Thereto. Mortgagor will pay for the recording and filing of this Mortgage, all mortgages supplemental hereto and any financing statement or other notices of a security interest required by Mortgagee at all times to be kept, recorded and filed in such manner and in such places as may be required by law for the recording and filing or for the rerecording and refileing of a mortgage, security interest, assignment or other lien or

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charge upon the Mortgaged Premises, or any part thereof, in order fully to preserve and protect the rights of Mortgagee hereunder, and, without limiting the foregoing, Mortgagor will pay or reimburse Mortgagee for the payment of any and all taxes, fees or other charges incurred in connection with any such recordation or re-recordation, including any documentary stamp tax, intangible tax or tax imposed upon the privilege of having this instrument or any instrument issued pursuant hereto recorded.

12. Insurance. Mortgagor will, at its expense, maintain insurance in accordance with the requirements of the Loan Agreement. The proceeds of such insurance shall be applied as provided in Section 13 hereof. In the event of foreclosure, Mortgagor authorizes and empowers Mortgagee to effect insurance upon the Mortgaged Premises in the amounts aforesaid, for a period covering the time of redemption from foreclosure sale provided by law, and if necessary therefor, to cancel any or all existing insurance policies.

13. Damage to and Destruction of the Improvements.

(a) Notice. In the case of any material damage to or destruction of any improvements which are or will be constructed on the Mortgaged Premises or any part thereof, Mortgagor shall promptly give notice thereof to Mortgagee generally describing the nature and extent of such damage or destruction. Material damage shall mean damages in excess of \$25,000.00.

(b) Restoration. Upon the occurrence of any damage to or destruction of any improvements on the Mortgaged Premises, provided Mortgagee permits the proceeds of insurance to be used for repairs, restoration and rebuilding (collectively "Restoration"), Mortgagor shall cause same to be restored, replaced or rebuilt as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such Restoration shall be effected promptly and Mortgagor shall notify the Mortgagee if it appears that such Restoration may unduly delay completion of such improvements. Any amounts required for Restoration in excess of insurance proceeds shall be paid by Mortgagor.

(c) Application of Insurance Proceeds. Net insurance proceeds received by the Mortgagee under the provisions of this Mortgage or any instrument supplemental hereto or thereto or any policy or policies of insurance covering any improvements on the Mortgaged Premises or any part thereof shall be applied by the Mortgagee at its option as and for a prepayment on the Notes (whether or not the same is then due or otherwise adequately secured) or shall be disbursed for Restoration of such improvements (in which event the Mortgagee shall not be obligated to supervise Restoration work nor shall the amount so released or used be deemed a payment of the indebtedness evidenced by the Notes). If Mortgagee elects to permit the use of insurance proceeds for Restoration it may do all necessary acts to accomplish that purpose including using funds deposited by Mortgagor with it for any purpose and advancing additional funds, all such additional funds to constitute part of the indebtedness secured by the Mortgage. If Mortgagee elects to make the insurance proceeds available to Mortgagor for the purpose of effecting such a Restoration, or, following an Event of Default, elects to restore such improvements, any excess of insurance proceeds above the amount necessary to complete such Restoration shall be applied as and for a prepayment on the Notes. Notwithstanding the foregoing provisions, Mortgagee agrees that net insurance proceeds shall be made available to Mortgagor for the Restoration of the portion of the Mortgaged Premises damaged or destroyed if the following conditions are satisfied: (i) no Event of Default or event which if

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uncured within any applicable cure period would constitute an Event of Default shall have occurred or be continuing hereunder or under the Loan Documents (and if such an event shall occur during restoration, Mortgagee may, at its election, provided that all applicable notice and cure or grace periods have expired without cure by Mortgagor, apply insurance proceeds then remaining in its hands to the reduction of the indebtedness hereby secured), (ii) Mortgagor shall have submitted to the Mortgagee plans and specifications for the Restoration which shall be reasonably satisfactory to the Mortgagee, (iii) Mortgagor shall have submitted to the Mortgagee contracts with good and responsible contractors and materialmen covering all work and materials necessary to complete Restoration and providing for a total completion price not in excess of the amount of insurance proceeds available for Restoration, or, if a deficiency shall exist, Mortgagor shall have deposited the amount of such deficiency with the Mortgagee or posted other collateral reasonably acceptable to the Mortgagee, (iv) the Restoration will, in the reasonable judgement of the Mortgagee, be completed not later than the Initial Maturity Date or the Extended Maturity Date of the Notes, as the case may be, (and any extensions duly exercised by Borrower) (as defined in the Notes); and (v) the Restoration will be completed within the time periods provided and will not constitute a default under the Lease, the Franchise Agreement or the Management Agreement (as these terms are defined in the Loan Agreement); and, (vi) Mortgagor shall have deposited with Lender a sufficient amount to cover all additional costs including interest, that may be incurred as a result of the Restoration, any insurance proceeds to be released pursuant to the foregoing provisions shall be disbursed from time to time as Restoration progresses to pay for Restoration work completed and in place and such disbursements shall be disbursed in compliance with each of the disbursement procedures outlined in Section 4.3 of the Loan Agreement unless waived in writing by Mortgagee. Mortgagee may impose such further conditions upon the release of insurance proceeds (including the receipt of title insurance) as are customarily imposed by prudent construction lenders to insure the completion of the Restoration work free and clear of all liens or claims for lien. All necessary and reasonable title insurance charges and other costs and expenses paid by Mortgagee in connection with the release of such insurance proceeds shall constitute so much additional indebtedness secured by this Mortgage to be payable upon demand and if not paid upon demand shall bear interest at the Default Interest Rate (as defined in Section 36 hereof). Mortgagee may deduct any such costs and expenses from insurance proceeds at any time held by Mortgagee. No interest shall be payable to Mortgagor upon insurance proceeds held by Mortgagee.

