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Cook County Recorder 53.00

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This document prepared by and after recording return to:  
Mark Lenz.  
Assistant Corporation Counsel  
Department of Law  
30 North LaSalle Street, Room 1610  
Chicago, IL 60602

17

CITY-LENDER AGREEMENT

This City-Lender Agreement ("Agreement") is made and entered into as of the 25<sup>th</sup> day of October, 2001 between the City of Chicago, by and through its Department of Planning and Development ("City"), and 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 "Lender"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Redevelopment Agreement (hereinafter defined).

W I T N E S S E T H:

**WHEREAS**, Firststar Bank, N.A. under its Trust Agreement dated October 10, 2001 and known as Trust No. 7504 and St. George Hotel, L.L.C., an Illinois limited liability company (collectively, the "Developer") have acquired certain property located within the Central Loop Redevelopment Project Area at 222 North Michigan Avenue and 230 North Michigan Avenue and legally described on Exhibit A hereto ("Property"), in order to (a) construct at 222 North Michigan Avenue a new four story building ("222 North Michigan Building") consisting of meeting space, pre-function space and ballroom space on the second floor, restaurant space on the ground floor and approximately fifty (50)

BOX 333-CT1

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parking spaces and (b) complete rehabilitation and restoration of the building located at 230 North Michigan Avenue (the "230 North Michigan Building") into a four-star full-service Hard Rock Hotel and (c) related improvements, (collectively referred to herein as the "Project"); and

**WHEREAS**, as part of obtaining financing for the Project, the Developer has entered into a certain Construction Loan Agreement dated October 25, 2001 with the Lender pursuant to which the Lender has agreed to make a loan to Developer in an amount not to exceed \$49,000,000 ("Loan"), which Loan is evidenced by Promissory Notes executed by Developer in favor of the Lender in the amount of \$5,500,000, \$29,000,000, and \$14,500,000 (the "Notes"), and the repayment of the Loan is secured by certain liens and encumbrances on the Property and other property of Developer pursuant to the (i) Construction Mortgage and Security Agreement with Assignment of Leases and Rents and Fixture Filing dated October 25, 2001 and recorded \_\_\_\_\_ as document number **11080159** made by the Developer to the Lender; and (ii) Assignment of Leases and Rents dated October 25, 2001 and recorded \_\_\_\_\_ as document number **11080160** made by Developer to the Lender (all such agreements referred to above and otherwise relating to the Loan referred to herein collectively as the "Loan Documents");

**WHEREAS**, the Developer desires to enter into a Redevelopment Agreement with the City related to the Project ("Redevelopment Agreement") in order to obtain additional financing for the Project (the Redevelopment Agreement and Junior Mortgage being referred to herein along with various other agreements and documents related thereto as the "City Agreements");

**WHEREAS**, pursuant to the Redevelopment Agreement, the Developer, and its successors and assigns, will agree to be bound by certain covenants expressly running with the Property, as set forth in Sections 3.10, 8.01(j), (m) and (n), 8.02, 8.06 (a) and (b) and 8.23 of the Redevelopment Agreement (the "City Encumbrances"), excepting, however, as may be modified by the terms and conditions of this Agreement; and

**WHEREAS**, the City has agreed to enter into the Redevelopment Agreement with the Developer as of the date hereof, subject, among other things to: (a) the execution by the Developer of the Redevelopment Agreement and the recording thereof as an encumbrance against the Property; and (b) the

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agreement by the Lender to subordinate its liens under the Loan Documents to the City Encumbrances;

**NOW, THEREFORE,** for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Lender and the City agree as hereinafter set forth:

1. Subordination. Except as otherwise provided herein, all rights, interests and claims of the Lender in the Property pursuant to the Loan Documents are and shall be subject and subordinate to the City Encumbrances. Nothing herein, however, shall be deemed to limit the Lender's right to receive, and the Developer's ability to make, payments and prepayments of principal and interest on the Notes, or to exercise its rights pursuant to the Loan Documents except as provided herein.

