

UNOFFICIAL COPY

0011083464

03/0330 07 001 Page 1 of 12
2001-11-16 15:07:47
Cook County Recorder 43.00



0011083464

This space reserved for Recorder's use only.

SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T AGREEMENT

12

795417102

THIS AGREEMENT is made and entered into as of the 25th day of October, 2001, by and between **HRH CHICAGO, LLC**, an Illinois limited liability company, ("Tenant"), **FIRSTAR BANK, N.A.**, not personally but solely as Trustee under Trust Agreement dated October 10, 2001 and known as Trust No. 7504 ("Trustee"), **ST. GEORGE HOTEL, L.L.C.**, an Illinois limited liability company ("Beneficiary", and together with Trustee, "Landlord"), and **U.S. BANK NATIONAL ASSOCIATION**, its successors and assigns individually and as agent of one or more banks pursuant to one or more Assignment and Acceptance Agreements ("Mortgagee").

RECITALS:

A. Mortgagee is the holder of a certain Construction Mortgage and Security Agreement, with Assignment of Leases and Rents and Fixture Filing dated October 25, 2001, to be recorded concurrently herewith (as amended from time to time, "Mortgage") encumbering the Real Estate (hereinafter defined) and securing a principal indebtedness in an amount equal to Forty Nine Million and 00/100 Dollars (\$49,000,000.00).

B. Tenant has entered into a lease agreement and a certain HTC Pass-Through Agreement ("Pass-Through Agreement") (such lease agreement and Pass-Through hereinafter being referred to together as "Lease Agreement," and the Lease Agreement, together with all amendments and modifications thereof, hereinafter being referred to as "Lease") each dated October 25, 2001 with Landlord, pursuant to which Tenant leased certain premises ("Leased Premises") consisting of the land and the improvements located in the building ("Building") on the parcel of land ("Land") legally described in Exhibit A attached hereto (the Land and Building herein being collectively referred to as "Real Estate").

**This instrument was prepared by:
and after recording return to:**

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

Permanent Index No.:
See Exhibit "A" attached

Address of Property:
222-230 N. Michigan Avenue
Chicago, Illinois

BOX 333-CTT

UNOFFICIAL COPY

Property of Cook County Clerk's Office

UNOFFICIAL COPY

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Tenant represents and warrants to Mortgagee that the Lease constitutes the entire agreement between Tenant and Landlord with respect to the Leased Premises and there are no other agreements, written or verbal, governing the tenancy of Tenant with respect to the Leased Premises.

2. Prior to pursuing any remedy available to Tenant under the Lease, at law or in equity as a result of any failure of Landlord to perform or observe any covenant, condition, provision or obligation to be performed or observed by Landlord under the Lease Agreement (any such failure hereinafter referred to as a "Landlord's Default"), Tenant shall: (a) provide Mortgagee with a notice of Landlord's Default specifying the nature thereof, the section of the Lease Agreement under which same arose and the remedy which Tenant will elect under the terms of the Lease Agreement or otherwise, and (b) allow Mortgagee not less than thirty (30) days following receipt of such notice of Landlord's Default to cure the same; provided, however, that, if such Landlord's Default is not readily curable within such thirty (30) day period, Tenant shall give Mortgagee such additional time as Mortgagee may reasonably need to obtain possession and control of the Real Estate and to cure such Landlord's Default so long as Mortgagee is diligently pursuing a cure. Tenant shall not pursue any remedy available to it as a result of any Landlord's Default unless Mortgagee fails to cure same within the time period specified above. For purposes of this Paragraph 2, a Landlord's Default shall not be deemed to have occurred until all grace and/or cure periods applicable thereto under the Lease Agreement have lapsed without Landlord having effectuated a cure thereof.

3. Tenant covenants with Mortgagee that the Lease Agreement shall be subject and subordinate to the lien and all other provisions of the Mortgage and to all modifications and extensions thereof, to the full extent of all principal, interest and all other amounts now or hereafter secured thereby and with the same force and effect as if the Mortgage had been executed and delivered prior to the execution and delivery of the Lease Agreement. Without limiting the generality of the foregoing subordination provision, Tenant hereby agrees that any of its right, title and interest in and to insurance proceeds and condemnation awards (or other similar awards arising from eminent domain proceedings) with respect to damage to or the condemnation (or similar taking) of any of the Real Estate, shall be subject and subordinate to Mortgagee's right, title and interest in and to such proceeds and awards. Tenant agrees that tenant shall not grant or convey any lease hold mortgage with respect to the Leased Premises.