(d) Adjustment of Loss. As long as no Event of Default exists, Mortgagor is hereby authorized and empowered, at its option, to adjust or compromise any loss under any insurance policies covering or relating to the Mortgaged Premises, subject to Mortgagee's prior approval of any adjustment or compromise of losses exceeding \$100,000.00, which approval shall not be unreasonably withheld. While an Event of Default exists, Mortgagee shall have the right to adjust or compromise any loss under any insurance policies covering or relating to the Mortgaged Premises, and in any event, Mortgagee shall be entitled to collect and receive the proceeds from any such policy or policies in excess of \$100,000.00. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact for the purposes set forth in the preceding sentence. Each insurance company is hereby authorized and directed to make payment (i) of 100% of all such losses of more than \$100,000.00 directly to Mortgagee alone and (ii) of 100% of all such losses of said amount or less directly to Mortgagor alone, and in no case to Mortgagor and Mortgagee jointly. After deducting from such insurance proceeds any reasonable expenses incurred by Mortgagee in the collection and settlement thereof, including without limitation attorneys' and adjusters' fees and charges, Mortgagee shall apply the net proceeds as provided in Paragraph 13(c). Mortgagee shall not be responsible for

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any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure, except for wilful misconduct or gross negligence on the part of Mortgagee.

## 14. Eminent Domain.

(a) Notice. Mortgagor covenants and agrees that Mortgagor will give Mortgagee immediate notice of the actual or threatened commencement of any proceedings of which it is aware under condemnation or eminent domain affecting all or any part of the Mortgaged Premises including any easement therein or appurtenance thereof or severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings.

(b) Assignment of Claim, Power of Attorney to Collect, Etc. Any and all awards hereafter made or to be made to the present and all subsequent owners of the Mortgaged Premises by any governmental body for taking or affecting the whole or any part of said Mortgaged Premises, the improvements on the Mortgaged Premises or any easement therein or appurtenance thereto (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the award for payment thereof) are hereby assigned by Mortgagor to Mortgagee to the extent of the then indebtedness hereby secured and Mortgagor hereby irrevocably constitutes and appoints Mortgagee its true and lawful attorney in fact with full power of substitution for it and in its name, place and stead to collect and receive the proceeds of any such award granted by virtue of any such taking and to give proper receipts and acquittances therefor. As long as no Event of Default exists, Mortgagor shall have the right to settle and compromise any condemnation award with the condemning party, subject to Mortgagee's prior approval of the settlement or compromise of any award in excess of \$100,000.00, which approval shall not be unreasonably withheld. While an Event of Default exists, Mortgagee shall have the right to settle and compromise any condemnation award with the condemning party without the consent of the Mortgagor.

(c) Effect of Condemnation and Application of Awards. In the event that any condemnation or eminent domain proceedings are commenced by any governmental body or other person to take or otherwise affect the Mortgaged Premises, the improvements thereon or any easement therein or appurtenance thereto, Mortgagee shall make the proceeds of any award related thereto available to Mortgagor for the repair and restoration of the Mortgaged Premises subject to the same terms and conditions as are set forth in Section 13(c) hereof with respect to insurance proceeds provided that any reference therein to insurance proceeds shall be deemed to mean condemnation or eminent domain award proceeds for purposes of this Section 14(c).

15. Construction, Repair, Waste, Etc. Except for the improvements on the Mortgaged Premises to be constructed pursuant to the provisions of the Loan Agreement, Mortgagor covenants and agrees (i) that except for leasehold improvements and alterations thereto, no building or other improvement on the Mortgaged Premises and constituting a part thereof shall be materially altered, removed or demolished nor shall any of Mortgagor's fixtures or appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged, without the consent of Mortgagee, which consent shall not be unreasonably withheld; and in the event of the demolition or destruction in whole or in part of any of the fixtures, chattels or articles of personal property covered hereby, the same will be replaced promptly by similar fixtures, chattels and articles of personal