Notwithstanding anything to the contrary contained herein, the City and Lender agree that in the event that Lender, or its successors and assigns, acquires legal title to the Property in the event of foreclosure or taking a deed in lieu of foreclosure, Lender shall be subject to the City Encumbrances, except as follows:

- (a) Lender, or its successors and assigns, shall not be liable to reimburse the City for any amount of the City Funds which shall have been disbursed by the City pursuant to the Redevelopment Agreement at or prior to the time in which the Lender, or any of its successors acquires the Property as described in this Section 1.
- (b) With regard to the covenants contained in Sections 8.01 (m) and (n) and 8.06 (a) and (b) of the Redevelopment Agreement (collectively, the "Operating and Use Covenants"), Lender understands and acknowledges that the Project shall be operated as a Hotel during the Term of the Agreement. The City acknowledges and agrees, however, that, notwithstanding the Operating and Use Covenants, the City will forbear, for a period of twenty four (24) months commencing with the date of default by Developer under the Loan Documents (after the expiration of any applicable cure period) from pursuing and exercising any rights and remedies against Lender or its successors under the Redevelopment Agreement, at law, in equity, or otherwise (excepting, however, the ability to draw on the Compliance Letter of Credit) solely arising out of or related to the failure of Developer (or Lender) to undertake or

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complete the construction of the Project, so long as Lender is actively pursuing its rights or remedies under the Loan Documents or, to the extent deemed commercially reasonable by Lender, the sale and/or conveyance of the Property to a third party that shall take subject to the City Encumbrances. In the event, however, that Lender is able to demonstrate, to the reasonable satisfaction of the City, that general market conditions or other local conditions affecting the hotel and restaurant industries in the Redevelopment Area (or areas adjacent thereto) make the use of the Project economically infeasible or commercially impractical as a Hotel, then Lender shall identify an alternative use to the DPD, which use shall be consistent with the general land use provisions as described in the Redevelopment Plan and underlying zoning. The alternative use of the Project shall be subject to the approval of the Commissioner of the DPD, which approval shall not be unreasonably withheld.

- (c) The City expressly agrees and acknowledges that the Junior Mortgage shall be junior and subordinate in lien and priority at all times to the liens and security interests created by the Loan Documents and any and all amendments, modifications, extensions, replacements or renewals of the Loan Documents, and to any and all advances made under the Loan Documents pursuant to the terms thereof. Notwithstanding the foregoing, Lender acknowledges and agrees that the City Encumbrances shall be prior and shall not be subordinate to, the Loan Documents and liens created thereunder, and accordingly, shall not be terminated or suspended upon the foreclosure of the Loan Documents set forth, except as otherwise provided herein.
- (d) During the Term of the Agreement, if there is an Event of Default by Developer under the Redevelopment Agreement which shall give rise to a Payment Obligation, the parties agree that the City may require Developer to pay such Payment Obligation, but only so long as: (i) Developer is not in material default under the Loan Documents (beyond expiration of applicable grace or cure periods); (ii) that the payment of such Payment Obligation by Developer does not result in the insolvency or bankruptcy (voluntary or involuntary) of Developer, and (iii) the City does not pursue collection of such Payment Obligation via seeking to foreclose on the Junior Mortgage (or pursue

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other rights to obtain possession or foreclose against the Project) when the debt evidenced by the Loan Documents is outstanding. Lender acknowledges, however, that nothing contained in this paragraph shall affect or restrain the City's ability to draw on the Compliance Letter of Credit.

- (e) If, as a result of foreclosure proceedings or deed in lieu of foreclosure, Lender acquires the Property, the City agrees that if the aggregate amount of City Funds expended on the Project to date of such foreclosure proceedings or the date of recordation of such deed, but in no event later than December 31, 2006, are repaid to the City, then the City, upon receipt of such funds, agrees to release the Redevelopment Agreement, including the City Encumbrances.
- (f) The City agrees that the acquisition of the Property by Lender (as a result of foreclosure proceedings or accepting a deed in lieu of foreclosure) and the subsequent conveyance of said Property by a third party shall not constitute a violation of the City Encumbrances represented by covenants in subsections 8.01(j) and (m) or 8.15 of the Redevelopment Agreement.
- (g) The City acknowledges that Lender shall have the rights contemplated under Section 5.04 of the Redevelopment Agreement to cure defaults of Developer.
- (h) The City shall not, without the prior written consent of Lender: (a) commence, or join with any other creditor in commencing, any bankruptcy, reorganization or insolvency proceedings with respect to the Property or Developer; (b) seek to appoint a receiver for the Property or Developer; (c) seek to obtain possession of the Property or (d) commence or seek to foreclose the Junior Mortgage or to enforce any other remedy under the Junior Mortgage.
- (i) In the event of any dissolution, winding-up, liquidation, readjustment, reorganization or other similar proceedings relating to Developer or its property (whether voluntary or involuntary, and whether in bankruptcy, insolvency or receivership, or upon an assignment to benefit creditors, or any sale of all or substantially all of the assets of Developer, or otherwise), including any foreclosure of the Property, Developer's obligations and liabilities under the Loan

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Documents ("Senior Liabilities") shall first be paid in full before the City shall be entitled to receive or to retain any payment or distribution with respect to any of the Payment Obligations (excepting, however, the Compliance Letter of Credit).

