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180 Maiden Lane
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Attn: Brian Diamond, Esq.



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Cook County Recorder of Deeds
Date: 10/29/2004 02:48 PM Pg: 1 of 58

Property of Cook County Clerk's Office

O'HARE CHICAGO HOTEL LLC, as mortgagor
(Borrower)

To

O'HARE CHICAGO FUNDING COMPANY LLC, as mortgagee
(Lender)

LEASEHOLD MORTGAGE
AND
SECURITY AGREEMENT
(WITH FIXTURE FILING)

Dated: As of October 26, 2004
Location: 8500 West Bryn Mawr Avenue
County: Chicago, Illinois
Property Identification Number: 12-02-304-010-0000

PREPARED BY AND UPON
RECORDATION RETURN TO:

STROOCK & STROOCK & LAVAN, LLP
180 MAIDEN LANE
NEW YORK, NEW YORK 10038-4982
ATTENTION: BRIAN DIAMOND, ESQ.

8/29/15 DECF 3074

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DEFINITIONS

The terms set forth below are defined in the following sections of this Leasehold Mortgage and Security Agreement (With Fixture Filing):

25 Market AVG	Section 9.10
Action	Section 9.04
Additional Funds	Section 3.07
Anti-Terrorism Regulations	Section 3.12
Assessments	Section 3.03
Assignment	Granting Clause
Award	Section 3.08
Bankruptcy Code	Granting Clause
Borrower	Preamble
Borrower LLC Agreement	Section 5.02
Costs	Section 4.01
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Deposit Accounts	Section 9.10
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Executive Order 13224	Section 2.09
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Grace Period	Section 6.01
Ground Lease	Granting Clause
Hazardous Materials	Section 3.12
Hotel Management Agreement	Section 10.02
Hotel Manager	Section 10.02
IMFL	Section 11.04
Improvements	Granting Clause
Instrument	Preamble
Land	Granting Clause
Laws	Section 3.05
Leases	Granting Clause
Lender	Preamble
Liens	Section 3.09
Loan	Recitals
Member Loans	Section 5.01
Microbial Matter	Section 3.12

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Net Proceeds	Section 3.07
Note	Recitals
Notice	Section 9.02
O&M Plan	Section 3.12
Obligations	Section 1.01
OFAC	Section 2.09
OFAC Lists	Section 2.09
OFAC Violation	Section 3.12
Operating Lease	Granting Clause
Operating Lessee	Granting Clause
Organization State	Section 2.01
Owner Agreement	Section 6.01
PCBs	Section 3.12
Permitted Encumbrances	Granting Clause
Personal Property	Section 6.02
Property	Granting Clause
Property State	Section 2.01
Release	Section 3.12
Rent Loss Proceeds	Section 3.07
Rents	Granting Clause
Restoration	Section 3.07
Taking	Section 3.08
Tenant	Granting Clause
Transaction Taxes	Section 3.03
U.C.C.	Section 2.02

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LEASEHOLD MORTGAGE AND SECURITY AGREEMENT (WITH FIXTURE FILING)

THIS LEASEHOLD MORTGAGE AND SECURITY AGREEMENT (WITH FIXTURE FILING) (this "**Instrument**") is made as of the ___ day of October, 2004, by O'HARE CHICAGO HOTEL LLC, a Delaware limited liability company, having its principal office and place of business c/o Tishman Realty Corporation, 666 Fifth Avenue, New York, New York 10103, as mortgagor ("**Borrower**"), to O'HARE CHICAGO FUNDING COMPANY LLC, a Delaware limited liability company, having an office c/o J.P. Morgan Investment Management Inc., 522 Fifth Avenue, New York, New York 10036, as mortgagee ("**Lender**").

RECITALS:

1. Borrower, by the terms of its promissory note executed on the same date as this Instrument ("**Note**") and in connection with the loan ("**Loan**") from Lender to Borrower, is indebted to Lender in the principal sum of up to TWENTY-NINE MILLION AND NO/100 U.S. DOLLARS (\$29,000,000.00) with interest from the date thereof at the rates set forth in the Note, principal and interest to be payable in accordance with the terms and conditions provided in the Note, the final payment of which, if not sooner paid, is due and payable on November 1, 2007, the maturity date.
2. Borrower desires to secure the payment of and the performance of all of its obligations under the Note and certain additional Obligations (as defined in Section 1.01).