4. Tenant acknowledges that Landlord has collaterally assigned to Mortgagee all leases affecting the Real Estate, including the Lease, and the rents and other amounts, including, without limitation, lease termination fees, if any, due and payable under such leases. In connection therewith, Tenant agrees that, upon receipt of a notice of a default by Landlord under such assignment and a demand by Mortgagee for direct payment to Mortgagee of the rents due under the Lease, Tenant will honor such demand and make all subsequent rent payments directly to Mortgagee. Tenant further

UNOFFICIAL COPY

agrees that any Lease termination fees payable to Landlord under the Lease shall be paid jointly to Landlord and Mortgagee.

5. Mortgagee agrees that so long as Tenant is not in default under the Lease beyond any applicable cure period:

a. Tenant shall not be named or joined as a party in any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage (unless Tenant is a necessary party under applicable law); and

b. The possession by Tenant of the Leased Premises and Tenant's rights thereto shall not be disturbed, affected or impaired by, nor will the Lease or the term thereof be terminated or otherwise materially adversely affected by (i) any suit, action or proceeding for the foreclosure of the Mortgage or the enforcement of any rights under the Mortgage, or by any judicial sale or execution or other sale of the Leased Premises, or any deed given in lieu of foreclosure, or (ii) any default under the Mortgage;

6. If Mortgagee or any future holder of the Mortgage shall become the owner of the Real Estate by reason of foreclosure of the Mortgage or otherwise, or if the Real Estate shall be sold as a result of any action or proceeding to foreclose the Mortgage or transfer of ownership by deed given in lieu of foreclosure, the Lease shall continue in full force and effect, without necessity for executing any new lease, as a direct lease between Tenant and the new owner of the Real Estate as "landlord" upon all the same terms, covenants and provisions contained in the Lease (subject to the exclusions set forth in subparagraph (b) below), and in such event:

a. Tenant shall be bound to such new owner under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term), and Tenant hereby agrees to attorn to such new owner and to recognize such new owner as "landlord" under the Lease without any additional documentation to effect such attornment (provided, however, if applicable law shall require additional documentation at the time Mortgagee exercises its remedies then Tenant shall execute such additional documents evidencing such attornment as may be required by applicable law);

b. Such new owner shall be bound to Tenant under all of the terms, covenants and provisions of the Lease for the remainder of the term thereof (including the extension periods, if Tenant elects or has elected to exercise its options to extend the term); provided, however, that such new owner shall not be:

(i) subject to any offsets or defenses which Tenant has against any prior landlord (including Landlord) unless Tenant shall have provided Mortgagee with (A) notice of the Landlord's Default that gave rise to such offset or defense and (B) the opportunity to cure the same, all in accordance with the terms of Section 4 above;

UNOFFICIAL COPY

(ii) bound by any base rent, percentage rent, additional rent or any other amounts payable under the Lease which Tenant might have paid in advance for more than the current month to any prior landlord (including Landlord);

(iii) liable to refund or otherwise account to Tenant for any security deposit or temporary security deposit whether or not paid over, delivered or received by Mortgagee or such new owner;

(iv) bound by any amendment or modification of the Lease made without Mortgagee's consent;

(v) bound by, or liable for any breach of, any representation or warranty or indemnity agreement contained in the Lease or otherwise made by any prior landlord (including Landlord);

(vi) bound by any provision requiring the completion of any improvements to the Leased Premises; or

(vii) personally liable or obligated to perform any such term, covenant or provision, such new owner's liability being limited in all cases to its interest in the Real Estate; or

(viii) be bound by any obligation under the Pass-Through Agreement.

7. Tenant agrees that the amount of any temporary security deposit returned by Landlord to Tenant shall be used to pay for soft costs and non-fixtured furnishing and furniture. Tenant further agrees to cause all operating and reserve accounts relating to Leased Premises to be maintained in Tenant's name in accounts with Mortgagee.

8. Any notices, communications and waivers under this Agreement shall be in writing and shall be (i) delivered in person, (ii) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (iii) by overnight express carrier, addressed in each case as follows:

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

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

UNOFFICIAL COPY

To Tenant: HRH Chicago, LLC
c/o 230 N. Michigan, LLC
233 N. Michigan Avenue
Chicago, Illinois 60601
Attn: John McDonald

With a copy to: Chevron TCI, Inc.
575 Market Street, 32nd Floor
San Francisco, CA 94105
Attn: John H. Medinger

With a copy to: Holland & Knight LLP
10 St. James Avenue
Boston, Massachusetts 02116
Attn: William F. Machen

or to any other address as to any of the parties hereto, as such party shall designate in a written notice to the other party hereto. All notices sent pursuant to the terms of this Paragraph shall be deemed received (i) if personally delivered, then on the date of delivery, (ii) if sent by overnight, express carrier, then on the next federal banking day immediately following the day sent, or (iii) if sent by registered or certified mail, then on the earlier of the third federal banking day following the day sent or when actually received.