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property at least equal in quality and condition to those replaced, free from any security interest in or encumbrance thereon or reservation of title thereto; (ii) to permit, commit or suffer no waste, impairment or deterioration of the Mortgaged Premises or any part thereof; (iii) to keep and maintain said Mortgaged Premises and every part thereof in good and first class repair and condition (ordinary wear and tear excepted); (iv) to effect such repairs as Mortgagee may reasonably require and from time to time to make all needful and proper replacements and additions so that said buildings, fixtures, machinery and appurtenances will, at all times, be in good and first class condition, fit and proper for the respective purposes for which they were originally erected or installed; (v) to comply, in all material respects, with all statutes, orders, requirements or decrees relating to said Mortgaged Premises by any Federal, State or Municipal authority; (vi) to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Premises or which have been granted to or contracted for by Mortgagor in connection with any existing or presently contemplated use of the Mortgaged Premises or any part hereof and not to initiate or acquiesce in any changes to or terminations of any of the foregoing or of zoning classifications affecting the use to which the Mortgaged Premises or any part thereof may be put without the prior written consent of Mortgagee, which consent shall not be unreasonably withheld; and (vii) to make no alterations in or improvements or additions to the Mortgaged Premises without Mortgagee's written permission, which consent shall not be unreasonably withheld except for leasehold improvements and alterations thereto, or as contemplated by the Loan Agreement or required by governmental authority.

16. Liens and Encumbrances. Mortgagor will not, without the prior written consent of Mortgagee, directly or indirectly, create or suffer to be created, or to remain, and will discharge or promptly cause to be discharged any mortgage, lien, encumbrance or charge on, pledge or conditional sale or other title retention agreement with respect to the Mortgaged Premises or any part thereof, whether superior or subordinate to the lien hereof, except for this instrument and the lien of all other documents given to secure the indebtedness hereby secured, provided, however, that Mortgagor may contest the validity of any mechanic's lien, charge or encumbrance (other than the lien of this Mortgage or of any other document securing payment of the Notes) upon giving Mortgagee timely notice of its intention to contest the same and either (a) maintaining with Mortgagee a deposit of cash or negotiable securities reasonably satisfactory to Mortgagee in an amount sufficient in the reasonable opinion of Mortgagee to pay and discharge or to assure compliance with the matter under contest in the event of a final determination thereof adversely to Mortgagor or (b) obtaining title insurance coverage over such lien on Mortgagee's title insurance policy by endorsements reasonably acceptable to Mortgagee. Mortgagor agrees to prosecute and contest such lien diligently and by appropriate legal proceedings which will prevent the enforcement of the matter under contest and will not impair the lien of this Mortgage or interfere with the normal conduct of business on the Mortgaged Premises. On final disposition of such contest, any cash or securities in Mortgagee's possession not required to pay or discharge or assure compliance with the matter contested shall be returned to Mortgagor without interest.

17. Right of Mortgagee to Perform Mortgagor's Covenants, Etc. If Mortgagor shall fail to make any payment or perform any material act required to be made or performed hereunder, Mortgagee, without waiving or releasing any obligation or default, may (but shall be under no obligation to) at any time thereafter upon prior written notice to Mortgagor and failure of Mortgagor to make such payment or perform such act within any applicable cure period provided herein or in



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any other Loan Document make such payment or perform such act for the account and at the expense of Mortgagor, and may enter upon the Mortgaged Premises or any part thereof for such purpose and take all such action thereon as, in the reasonable opinion of Mortgagee, may be necessary or appropriate therefor. All sums so paid by Mortgagee and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence at the Default Interest Rate, shall constitute so much additional indebtedness hereby secured and shall be paid by Mortgagor to Mortgagee on demand. Mortgagee in making any payment authorized under this Section relating to taxes or assessments may do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy of such bill, statement or estimate or into the validity of any tax assessment, sale, forfeiture, tax lien or title or claim thereof.

18. After-Acquired Property. Any and all property hereafter acquired which is of the kind or nature herein provided and related to the premises described in Granting Clause I hereof, or intended to be and become subject to the lien hereof, shall ipso facto, and without any further conveyance, assignment or act on the part of Mortgagor, become and be subject to the lien of this Mortgage as fully and completely as though specifically described herein; but nevertheless Mortgagor shall from time to time, if requested by Mortgagee, execute and deliver any and all such further assurances, conveyances and assignments as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting to the lien of this Mortgage all such property.

19. Inspection by Mortgagee. Mortgagee and its agents shall have the right to inspect the Mortgaged Premises at all reasonable times, and access thereto shall be permitted for that purpose, upon reasonable prior notice.

20. Subrogation. Mortgagor acknowledges and agrees that Mortgagee shall be subrogated to any lien discharged out of the proceeds of the loan evidenced by the Notes or out of any advance by Mortgagee hereunder or under the Loan Agreement, irrespective of whether or not any such lien may have been released of record.