IN CONSIDERATION of the principal sum of the Note, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Borrower irrevocably:

A. Grants, bargains, sells, assigns, transfers, pledges, mortgages, warrants, conveys and sets over to Lender, all of Borrower's right, title and interest (if any) in, to and under the following property, rights, interests and estates now owned or hereafter acquired by Borrower (collectively, the "**Property**") upon the terms and conditions hereof:

(i) Borrower's leasehold estate in the real property in Cook County, Illinois and described in Exhibit A ("**Land**"); all rights, options and privileges of the Borrower as ground lessee under that certain Ground Lease dated as of February 3, 1999, between Bryn Mawr, LLC, as landlord and Borrower, as predecessor in interest to Bryn Mawr Hotel, L.L.C., as tenant, as amended by a First Amendment of Ground Lease and Short Form Lease dated August 14, 2000, and a Second Amendment to Ground Lease dated as of May 18, 2001, supplemented by a letter from Landlord to Tenant dated as of January 31, 2003, and letter agreements dated as of October 1, 2002 and as of March 27, 2003 and as further amended and supplemented by that certain Agreement of Ground Lessor dated as of the date hereof among Landlord, Borrower and Lender (collectively, the "**Ground Lease**"); all rights, options and privileges of Borrower under that certain Declaration of Easements, Covenants and Restrictions made as of the 29th day of January 1999, by 8550 Bryn Mawr, L.L.C. and all amendments or modifications thereto (collectively, the "**Declaration**"); any and all security deposits or other property of Borrower held by the ground lessor pursuant to the terms of or in connection with the Ground Lease; together with additional lands, estates and development rights hereafter acquired by Borrower for use in connection with

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the development, ownership or occupancy of such real property; and all additional lands and estates therein which may, from time to time, by supplemental mortgage or otherwise be expressly made subject to the lien of this Security Instrument;

(ii) All buildings, structures and improvements (including fixtures) now or later located in or on the Land ("**Improvements**");

(iii) All easements, estates, and interests including hereditaments, servitudes, appurtenances, tenements, mineral and oil/gas rights, water rights, air rights, development power or rights, options, reversion and remainder rights, and any other rights owned by Borrower and relating to or usable in connection with or access to the Land and the Improvements;

(iv) All land lying within the rights-of-way, roads, or streets, open or proposed, adjoining the Land to the center line thereof; and all sidewalks, alleys, and strips and gores of land adjacent to or used in connection with the Land and the Improvements;

(v) All plans, specifications, surveys, studies, reports, permits, licenses, agreements, contracts, instruments, books of account, insurance policies, and any other documents relating to the use, construction, occupancy, leasing, activity, or operation of the Property;

(vi) All of the fixtures and personal property described in Exhibit B that are owned by Borrower and all replacements thereof that are owned by Borrower, but excluding all personal property owned by Operating Lessee (as defined below) or any other tenant, guest or occupant (a "**Tenant**") of the Property;

(vii) All proceeds (including conversion to cash or liquidation claims) of (A) insurance relating to the Property and (B) all awards made for the taking by eminent domain (or by any proceeding or purchase in lieu thereof) of the Property, including awards resulting from a change of any streets (whether as to grade, access, or otherwise) and for severance damages;

(viii) All tax refunds, including interest thereon, tax rebates, tax credits, and tax abatements, and the right to receive the same, which may be payable or available with respect to the Property and all amounts deposited in escrow for the payment of ad valorem taxes, assessments and charges and/or premiums for policies of insurance with respect to the Property;

(ix) All leasehold estates, ground leases, leases, subleases, licenses, or other agreements affecting the use, enjoyment or occupancy of the Property now or later existing, including, without limitation, any and all reservations, security interests, contractual liens, security deposits, booking deposits, and any use or occupancy arrangements created pursuant to Title 7 or 11 of the United States Code, as amended from time to time, or any similar federal or state laws now or later enacted for the relief of debtors (the "**Bankruptcy Code**") and all extensions and amendments thereto, including, without limitation, all right, title and interest of Borrower in, to and under that certain Hotel Lease dated as of the date hereof (as the same may be amended, the "**Operating Lease**"), between Borrower, as landlord, and Chicago Hotel Lease LLC ("**Operating Lessee**"), as tenant, pursuant to which Borrower has leased the entire Property to Operating Lessee (collectively, the "**Leases**") and all Borrower's right, title and interest under the Leases, including all guaranties thereof;

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(x) All rents, issues, profits, royalties, receivables, use and occupancy charges, income and revenues (including all oil, gas or other mineral royalties and bonuses), income and other benefits now or later derived from any portion or use of the Property (including, without limitation, room rents, revenues, accounts and receivables derived from the use or occupancy of all or any portion of the Improvements, and any payments received with respect to any Tenant or the Property pursuant to the Bankruptcy Code) and all cash, security deposits, advance rentals, or similar payments relating thereto, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, parking fees and revenues, health club membership fees, food and beverage wholesale and retail sales (including mini-bar revenues), service charges, vending machine sales and proceeds, if any, from rent loss, business interruption or other loss of income insurance, and all amounts payable by Operating Lessee to Borrower under the Operating Lease (collectively, the “**Rents**”) and all proceeds from the cancellation, termination, surrender, sale or other disposition of the Leases, and the right to receive and apply the Rents to the payment of the Obligations;