- (j) The priorities described herein shall apply with respect to all insurance proceeds and condemnation awards arising from the casualty or condemnation of the Property. In connection therewith, and notwithstanding the City being named as loss payee on any builder's risk or other casualty insurance policies, the City agrees that all funds payable in the event of a casualty with respect to the Property shall be paid over to Lender to pay the Loan or to re-build the Project, then second, any remaining amounts to be paid to the City.
- (k) Until such time as the Senior Liabilities have been paid in full, the City may not exercise any rights of subrogation that would result in the City obtaining a priority equal or superior to the priority of the Loan Documents, except for the purpose of enforcing the City Encumbrances to the extent permitted hereunder.
- (l) Lender may take any or all of the following actions without affecting the priorities or its other rights set forth in this Agreement: (a) extend or renew the Loan for one or more periods of time (whether or not longer than the original period), alter or modify any of the Senior Liabilities, or release or compromise any obligation of any nature of any obligor with respect to any of the Senior Liabilities; (b) amend any one or more of the Loan Documents, including without limitation an increase (related to the Project or as otherwise contemplated under the Redevelopment Agreement) decrease in the principal amount of the Senior Liabilities or the rate of interest payable thereunder; (c) release its security interest in, or surrender, release or permit any substitution or exchange for all or any part of, the property securing any of the Senior Liabilities, or release, compromise, alter or modify any obligation of any nature of any obligor with respect to any such property; and (d) take any such action with respect to any collateral for the Senior Liabilities which it may be entitled to take under the Loan Documents or pursuant to applicable law.

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- (m) In the event that Lender (or its designee) acquires any ownership interest in the Property, none of Lender or its officers, directors, shareholders or other equity holders, agents or affiliates shall have any personal liability under any of the City Agreements, all such liability, if any, being limited to Lender's interest in the Property.
- (n) This Agreement shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, all holders of any of the Notes. Furthermore, at the request of any mortgagee financing the Property with a loan that re-finances the Loan (or any successor loan for the Property), this Agreement may be assigned by Lender (or the then existing first mortgage lender) to such new mortgagee, in which event: (a) such new mortgagee shall be entitled to all of the benefits and be bound by all of the burdens of this Agreement; and (b) the new loan shall be deemed to be the "Loan Documents" hereunder.

2. Notice of Default. The Lender shall use reasonable efforts to give to the City, and the City shall use reasonable efforts to give to the Lender: (a) copies of any notices of default which it may give to the Developer with respect to the Project pursuant to the Loan Documents or the City Agreements, respectively; and (b) copies of waivers, if any, of the Developer's default in connection therewith. Under no circumstances shall the Developer or any third party be entitled to rely upon the agreement provided for herein

3. Waivers. No waiver shall be deemed to be made by the City or the Lender of any of their respective rights hereunder, unless the same shall be in writing, and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the City or the Lender in any other respect at any other time.

4. Governing Law; Binding Effect. This Agreement shall be interpreted, and the rights and liabilities of the parties hereto determined, in accordance with the internal laws and decisions of the State of Illinois, without regard to its conflict of laws principles, and shall be binding upon and inure to the benefit of the respective successors and assigns of the City and the

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Lender.

5. Section Titles; Plurals. The section titles contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto. The singular form of any word used in this Agreement shall include the plural form.

6. Notices. Any notice required hereunder shall be in writing and addressed to the party to be notified as follows:

If to the City: City of Chicago Department of  
Planning and Development  
121 North LaSalle Street,  
Room 1000  
Chicago, Illinois 60602  
Attention: Commissioner

With a copy to: City of Chicago  
Department of Law  
121 North LaSalle Street  
Room 600  
Chicago, Illinois 60602  
Attention: Finance and  
Economic Development Division

If to the Lender: US Bank National Association  
701 Lee Street  
Des Plaines, Illinois 60016  
Attention: James J. West

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

or to such other address as either party may designate for itself by notice. Notice shall be deemed to have been duly given (i) if delivered personally or otherwise actually received, (ii) if sent by overnight delivery service, (iii) if mailed by first class United States mail, postage prepaid, registered or certified, with

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return receipt requested, or (iv) if sent by facsimile with facsimile confirmation of receipt (with duplicate notice sent by United States mail as provided above). Notice mailed as provided in clause (iii) above shall be effective upon the expiration of three (3) business days after its deposit in the United States mail. Notice given in any other manner described in this paragraph shall be effective upon receipt by the addressee thereof; provided, however, that if any notice is tendered to an addressee and delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

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10/10/10

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IN WITNESS WHEREOF, this City-Lender Agreement has been signed as of the date first written above.