21. Transfer of the Mortgaged Premises.

(a) In determining whether or not to make the loan secured hereby, Mortgagee has examined the credit-worthiness of Mortgagor, found it acceptable and relied and continues to rely upon same as the means of repayment of the loan. Mortgagor is well-experienced in borrowing money and owning and operating property such as the Mortgaged Premises, was ably represented by a licensed attorney at law in the negotiation and documentation of the loan secured hereby and bargained at arm's length and without duress of any kind for all of the terms and conditions of the loan, including this provision. Mortgagor recognizes that Mortgagee is entitled to keep its loan portfolio at current interest rates by either making new loans at such rate or collecting assumption fees and/or increasing the interest rate on a loan, the security for which is purchased by a party other than the original Mortgagor. Mortgagor further recognizes that any secondary or junior financing placed upon the Mortgaged Premises, (a) may divert funds which would otherwise be used to pay the Notes secured hereby, (b) could result in acceleration and foreclosure by any such junior encumbrancer which would force Mortgagee to take measures and incur expenses to protect its security, (c) would detract from the value of the Mortgaged Premises should Mortgagee come into possession thereof with the intention of selling same; and (d) impair Mortgagee's right to accept a

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deed in lieu of foreclosure as a foreclosure by Mortgagee would be necessary to clear the title to the Mortgaged Premises.

(b) In accordance with the foregoing and for the purposes of (i) protecting Mortgagee's security, both of repayment by Mortgagor and in the value of the Mortgaged Premises; (ii) giving Mortgagee the full benefit of its bargain and contract with Mortgagor; (iii) allowing Mortgagee to raise the interest rate and/or collect assumption fees; and (iv) keeping the Mortgaged Premises free of subordinate financing liens, Mortgagor agrees that if this Paragraph be deemed a restraint on alienation, that it is a reasonable one, and Mortgagor shall not permit or suffer to occur any sale, assignment, conveyance, mortgage, pledge, encumbrance or other transfer of, or the granting of any option in, or any contract for any of the foregoing (on an installment basis or otherwise), unless the indebtedness hereby secured would be repaid in full upon the closing of such contract, pertaining to

(i) the Mortgaged Premises, any part thereof, or any interest therein except for the Permitted Exceptions and as expressly permitted under the Loan Agreement,

(ii) any membership interest in Beneficiary,

(iii) any membership interest in HRH Chicago L.L.C., or

(iv) the beneficial interest in the Trust.

Provided, however, that notwithstanding the foregoing, transfers of membership with respect to dilution of interests as provided under the operating agreements of Beneficiary and HRH Chicago, L.L.C. and with respect to transfers among members of Beneficiary or and/or HRH Chicago L.L.C. shall be permitted provided that the persons and entities that retain direct or indirect control of such entities as of the date hereof remains unchanged. Whether involuntary or by operation of law or otherwise, without the prior written consent of Mortgagee having been obtained to such sale, assignment, conveyance, mortgage, option, pledge, encumbrance or other transfer. Upon any such transfer permitted hereunder, the terms of this paragraph shall apply automatically with respect to any transferee. Mortgagor agrees that in the event the ownership of the Mortgaged Premises or except as provided in the preceding sentence, any membership interest of the Beneficiary, or any interest therein or any part thereof becomes vested in a person other than their current owners, Mortgagee may, without notice to Mortgagor, deal in any way with such successor or successors in interest with reference to this Mortgage, the Notes, and any other document evidencing the indebtedness secured hereby, without in any way vitiating or discharging Mortgagor's liability hereunder or under any other document evidencing the indebtedness secured hereby. No sale of the Mortgaged Premises, forbearance to any person with respect to this Mortgage, or extension to any person of the time for payment of the Notes given by Mortgagee shall operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part, except to the extent specifically agreed in writing by Mortgagee. Without limitation of the foregoing, in any event in which the written consent of Mortgagee is required in this Paragraph 21, Mortgagee may, except with respect to transfers to any Permitted Transferees, condition its consent upon any combination of (i) the payment of compensation to be determined by Mortgagee, (ii) the increase of the interest rate payable under the Notes, (iii) the shortening of maturity of the Notes, and (iv) other modifications of the terms of the Notes or the other instruments evidencing the indebtedness secured hereby.

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(c) Without limitation of the foregoing, (i) in any event in which Mortgagee's consent is requested in accordance with the terms of this Paragraph 21, Mortgagor shall pay all expenses incurred by Mortgagee, including reasonable attorneys' fees, in connection with the processing of such request, and (ii) the consent of Mortgagee to any transfer of the Mortgaged Premises shall not operate to release, discharge, modify, change or affect the liability of Mortgagor, either in whole or in part.

22. Events of Default. Any one or more of the following shall constitute an "Event of Default" hereunder:

(a) Default in making payment within ten (10) days of the date when due (whether by lapse of time, acceleration, or otherwise) of the principal of or interest on any of the Notes or any other indebtedness hereby secured;

(b) Any violation of Sections 12 or 21 hereof;

(c) The Mortgaged Premises is abandoned by the Mortgagor;

(d) Default in the observance or performance of any other covenant, condition, agreement or provisions hereof or of the Notes or any additional collateral document which is not remedied within thirty (30) days after written notice thereof to Mortgagor by Mortgagee; provided, however, that if such default cannot be cured within thirty (30) days, then, so long as Mortgagor promptly commences and diligently performs all actions necessary to cure such default, the period for effecting the cure thereof shall be extended for a period of sixty (60) additional days;

(e) Any representation or warranty made by the Mortgagor herein or in the Notes, Loan Agreement, Environmental Indemnity Agreement or any other Loan Document proves untrue in any material respect as of the date of the issuance or making thereof and is not cured within the cure periods set forth in subsection (d);