(xi) All cash funds, deposit accounts and other rights and evidence of rights to cash now or hereafter created or held by Lender pursuant to this Instrument or any other of the Documents (defined below); and

(xii) (A) All management, operating or similar agreements related to the Property, (B) any licenses relating to the sale, distribution or provision of food and beverages at, on or from the Property, all parking garage operating or management agreements and all other agreements relating to the operation of the Property, (B) all licenses and permits (to the extent not prohibited by applicable Laws (defined below)), trademarks and servicemarks (including the name of the Property), plans and specifications, reservation system agreements, service contracts, warranties and computer software related to the Property (excluding the proprietary systems and software of Hotel Manager (defined below) used in connection with the Property and Hotel Manager’s proprietary trademarks and servicemarks), (C) use agreements (such as golf course or tennis facility use agreements) relating to the Property, (D) FF&E reserve funds, and (E) to the extent permitted by applicable Laws, liquor licenses associated with the Property, provided that such licenses, at Lender’s direction, may (but only to the extent such liquor licenses are assignable under applicable Laws) be assigned to a nominee of Lender or the ownership interests in any corporation or other entity that may hold such liquor licenses may be assigned to Lender or its nominee.

B. In addition, Borrower has absolutely and unconditionally assigned, transferred and set over to Lender all of the Rents from all of the Leases, pursuant to that certain Assignment of Leases and Rents made by Borrower to Lender dated the same date as this Instrument (the “**Assignment**”), which document shall govern and control the provisions of this assignment.

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TO HAVE AND TO HOLD the Property unto Lender forever, subject to the title exceptions set forth in the title insurance policy in favor of Lender that insures the priority of this Instrument (“**Permitted Encumbrances**”) and the provisions, terms and conditions of this Instrument, to secure payment and performance of the Obligations in the time and manner set forth in the Documents (defined below).

IN FURTHERANCE of the foregoing, Borrower warrants, represents, covenants and agrees as follows:

ARTICLE I - - OBLIGATIONS

Section 1.01 Obligations. This Instrument is executed, acknowledged, and delivered by Borrower to secure and enforce the following obligations (collectively, the “**Obligations**”):

(a) Payment of all obligations, indebtedness and liabilities under the Documents including (i) any Breakage Fees, as such term is defined in the Note, (ii) interest at both the rate specified in the Note and at the Default Rate (as defined in the Note), if applicable and to the extent permitted by Laws (defined below), and (iii) renewals, extensions, and amendments of the Documents;

(b) Performance of every obligation, covenant, and agreement under the Documents including renewals, extensions, and amendments of the Documents; and

(c) Payment of all sums advanced (including costs and expenses) by Lender pursuant to the Documents including renewals, extensions, and amendments of the Documents.

Section 1.02 Documents. The “**Documents**” shall mean this Instrument, the Note, the Assignment, and any other written agreement executed by Borrower in connection with the Loan, including those given to evidence or further secure the payment and performance of any of the Obligations, and any written renewals, extensions, and amendments of the foregoing, executed by Borrower. All of the provisions of the Documents are incorporated into this Instrument as if fully set forth in this Instrument.

ARTICLE II - - REPRESENTATIONS AND WARRANTIES

Borrower hereby represents and warrants to Lender as of the date hereof, as follows:

Section 2.01 Title, Legal Status and Authority. Borrower (i) is seized of leasehold title in the Land and Improvements and has good and marketable leasehold title to the Property, free and clear of all liens, charges, encumbrances, and security interests, except the Permitted Encumbrances; (ii) will forever warrant and defend its title to the Property and the validity, enforceability, and priority of the lien and security interest created by this Instrument against the claims of all persons; (iii) is a limited liability company duly organized, validly existing, and in good standing and qualified to transact business under the laws of its state of organization or incorporation (“**Organization State**”) and is qualified to transact business in the state where the Property is located (“**Property State**”); and (iv) has all necessary approvals, governmental and otherwise, and full power and authority to own its properties (including the Property) and carry on its business.

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Section 2.02 Validity of Documents. The execution, delivery and performance of the Documents and the borrowing evidenced by the Note (i) are within the power of Borrower and all other parties executing same; (ii) have been authorized by all requisite action; (iii) have received all necessary approvals and consents; (iv) will not violate, conflict with, breach, or constitute (with notice or lapse of time, or both) a default under (1) any law, order or judgment of any court, governmental authority, or the governing instrument of Borrower or (2) any indenture, agreement, or other instrument to which Borrower is a party or by which it or any of its property is bound or affected; (v) will not result in the creation or imposition of any lien, charge, or encumbrance upon any of its properties or assets except for those in this Instrument; and (vi) will not require any authorization or license from, or any filing with, any governmental or other body (except for the recordation of this Instrument, the Assignment and Uniform Commercial Code ("U.C.C.") filings). The Documents constitute legal, valid, and binding obligations of Borrower.