U.S. BANK NATIONAL  
ASSOCIATION, a national  
banking association

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Its: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY OF CHICAGO, an  
Illinois municipal  
corporation

By: Alicia M. Berg  
Alicia Marie Berg  
Commissioner of Planning  
and Development

ACKNOWLEDGED AND AGREED TO THIS  
5th DAY OF October, 2001  
St. George Hotel, L.L.C., an Illinois  
limited liability company

By: Chris Fischer  
Its: Anthony Segnata



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10/10/2017

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IN WITNESS WHEREOF, this City-Lender Agreement has been signed as of the date first written above.

U.S. BANK NATIONAL ASSOCIATION, a national banking association

By: [Signature]

Its: VICE PRESIDENT

CITY OF CHICAGO, an Illinois municipal corporation

By: \_\_\_\_\_

ACKNOWLEDGED AND AGREED TO THIS

DAY OF \_\_\_\_\_, 2001

St. George Hotel, L.L.C., an Illinois limited liability company

By: [Signature]  
Its: [Signature]

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IN WITNESS WHEREOF, this City-Lender Agreement has been signed as of the date first written above.

U.S. BANK NATIONAL  
ASSOCIATION, a national  
banking association

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Its: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CITY OF CHICAGO, an  
Illinois municipal  
corporation

By: \_\_\_\_\_

ACKNOWLEDGED AND AGREED TO THIS  
\_\_\_\_ DAY OF \_\_\_\_\_, 2001  
St. George Hotel, L.L.C., an Illinois  
limited liability company

By: Chris Markin  
Its: Authorized Signatory

ACKNOWLEDGED AND AGREED TO THIS  
\_\_\_\_ DAY OF \_\_\_\_\_, 2001  
HRH (Chicago) Development, LLC, an Illinois  
limited liability company

By: Chris Markin  
Its: Authorized Signatory

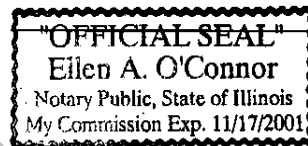
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STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF COOK        )

I, the undersigned, a notary public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Alicia Mazur Berg, personally known to me to be the ~~Alicia Mazur Berg~~, the Commissioner of Planning and Development of the City of Chicago, Illinois (the "City") and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Commissioner, she signed and delivered the said instrument pursuant to authority, as his/her free and voluntary act, and as the free and voluntary act and deed of said City, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 25<sup>th</sup> day of October, 2001.

  
Notary Public



(SEAL)

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STATE OF ILLINOIS            )  
   ) SS  
 COUNTY OF COOK                )

I, Sonia Fernandez, a notary public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY THAT, James J. West personally known to me to be the Vice President of and U.S. BANK NATIONAL ASSOCIATION, a national banking association ("USB"), and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he/she signed, sealed and delivered said instrument, pursuant to the authority given to him/her by USB, as his/her free and voluntary act, and as the free and voluntary act of USB, for the uses and purposes therein set forth.

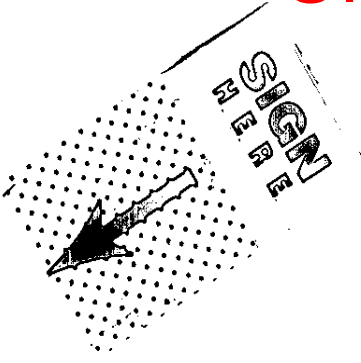
GIVEN under my hand and notarial seal this 8th day of November 2001.

*Sonia Fernandez*  
 \_\_\_\_\_  
 Notary Public

My Commission Expires 6/4/05



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11/11/2023







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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.

PERMANENT INDEX NO. 17-10-303-024-0000

COMMON ADDRESS: 222 and 230 NORTH MICHIGAN AVENUE  
CHICAGO, ILLINOIS

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