(f) Beneficiary, Trustee or Guarantor (as defined in the Loan Agreement) become insolvent or bankrupt or admit in writing his inability to pay its or his debts as they mature or makes an assignment for the benefit of creditors or applies for or consent to the appointment of a trustee, custodian or receiver for either of them or for the major part of the property of either of them;

(g) Bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy laws or laws for the relief of debtors are instituted voluntarily by Beneficiary, Trustee or Guarantor; or are instituted involuntarily against Mortgagor and are not dismissed within ninety (90) days after such institution;

(h) Any judgment or judgments, writ or writs or warrant or warrants of attachment or any similar process or processes in an aggregate amount in excess of \$100,000.00 shall be entered or filed against Beneficiary, Trustee or Guarantor, or against any of their respective property or assets, and remains unsatisfied, unvacated, unbonded or unstayed for a period of sixty (60) days;

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(i) Any Event of Default shall occur under the Loan Agreement or any other document evidencing or securing the indebtedness evidenced by the Notes (collectively the "Loan Documents").

23. Remedies. When any Event of Default has happened and is continuing (regardless of the pendency of any proceeding which has or might have the effect of preventing Mortgagor from complying with the terms of this instrument) and in addition to such other rights and remedies as may be available under applicable law, whether in law or in equity, or under the Loan Agreement, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Mortgagee may, by written notice to Mortgagor, declare the Notes and all unpaid indebtedness of Mortgagor hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind.

(b) Uniform Commercial Code. Mortgagee shall, with respect to any part of the Mortgaged Premises constituting property of the type in respect of which realization on a lien or security interest granted therein is governed by the Uniform Commercial Code which may now or hereafter be in effect, have all the rights, options and remedies of a secured party under the Uniform Commercial Code of Illinois, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Mortgagor at its address above set forth at least ten (10) days prior to the sale or other event for which such notice is required. The expenses of retaking, selling and otherwise disposing of said property, including reasonable attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional indebtedness hereby secured and shall be payable upon demand with interest at the Default Interest Rate.

(c) Foreclosure. Mortgagee may proceed to protect and enforce the rights of Mortgagee hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional indebtedness hereby secured in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et seq., as from time to time amended (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for reasonable attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Mortgagee may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Premises. All expenditures and expenses of the nature mentioned in this paragraph, and such other reasonable expenses and fees as may be incurred in the protection of the Mortgaged Premises and rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any attorney employed by Mortgagee in any litigation or proceedings affecting this Mortgage, the Notes or the Mortgaged Premises, including



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bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional indebtedness hereby secured and shall be immediately due and payable by Mortgagor, with interest thereon at the Default Interest Rate until paid.

(d) Appointment of Receiver. Mortgagee shall, as a matter of right, without notice and without giving bond to Mortgagor or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Mortgagor or the then value of the Mortgaged Premises, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Premises and the rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Mortgagor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Premises or any part thereof by force, summary proceedings, ejectment or otherwise, and may remove Mortgagor or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession, Collecting Rents, Etc. Upon demand by Mortgagee, Mortgagor shall surrender to Mortgagee and Mortgagee may enter and take possession of the Mortgaged Premises or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Mortgagee, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter upon and take and maintain possession of all or any part of the Mortgaged Premises, together with all documents, books, records, papers, and accounts of Mortgagor relating thereto, and may exclude Mortgagor and any agents and servants thereof wholly therefrom and may, on behalf of Mortgagor, or in its own name as Mortgagee and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Premises and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the rents, issues, deposits, profits, and avails of the Mortgaged Premises, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Mortgagor;

(ii) cancel or terminate any lease or sublease of all or any part of the Mortgaged Premises for any cause or on any ground that would entitle Mortgagor to cancel the same;

(iii) elect to disaffirm any lease or sublease of all or any part of the Mortgaged Premises subordinate to this Mortgage;

(iv) extend or modify any then existing leases and make new leases of all or any part of the Mortgaged Premises, which extensions, modifications, and new leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the loan evidenced by the Notes and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such leases, and the options



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or other such provisions to be contained therein, shall be binding upon Mortgagor, all persons whose interests in the Mortgaged Premises are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness hereby secured, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(v) make all necessary or proper repairs, decoration renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Premises as may seem judicious to Mortgagee, to insure and reinsure the Mortgaged Premises and all risks incidental to Mortgagee's possession, operation and management thereof, and to receive all rents, issues, deposits, profits, and avails therefrom; and

(vi) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Premises, to the payment of taxes, premiums and other charges applicable to the Mortgaged Premises, or in reduction of the indebtedness hereby secured in such order and manner as Mortgagee shall select.

Nothing herein contained shall be construed as constituting Mortgagee a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Premises. The right to enter and take possession of the Mortgaged Premises and use any personal property therein, to manage, operate, conserve and improve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Mortgagee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Mortgagor promises to pay upon demand together with interest at the Default Interest Rate from the date incurred. Mortgagee shall not be liable to account to Mortgagor for any action taken pursuant hereto other than to account for any rents actually received by Mortgagee. Without taking possession of the Mortgaged Premises, Mortgagee may, in the event the Mortgaged Premises become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Premises (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional indebtedness hereby secured payable upon demand with interest thereon from the date incurred at the Default Interest Rate.