Section 2.03 Litigation. Except as disclosed to Lender in writing, there is no action, suit, or proceeding, judicial, administrative, or otherwise (including any condemnation or similar proceeding), pending or, to Borrower's knowledge, threatened or contemplated against, or affecting, Borrower, Operating Lessee or the Property which would have a material adverse effect on either the Property or Borrower's ability to perform the Obligations.

Section 2.04 Status of Property.

(a) The Land and Improvements are not located in an area identified by the Secretary of Housing and Urban Development, or any successor, as an area having special flood hazards pursuant to the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994, as each have been or may be amended, or any successor law (collectively, the "**Flood Acts**") or, if located within any such area, Borrower has and will maintain the insurance prescribed in Section 3.06 below.

(b) Borrower or Operating Lessee has (or will have prior to the date on which the hotel located on the Land first opens for business) all necessary (i) certificates, licenses, and other approvals, governmental and otherwise, for the operation of the Property and the conduct of its business and (ii) zoning, building code, land use, environmental and other similar permits or approvals, all of which are currently in full force and effect and not subject to revocation, suspension, forfeiture, or modification. To Borrower's knowledge, the Property and its use and occupancy is in full compliance with all Laws. Borrower has received no written notice of any violation or potential violation of the Laws which has not been remedied or satisfied.

(c) The Property is served by all utilities (including water and sewer) required for its current use.

(d) All public roads and streets necessary to serve the Property for its current use have been completed, are serviceable, are legally open, and have been dedicated to and accepted by the appropriate governmental entities.

(e) The Property is free from damage caused by fire or other casualty.

(f) All costs and expenses for labor, materials, supplies, and equipment used in the construction of the Improvements have been paid in full except for the Permitted Encumbrances.

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(g) Borrower owns and has paid in full for or leases pursuant to equipment leases all furnishings, fixtures, and equipment (other than property owned or leased by Operating Lessee or a Tenant) used in connection with the operation of the Property, free of all security interests, liens, or encumbrances except the Permitted Encumbrances and those created by this Instrument or the Operating Lease. To Borrower's knowledge, Operating Lessee owns and has paid in full for or leases pursuant to equipment leases all other furnishings, fixtures, and equipment (other than property owned or leased by a Tenant) used in connection with the operation of the Property, free of all security interests, liens, or encumbrances except the Permitted Encumbrances.

(h) The Property is assessed for real estate tax purposes as one or more wholly independent tax lot(s), separate from any adjoining land or improvements and no other land or improvements is assessed and taxed together with the Property.

Section 2.05 Tax Status of Borrower. Borrower is not a "foreign person" within the meaning of Sections 1445 and 7701 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder.

Section 2.06 Bankruptcy and Equivalent Value. No bankruptcy, reorganization, insolvency, liquidation, or other proceeding for the relief of debtors has been instituted by or against Borrower or Operating Lessee, any general partner of Borrower (if Borrower is a partnership), Operating Lessee (if Operating Lessee is a partnership), or any manager or managing member of Borrower (if Borrower is a limited liability company) or Operating Lessee (if Operating Lessee is a limited liability company). Borrower has received reasonably equivalent value for granting this Instrument.

Section 2.07 Disclosure. Borrower has not failed to disclose any material fact actually known to Borrower that would cause any representation or warranty made herein to be materially misleading.

Section 2.08 Illegal Activity. To Borrower's knowledge, no portion of the Property has been or will be purchased, improved, fixtured, equipped or furnished with proceeds of any illegal activity and, to the best of Borrower's knowledge, there are no illegal activities at or on the Property.

Section 2.09 OFAC Lists. That (i) neither Borrower, Operating Lessee, nor any member of Borrower or Operating Lessee, nor, to Borrower's knowledge, any person or entity with actual authority to direct the actions of any member of Borrower or Operating Lessee, nor, to Borrower's present, actual knowledge, any other persons or entities holding any legal or beneficial interest whatsoever in Borrower or Operating Lessee, are named on any list of persons, entities, and governments issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 – Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism ("Executive Order 13224"), as in effect on the date hereof, or any similar list known to Borrower or publicly issued by OFAC or any other department or agency of the United States of America (collectively, the "OFAC Lists"), (ii) neither Borrower, Operating Lessee, nor any member of Borrower or Operating Lessee, nor, to Borrower's knowledge, any person or entity with actual authority to direct the actions of any member of Borrower or Operating Lessee,

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nor to Borrower's present, actual knowledge, any other persons or entities holding any legal or beneficial interest whatsoever in Borrower or Operating Lessee, are included in, owned by, controlled by, knowingly acting for or on behalf of, knowingly providing assistance, support, sponsorship, or services of any kind to, or otherwise knowingly associated with any of the persons or entities referred to or described in the OFAC Lists; and (iii) neither Borrower, Operating Lessee, nor any member of Borrower, Operating Lessee, nor, to Borrower's knowledge, any person or entity with actual authority to direct the actions of any member of Borrower or Operating Lessee, nor any other persons or entities holding any legal or beneficial interest whatsoever in Borrower or Operating Lessee, has knowingly conducted business with or knowingly engaged in any transaction with any person or entity named on any of the OFAC Lists or any person or entity included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or, to Borrower's present, actual knowledge otherwise associated with any of the persons or entities referred to or described in the OFAC Lists.