9. Tenant acknowledges and agrees that Mortgagee will be relying on the representations, warranties, covenants and agreements of Tenant contained herein and that any default by Tenant hereunder shall permit Mortgagee, at its option, to exercise any and all of its rights and remedies at law and in equity against Tenant and to join Tenant in a foreclosure action thereby terminating Tenant's right, title and interest in and to the Leased Premises.

10. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and assigns and any nominees of Mortgagee, all of whom are entitled to rely upon the provisions hereof. This Agreement shall be governed by the laws of the State of Illinois.

11. This Agreement may be executed in multiple counterparts and all of such counterparts together shall constitute one and the same Agreement.

11. This instrument is executed by Firststar 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

UNOFFICIAL COPY

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 Agreement, on any questions of apparent liability or obligation resting upon said trustee, the provisions of this paragraph shall be controlling.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

Tenant:

HRH CHICAGO, LLC, an Illinois limited liability company

By: 230 N. MICHIGAN AVENUE, LLC,
an Illinois limited liability company,
its managing member

By: John Marks
Name: JOHN MARKS
Title: Manager of Marks/McDonald,
LLC, a member of 230 N.
Michigan, LLC

Landlord:

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

By: June Stout
Its: JUNE STOUT, Vice Pres

ATTEST:

By: Mary Figiel
Its: LAND TR. OFFICER.

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

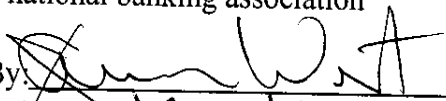
By: Niki Development, L.L.C.,
an Illinois limited liability company,
its member

By: John Marks
John Marks, its manager

UNOFFICIAL COPY

Mortgagee:

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

By: 
Name: JAMES WEST
Title: VICE PRESIDENT

R:\44535\11947\SNDA (v3).wpd

Property of Cook County Clerk's Office

UNOFFICIAL COPY

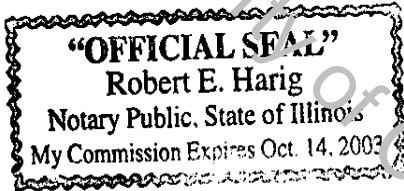
Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILL)
) 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 FLIGEL, the LAND TRUST OFFICER 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 OFFICER, 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 25th day of Oct., 2001.



Robert E. Harig
NOTARY PUBLIC
(SEAL)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, _____, a Notary Public in and for said County in the State aforesaid, do hereby certify that _____, a _____ of U.S. BANK NATIONAL ASSOCIATION, who is personally known to be to be the same person whose name is subscribed to the foregoing instrument as such _____, appeared before me this day in person and acknowledged that he/she signed and delivered such instrument as his/her own free and voluntary act and as the free and voluntary act of said Bank, for the uses and purposes set forth therein.

Given under my hand and notarial seal on _____, 20__.

Notary Public

UNOFFICIAL COPY

STATE OF _____)
) SS.
COUNTY OF _____)

I, _____, a Notary Public in and for said County, in the State
aforesaid, do hereby certify that _____, the
of Firststar Bank, N.A. as Trustee, and _____, the
_____ thereof, who are personally known to me to be the same persons
whose names are subscribed to the foregoing instrument as such _____ and
_____, 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 _____ day of _____, 2001.

NOTARY PUBLIC

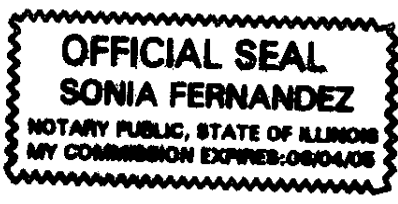
(SEAL)

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Sonia Fernandez, a Notary Public in and for said County in the State aforesaid, do hereby
certify that James J. West, a V. P. of U.S. BANK NATIONAL ASSOCIATION,
who is personally known to be to be the same person whose name is subscribed to the foregoing
instrument as such V. P., appeared before me this day in person and acknowledged that he/she
signed and delivered such instrument as his/her own free and voluntary act and as the free and
voluntary act of said Bank, for the uses and purposes set forth therein.

Given under my hand and notarial seal on 11-13, 2001.

Sonia Fernandez
Notary Public



UNOFFICIAL COPY

EXHIBIT A

Legal Description of Real Estate

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

Property of Cook County Clerk's Office

A-1

11083464

UNOFFICIAL COPY

Property of Cook County Clerk's Office