24. Compliance with Law. In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act the provisions of the Act shall take precedence over the provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

25. Compliance with Illinois Mortgage Foreclosure Law. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of the Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the Act in the absence of said provision, Mortgagee shall be vested with the rights granted in the Act to the full extent permitted by law.

Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the Act, whether incurred before

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or after any decree or judgment of foreclosure, and whether enumerated in Section 23(c) or Section 26 of this Mortgage, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

26. Waiver of Right to Redeem From Sale - Waiver of Appraisal, Valuation, Etc. Mortgagor shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or 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 estates comprising the Mortgaged Premises marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Premises sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Premises may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Mortgagee may determine. Mortgagee shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Mortgagee so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Mortgagee with the amount payable to Mortgagee out of the net proceeds of such sale. In the event of any such sale, the Notes and the other indebtedness hereby secured, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Mortgagor acknowledges that the Mortgaged Premises does not constitute agricultural real estate, as defined in Section 15-1201 of the Act, or residential real estate, as defined in Section 15-1219 of the Act. To the fullest extent permitted by law, Mortgagor, pursuant to Section 15-1601(b) of the Act, hereby voluntarily and knowingly waives any and all rights of redemption on behalf of Mortgagor, and each and every person acquiring any interest in, or title to the Mortgaged Premises described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law.

27. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, Torrens certificates and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Premises, and all of which expenditures shall become so much additional indebtedness hereby secured which Mortgagor agrees to pay and all of such shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Interest Rate.

28. Insurance After Foreclosure. Wherever provision is made in the Mortgage or the Loan Agreement for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of the Mortgagee shall continue in the Mortgagee as judgment creditor or mortgagee until

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confirmation of sale. Upon confirmation of sale, Mortgagee shall be empowered to assign all policies of insurance to the purchaser at the sale.

29. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Premises or of any sale of property pursuant to Section 23(c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 23(b), 23(c) and 26 hereof; Second, to all other items which under the terms hereof constitute indebtedness hereby secured in addition to that evidenced by the Notes with interest thereon as herein provided; Third, to all interest on the Notes; Fourth, to all principal on the Notes with any overplus to whomsoever shall be lawfully entitled to same.

30. Mortgagee's Remedies Cumulative - No Waiver. No remedy or right of Mortgagee shall be exclusive but shall be cumulative and in addition to every other remedy or right now or hereafter existing at law or in equity or by statute or provided for in the Loan Agreement. No delay in the exercise or omission to exercise any remedy or right accruing on any default shall impair any such remedy or right or be construed to be a waiver of any such default or acquiescence therein, nor shall it affect any subsequent default of the same or different nature. Every such remedy or right may be exercised concurrently or independently, and when and as often as may be deemed expedient by Mortgagee.

31. Indemnity. To the fullest extent permitted by law, Mortgagor shall indemnify, save and keep Mortgagee harmless from any damage, claims or causes of action brought by third parties arising out of or related to the Mortgaged Premises or otherwise arising out of or related to Mortgagor's operations and management or other activities of or in connection with the Mortgaged Premises, except to the extent of wilful misconduct or gross negligence on the part of the Mortgagee or with respect to any such damage, claim or cause of action which first occurs and relates to an event which is after the date that Mortgagor no longer owns the Mortgaged Premises. Mortgagor hereby acknowledges that Mortgagee shall not be deemed to have assumed any responsibility or liability in respect to the Mortgaged Premises on account of any inspections thereof by Mortgagee or Mortgagee's receipt or review of information and materials furnished by Mortgagor.

32. Additional Assurances. Mortgagor shall execute and deliver or cause to be executed and delivered to Mortgagee now, and at any time or times hereafter, all documents, instruments, letters of direction, notices, authorizations, reports, acceptances, receipts, consents, waivers, affidavits and certificates as Mortgagee may reasonably request, in form reasonably satisfactory to Mortgagee, to perfect and maintain perfected the liens granted by Mortgagor to Mortgagee upon the Mortgaged Premises or other collateral securing the obligation of the Mortgagor pursuant to the terms of this Mortgage and the Loan Documents or in order to consummate fully all of the transactions contemplated hereunder; and in connection therewith, Mortgagor hereby irrevocably makes, constitutes and appoints Mortgagee and any of its officers, employees or agents, as its true and lawful attorney with power to sign the name of Mortgagor to any such document, instrument, letter of direction, notice, report, acceptance, receipt, consent, waiver, affidavit or certificate if Mortgagor has not complied with Mortgagee's request to execute such document within fifteen (15) days from date of written request.