ARTICLE III - - COVENANTS AND AGREEMENT

Borrower covenants and agrees with Lender as follows:

Section 3.01 Payment of Obligations. Borrower shall timely pay and cause to be performed the Obligations.

Section 3.02 Continuation of Existence. Borrower shall not (a) dissolve, terminate, or otherwise dispose of, directly, indirectly or by operation of law, all or substantially all of its assets; (b) except as may be expressly permitted by the Documents, reorganize or change its legal structure without Lender's prior written consent; (c) change its name, address, or the name under which Borrower conducts its business without promptly notifying Lender; or (d) do anything to cause the representations in Section 2.02 to become untrue.

Section 3.03 Taxes and Other Charges.

(a) Payment of Assessments. Borrower shall pay, or cause Operating Lessee to pay pursuant to the terms of the Operating Lease, when due all taxes, liens, assessments, utility charges (public or private and including sewer fees), ground rents, maintenance charges, dues, fines, impositions, and public and other charges of any character (including penalties and interest) assessed against, or which could become a lien against, the Property ("Assessments") no later than ten (10) days prior to the date any fine, penalty, interest or charge for nonpayment may be imposed. Borrower shall provide Lender with receipts evidencing such payments (except for income taxes, franchise taxes, ground rents, maintenance charges, and utility charges) within thirty (30) days after their due date.

(b) Right to Contest. So long as no Event of Default (defined below) has occurred and is continuing, Borrower may, prior to delinquency and at its sole expense, contest any Assessment, but this shall not change or extend Borrower's obligation to pay, or to cause the Operating Lessee to pay pursuant to the terms of the Operating Lease, the Assessment as required above unless (i) Borrower gives Lender prior written notice of its intent to contest an Assessment; (ii) Borrower demonstrates to Lender's reasonable satisfaction that (1) the Property

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will not be sold to satisfy the Assessment prior to the final determination of the legal proceedings, (2) it has taken such actions as are required or permitted to accomplish a stay of any such sale, or (3) it has furnished a bond or surety (satisfactory to Lender in form and amount) sufficient to prevent a sale of the Property; (iii) at Lender's option, if Borrower shall not have furnished a bond or surety as provided in (ii)(3) of this subsection above, Borrower has deposited the full amount necessary to pay any unpaid portion of the Assessments with Lender; and (iv) such proceeding shall be permitted under any other instrument to which Borrower or the Property is subject (whether superior or inferior to this Instrument); provided, however, that the foregoing shall not apply to the contesting of any income taxes, franchise taxes, ground rents, maintenance charges, and utility charges.

(c) Documentary Stamps and Other Charges. Borrower shall pay all taxes, assessments, charges, expenses, costs and fees (including registration and recording fees and revenue, transfer, stamp, intangible, indebtedness and any similar taxes, but specifically excluding taxes on Lender's gross or net income) (collectively, the "Transaction Taxes") required in connection with the making and/or recording of the Documents. If Borrower fails to pay the Transaction Taxes within ten (10) days after written demand by Lender, Lender may (but is not obligated to) pay these and Borrower shall reimburse Lender on demand for any amount so paid with interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws.

(d) Changes in Laws Regarding Taxation. If any law (i) deducts from the value of real property for the purpose of taxation any lien or encumbrance thereon, (ii) taxes mortgages, (iii) taxes deeds of trust or debts secured by deeds of trust for federal, state or local purposes or changes the manner of the collection of any such existing taxes, and/or (iv) imposes a tax, either directly or indirectly, on any of the Documents or the Obligations (specifically excluding, however, taxes on Lender's gross or net income), Borrower shall, if permitted by law, pay such tax within the statutory period or within twenty (20) days after demand by Lender, whichever is less; provided, however, that if, in the opinion of Lender, Borrower is not permitted by law to pay such taxes, Lender shall have the option to declare the Obligations immediately due and payable (without any Breakage Fee) upon sixty (60) days' notice to Borrower.

(e) No Credits on Account of the Obligations. Borrower will not claim or be entitled to any credit(s) on account of the Obligations for any part of the Assessments and no deduction shall be made or claimed from the taxable value of the Property for real estate tax purposes by reason of the Documents or the Obligations. If such claim, credit or deduction is required by law, Lender shall have the option to declare the Obligations immediately due and payable (without any Breakage Fee) upon sixty (60) days' notice to Borrower.