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33. Mortgagee Party to Suits. If Mortgagee shall be made a party to or shall intervene in any action or proceeding affecting the Mortgaged Premises or the title thereto or the interest of Mortgagee under this Mortgage (including probate and bankruptcy proceedings), or if Mortgagee employs an attorney to collect any or all of the indebtedness hereby secured or to enforce any of the terms hereof or realize hereupon or to protect the lien hereof, or if Mortgagee shall incur any costs or expenses in preparation for the commencement of any foreclosure proceeding or for the defense of any threatened suit or proceeding which might affect the Mortgaged Premises or the security hereof, whether or not any such foreclosure or other suit or proceeding shall be actually commenced, then in any such case, Mortgagor agrees to pay to Mortgagee, within five (5) days of demand, all reasonable costs, charges, expenses and attorneys' fees incurred by Mortgagee in any such case, and the same shall constitute so much additional indebtedness hereby secured payable upon demand with interest at the Default Interest Rate.

34. Notices. All notices or other communications required or permitted hereunder shall be (a) in writing and shall be deemed to be given when either (i) delivered in person, (ii) when received after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, A return receipt requested, (iii) when received if sent by private courier service, (iv) when received if sent by facsimile transmission, or (v) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed as follows:

To Lender: U.S. Bank National Association  
701 Lee Street  
Des Plaines, Illinois 60016  
Attn: James J. West, Vice President

With copy to: Scott M. Lapins  
Schwartz, Cooper, Greenberger & Krauss  
180 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601

To Mortgagor: c/o Mark IV Realty  
230 N. Michigan Avenue  
Chicago, Illinois 60601  
Attn: Mr. John Marks

With copy to: Becker Ventures, LLC  
250 Stephenson Highway  
Suite 300  
Troy, Michigan 48083  
Attn: Mike McInerney, president

With copy to: Elias N. Matsakis  
McBride Baker & Coles  
500 West Madison Street  
40<sup>th</sup> Floor  
Chicago, Illinois 60661-2511



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With copy to: City of Chicago  
Commissioner of Planning and Development  
121 North LaSalle Street  
Room 1000  
Chicago, Illinois 60602

or to each such party at such other addresses as such party may designate in a written notice to the other parties.

35. Partial Invalidity. All rights, powers and remedies provided herein are intended to be limited to the extent necessary so that they will not render this Mortgage invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. If any term of this Mortgage shall be held to be invalid or unenforceable, the validity and enforceability of the other terms of this Mortgage shall in no way be affected thereby.

36. Successors and Assigns. Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Mortgage contained by or on behalf of Mortgagor, or by or on behalf of Mortgagee, shall bind and inure to the benefit of the respective successors and assigns of such parties, whether so expressed or not.

37. Default Interest Rate. For purposes of this Mortgage, "Default Interest Rate" shall mean the "Default Interest Rate" as defined in the Notes.

38. Guarantor. For purposes of this Mortgage, "Guarantor" shall mean the "Guarantor" as defined in the Loan Agreement or any substitute therefor.

39. Headings. The headings in this instrument are for convenience of reference only and shall not limit or otherwise affect the meaning of any provision hereof.

40. Changes, Etc. This instrument and the provisions hereof may be changed, waived, discharged or terminated only by an instrument in writing signed by both Mortgagor and Mortgagee.

41. Governing Law. This Mortgage shall be governed by and construed under the laws of the State of Illinois.

42. Future Advances. It is agreed that any additional sum or sums advanced by the then holder of the Notes secured hereby to or for the benefit of the Mortgagor, whether such advances are obligatory or are made at the option of the Mortgagee, or otherwise, at any time within ten (10) years from the date of this Mortgage, or within such lesser period of time as may be provided hereafter by law as a prerequisite for the sufficiency of actual notice or record notice of the optional future and additional advances as against the rights of creditors or subsequent purchasers for valuable consideration, with interest thereon at the rate agreed upon at the time of each additional loan or advance, shall be equally secured and have the same priority as the original indebtedness and be subject to all of the terms and provisions of this Mortgage, whether or not such additional loan or advance is evidenced by a Notes of the Mortgagor and whether or not identified by a recital that is secured by this Mortgage; provided, however, that the aggregate amount of the principal



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indebtedness outstanding and so secured any one time shall not exceed One Hundred Million Dollars (\$100,000,000) plus interest and disbursements made for the payment of taxes, levies or insurance on the property covered by this Mortgage and provided further that it is understood and agreed that this future advance provision shall not be construed to obligate the Mortgagee to make any such additional loans or advances. Nothing herein shall obligate the Mortgagee to loan the Mortgagor at any one time a sum in excess of the face amount of the Notes. It is further agreed that any additional Notes or Notes executed and delivered under this future advance provision shall be included in the word "Notes" wherever it appears in the context of this Mortgage.

43. Additional Waivers. MORTGAGOR AND MORTGAGEE (BY ITS ACCEPTANCE HEREOF) HEREBY WILFULLY, KNOWINGLY, IRREVOCABLY EXPRESSLY AND UNCONDITIONALLY WAIVE, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY MORTGAGEE ON THIS MORTGAGE, ANY AND EVERY RIGHT IT MAY HAVE TO (I) INJUNCTIVE RELIEF, (II) A TRIAL BY JURY, (III) INTERPOSE ANY COUNTERCLAIM THEREIN, UNLESS REQUIRED TO DO SO IN SUCH SUIT UNDER THE APPLICABLE RULES OF COURT, (IV) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR PROCEEDING UNLESS REQUIRED TO DO SO IN SUCH SUIT UNDER THE APPLICABLE RULES OF COURT.