Section 3.04 Defense of Title, Litigation and Rights under Documents. Borrower shall forever warrant, defend and preserve Borrower's title to the Property, the validity, enforceability and priority of this Instrument and the lien or security interest created thereby, and any rights of Lender under the Documents against the claims of all persons, and shall promptly notify Lender of any such claims following receipt of notice of same. Lender (whether or not named as a party to such proceedings) is authorized and empowered (but shall not be obligated) to take such additional steps as it reasonably deems necessary or proper for the defense of any such proceeding or the protection of the lien, security interest, validity, enforceability, or priority of

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this Instrument, title to the Property, or any rights of Lender under the Documents, including the employment of counsel, the prosecution and/or defense of litigation, the compromise, release, or discharge of such adverse claims, the purchase of any tax title, the removal of any such liens and security interests, and any other actions Lender reasonably deems necessary to protect their interests; provided, however, unless an Event of Default has occurred and is continuing, Lender shall not compromise, release or discharge any such claim without Borrower's written consent unless there is a reasonable risk that failure to do so will have a material adverse impact on the value of the Property or might otherwise result in the imposition of a lien on the Property that is not being contested by Borrower or Operating Lessee as provided in Section 3.09 below. Borrower authorizes Lender to take any actions required to be taken by Borrower, or permitted to be taken by Lender, in the Documents in the name and on behalf of Borrower; provided, however, that prior to the occurrence of an Event of Default, Lender shall use commercially reasonable efforts to coordinate such action with Borrower in order to minimize any duplication of efforts or costs. Borrower shall reimburse Lender on demand for all reasonable expenses (including reasonable attorneys' fees) incurred by them in connection with the foregoing and their exercise of the rights under the Documents. All such expenses of Lender, until reimbursed by Borrower, shall be part of the Obligations, bear interest at the applicable interest rate specified in the Note if not paid on demand, which shall be the Default Rate unless prohibited by Laws, and shall be secured by this Instrument.

Section 3.05 Operation and Maintenance of Property.

(a) Repair and Maintenance. Borrower will (or will cause Operating Lessee pursuant to the terms of the Operating Lease to) operate and maintain the Property in good order, repair, and operating condition. Borrower will (or will cause Operating Lessee pursuant to the terms of the Operating Lease to) promptly make all necessary repairs, replacements, additions, and improvements necessary to ensure that the Property shall not in any way be diminished or impaired in any material respect. Borrower will not cause or allow any of the Property to be misused, wasted, or to deteriorate in any material respect and Borrower will not abandon the Property. Except as required or permitted in the event of a casualty or condemnation, no new building, structure, or other improvement shall be constructed on the Land nor shall any material part of the Improvements be removed, demolished, or structurally or materially altered, without Lender's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

(b) Replacement of Property. Borrower will (or will cause Operating Lessee pursuant to the terms of the Operating Lease to) keep the Property fully equipped and will replace all worn out or obsolete Property with new, comparable fixtures or Property. Borrower will not (and Borrower will not permit Operating Lessee pursuant to the terms of the Operating Lease to), without Lender's prior written consent, remove any Property covered by this Instrument unless the same is replaced by Borrower or Operating Lessee with a new, comparable article (i) owned by Borrower or Operating Lessee free and clear of any lien or security interest (other than the Permitted Encumbrances and those created by this Instrument) or (ii) leased by Borrower or Operating Lessee (A) with Lender's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, or (B) if the replaced Property was leased by Borrower or Operating Lessee at the time of execution of this Instrument.

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(c) Compliance with Laws. Borrower shall (and shall require Operating Lessee pursuant to the terms of the Operating Lease to) comply with and shall cause the Property to be maintained, used, and operated in material compliance with: (i) present and future laws, Environmental Laws (defined below), ordinances, regulations, rules, orders and requirements (including zoning and building codes) of any governmental or quasi-governmental authority or agency applicable to Borrower, Operating Lessee or the Property (collectively, the “Laws”); (ii) orders, rules, and regulations of any regulatory, licensing, accrediting, insurance underwriting or rating organization, or other body exercising similar functions; (iii) duties or obligations of any kind imposed under any Permitted Encumbrance or by law, covenant, condition, agreement, or easement, public or private; and (iv) policies of insurance at any time in force with respect to the Property. If proceedings are initiated or Borrower receives notice that Borrower, Operating Lessee or the Property is not in compliance with any of the foregoing, Borrower will promptly send Lender notice and a copy of the proceeding or violation notice. Without limiting Lender’s rights and remedies under Article VI hereof or otherwise, if Borrower, Operating Lessee or the Property is not in compliance with all Laws, Lender may impose such additional requirements upon Borrower including monetary reserves or financial equivalents that Lender reasonably deems necessary to protect the interest of Lender.

(d) Zoning and Title Matters. Borrower shall not (and shall not permit Operating Lessee pursuant to the terms of the Operating Lease to), without Lender’s prior written consent, (i) initiate or support any zoning reclassification of the Property or variance under existing zoning ordinances; (ii) modify or supplement any of the Permitted Encumbrances; (iii) impose any restrictive covenants or encumbrances upon the Property; (iv) execute or file any subdivision plat affecting the Property; (v) consent to the annexation of the Property to any municipality; (vi) permit the Property to be used by the public or any person in a way that might make a claim of adverse possession or any implied dedication or easement possible; (vii) cause or permit the Property to become a non-conforming use under zoning ordinances or any present or future non-conforming use of the Property to be discontinued; or (viii) fail to comply with the terms of the Permitted Encumbrances.

Section 3.06 Insurance.

(a) Property and Time Element Insurance. Borrower shall keep (or cause Operating Lessee to keep pursuant to the terms of the Operating Lease to) the Property insured for the benefit of Borrower and Lender (with Lender named as mortgagee) by (i) an “all risk” property insurance policy with an agreed amount endorsement for full replacement cost (defined below) without any coinsurance provisions or penalties, or the broadest form of coverage available, in an amount sufficient to prevent Lender from ever becoming a coinsurer under the policy or Laws, and with a deductible not to exceed Two Hundred Fifty Thousand Dollars (\$250,000.00); (ii) a policy or endorsement insuring against acts of terrorism; provided, however Borrower shall not be obligated to spend more than Twenty-Five Thousand Dollars (\$25,000.00), in the aggregate per year, for terrorism insurance costs, whether as part of property and casualty and liability policies generally or for any portion of the aforementioned coverages; provided, further, however, Borrower shall not be obligated to obtain terrorist coverage if any such coverage cannot be obtained for such amounts, (iii) a policy or endorsement insuring against claims applicable to the presence of Microbial Matter (as defined in 3.12(a) hereof) to the extent that the same are available at commercially reasonable rates, as determined by Lender in its reasonable

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discretion, as part of any environmental insurance coverage maintained by Borrower (or by Operating Lessee pursuant to the terms of the Operating Lease); (iv) a policy or endorsement providing loss of rental income insurance (including extra expense insurance) on an actual loss sustained basis in an amount equal to at least one (1) year's total income from the Property including all Rents plus all other pro forma annual income such as percentage rent and tenant reimbursements of fixed and operating expenses; (v) a policy or endorsement insuring against damage by flood if the Property is located in a Special Flood Hazard Area identified by the Federal Emergency Management Agency or any successor or related government agency as a 100 year flood plain currently classified as Flood Insurance Rate Map Zones "A", "AO", "AH", "A1-A"30, "AE", "A99", "V", "V1-V"30, and "VE", under which flood insurance has been made available under the Flood Acts, in an amount equal to the lesser of (1) the original amount of the Note or (2) the maximum limit of coverage available for the Property under the Flood Acts; (vi) a policy or endorsement covering against damage or loss from (A) sprinkler system leakage and (B) boilers, boiler tanks, HVAC systems, heating and air-conditioning equipment, pressure vessels, auxiliary piping, and similar apparatus, in the amount reasonably required by Lender; (vii) during the period of any construction, repair, restoration, or replacement of the Property, a standard builder's risk policy with extended coverage in an amount at least equal to the full replacement cost of such Property, and worker's compensation, in statutory amounts; and (viii) a policy or endorsement covering against damage or loss by earthquake and other natural phenomenon in commercially reasonable amounts as reasonably determined by Lender. "**Full replacement cost**" shall mean the one hundred percent (100%) replacement cost of the Property, without allowance for depreciation and exclusive of the cost of excavations, foundations, footings, and value of land, and shall be subject to verification by Lender. Full replacement cost will be determined, at Borrower's expense, periodically (but at least once per year) by the insurance company or an appraiser, engineer, architect, or contractor approved by said company and Lender.

(b) Liability and Other Insurance. Borrower shall maintain (or cause Operating Lessee to maintain pursuant to the terms of the Operating Lease) commercial general liability insurance with per occurrence limits of \$1,000,000, a products/completed operations limit of \$2,000,000, and a general aggregate limit of \$2,000,000, with an excess/umbrella liability policy of not less than \$10,000,000 per occurrence and annual aggregate covering Borrower and Operating Lessee, with Lender named as an additional insured, against claims for bodily injury or death or property damage occurring in, upon, or about the Land and the Improvements or any street, drive, sidewalk, curb, or passageway adjacent thereto. In addition to any other requirements, such commercial general liability and excess/umbrella liability insurance shall provide insurance against acts of terrorism (provided that Borrower shall incur up to, but no more than \$25,000 annually for such coverage, in the aggregate with the costs of all other terrorism insurance related coverage as described in Section 3.06(a) above, and provided further that Borrower shall not be obligated to obtain terrorism coverage if any such coverage cannot be obtained for such amounts), against claims applicable to the presence of Microbial Matter (but only as and to the extent provided in Section 3.06(a) above), or such coverages shall be provided by separate policies or endorsements as required hereunder. Upon request, Borrower shall also carry (or cause Operating Lessee to maintain pursuant to the Operating Lease) additional insurance or additional amounts of insurance covering Borrower or the Property as Lender shall reasonably require.