44. Land Trust. The trust arrangement under which Trustee has been established constitutes a "land trust" as said term is defined in Section 15-1205 of the Act.

45. Exculpation. This instrument is executed by Firstar Bank, N.A., not personally but as Trustee under Trust No. 7504 as aforesaid, in the exercise of power and authority conferred on and vested in said Trustee as such, and it is expressly understood and agreed that nothing in said document contained shall be construed as creating any liability on said Trustee personally to pay any indebtedness accruing thereunder, or to perform any promises, agreements or covenants or to honor any warranties or representations, either expressed or implied, including but not limited to warranties (including but not limited to warranties of title, physical condition, environmental condition, merchantability, and fitness for particular purpose), indemnifications (including but not limited to indemnifications for injury to persons or property, for environmental liability, and for liability or damages resulting from or relating to claims or matters of any nature whatsoever) and hold harmless representations in said instrument (all such liability, if any, being expressly waived by the parties hereto and their respective successors and assigns) and that so far as said Trustee is concerned, the owner or any indebtedness or right accruing under said document shall look solely to the premises described therein for the payment or enforcement thereof, it being understood that said Trustee merely holds legal title to the premises described therein and has no control over the management thereof or the income therefrom, and has no knowledge respecting any factual matter with respect to said premises, except as represented to it by the beneficiary or beneficiaries of said trust. In event of conflict between the terms of this paragraph and of this Mortgage, on any questions of apparent liability or obligation resting upon said trustee, the provisions of this paragraph shall be controlling.

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*IN WITNESS WHEREOF*, the undersigned has caused these presents to be signed as of the day and year first above written.

**FIRSTAR BANK, N.A.**, not personally, but as  
Trustee as aforesaid

By: *Ju Stout*  
Its: *Ju Stout, Vice President*

**ATTEST:**

By: *Mary Figiel*  
Its: *LAND TR. OFCR.*

**ST. GEORGE HOTEL, L.L.C.**,  
an Illinois limited liability company

By: Niki Development, L.L.C.,  
an Illinois limited liability company,  
its member

By: *John Marks*  
John Marks, its manager

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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

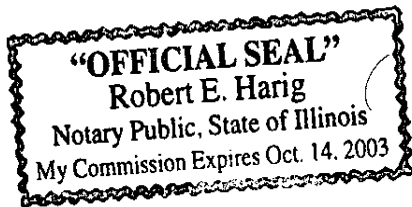
I HEREBY CERTIFY that on this 26<sup>th</sup> day of OCT, 2001, before me personally appeared JOHN MARKS OF NIKI REV., a duly authorized member of St. George Hotel, L.L.C., an Illinois limited liability company, to me known to be the same person who signed the foregoing instrument as his free act and deed as such member and as the free act and deed of said limited liability company for the use and purpose therein mentioned, and that the said instrument is the act and deed of said limited liability company.

WITNESS my signature and official seal at CHICAGO in the County of COOK and State of ILL, the day and year last aforesaid.

(NOTARY SEAL)

Robert E. Harig  
Notary Public

My Commission Expires: \_\_\_\_\_



11080159

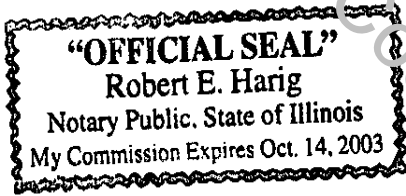
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STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

I, ROBERT E. HARIG, a Notary Public in and for said County, in the State aforesaid, do hereby certify that JUNE STOUT, the VICE PRES. of Firststar Bank, N.A. as Trustee, and MARY FLIBEL, the LAND TRUST OFFR. thereof, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such VICE PRES. and LAND TRUST OFFR., respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said Trustee, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal, this 26<sup>th</sup> day of OCTOBER, 2001.

Robert E. Harig  
NOTARY PUBLIC



(SEAL)

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## EXHIBIT "A"

### LEGAL DESCRIPTION

LOTS 10, 11, 12, 13, 14, AND 15 IN BLOCK 7 IN FORT DEARBORN ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**ADDRESS.** 222 and 230 North Michigan Avenue  
Chicago, Illinois

**PINS:** 17-10-303-024-0000

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**11080159**



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## EXHIBIT "B"

### PERMITTED EXCEPTIONS

Exceptions A, AI, AJ, W, AC, AD, BS, BT, BU, AG, and CE as shown on Chicago Title Insurance Company Commitment No. 1401-007954171 dated October 4, 2001 and October 10, 2001, and the Redevelopment Agreement with the City of Chicago, provided such Redevelopment Agreement has been approved by Lender and as subordinate to the Mortgage, the Lease Agreement with HRH dated October 25, 2001 and the Mortgage to the City of Chicago.

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JAN 10 2011