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(c) Form of Policy. All insurance required under this Section shall be fully paid for, non-assessable, and the policies shall contain such provisions, endorsements, and expiration dates as Lender shall reasonably require. The policies shall be issued by insurance companies authorized to do business in the Property State, approved by Lender, and must have and maintain a current financial strength rating of "A.X" (or higher) from A.M. Best or equivalent (or if a rating by A.M. Best is no longer available, a similar rating from a similar or successor service). In addition, all policies shall (i) include a standard mortgagee clause, without contribution, in the name of Lender, (ii) provide that they shall not be canceled, amended, or materially altered (including reduction in the scope or limits of coverage) without at least thirty (30) days' prior written notice to Lender except in the event of cancellation for non-payment of premium, in which case only ten (10) days' prior written notice will be given to Lender, and (iii) include a waiver of subrogation clause substantially equivalent to the following: "The Company may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefore is made by the Company, but the Company shall not acquire any rights of recovery which the Insured has expressly waived prior to loss, nor shall such waiver affect the Insured's rights under this policy".

(d) Original Policies. Borrower shall deliver (or cause Operating Lessee to deliver pursuant to the Operating Lease) to Lender (i) original or certified copies of all policies (and renewals) required under this Section and (ii) receipts evidencing payment of all premiums on such policies at least thirty (30) days prior to their expiration. If original and renewal policies are unavailable or if coverage is under a blanket policy, Borrower shall deliver original ACORD 27 and ACORD 25-S certificates (or equivalent certificates) evidencing that such policies are in full force and effect.

(e) General Provisions. Borrower shall not carry separate or additional insurance concurrent in form or contributing in the event of loss with that required under this Section unless endorsed in favor of Lender as per this Section and approved by Lender in all respects, which approval shall not be unreasonably withheld, conditioned or delayed. In the event of foreclosure of this Instrument or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Obligations, all right, title, and interest of Borrower in and to all policies of insurance then in force regarding the Property and all proceeds payable thereunder and unearned premiums thereon shall immediately vest in the purchaser or other transferee of the Property. No approval by Lender of any insurer shall be construed to be a representation, certification, or warranty of its solvency. No approval by Lender as to the amount, type, or form of any insurance shall be construed to be a representation, certification, or warranty of its sufficiency. Borrower shall comply with all insurance requirements and shall not cause or permit any condition to exist which would be prohibited by any insurance requirement or would invalidate the insurance coverage on the Property.

(f) Waiver of Subrogation. A waiver of subrogation shall be obtained by Borrower (and Operating Lessee, if any such insurance is being carried by Operating Lessee) from its insurers and, consequently, Borrower for itself, and on behalf of its insurers and Operating Lessee, hereby waives and releases any and all right to claim or recover against Lender, its officers, employees, agents and representatives, for any loss of or damage to Borrower, Operating Lessee, other Persons, the Property, Borrower's property, Operating Lessee's property, or the property of other Persons from any cause required to be insured against by the

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provisions of this Instrument or otherwise insured against by Borrower.

Section 3.07 Damage and Destruction of Property.

(a) Borrower's Obligations. If any damage to, loss, or destruction of the Property occurs (any "**Damage**"), (i) Borrower shall promptly notify Lender after learning of same and take all necessary steps to preserve any undamaged part of the Property and (ii) if the insurance proceeds are made available for Restoration (defined below) (but regardless of whether any proceeds are sufficient for Restoration), Borrower shall promptly commence and diligently pursue to completion the restoration, replacement, and rebuilding of the Property as nearly as possible to its value and condition immediately prior to the Damage or a Taking (defined below) in accordance with plans and specifications approved by Lender ("**Restoration**"), which approval shall not be unreasonably withheld, conditioned or delayed. Borrower shall comply with other reasonable requirements established by Lender to preserve the security under this Instrument.

(b) Lender's Rights. If any Damage occurs for which the Net Proceeds (defined below) are in excess of Seven Hundred Thousand and No/100 Dollars (\$700,000.00), then (i) Lender may, but is not obligated to, make proof of loss if not made promptly by Borrower and, following an Event of Default (unless Lender has accepted cure of such Event of Default by specific written statement from Lender to Borrower acknowledging Lender's acceptance of such cure, and Borrower specifically understands and agrees that Lender shall have no obligation whatsoever to accept the cure of any Event of Default), Lender is authorized and empowered by Borrower to settle, adjust, or compromise any claims for the Damage; (ii) each insurance company concerned is authorized and directed to make payment directly to Lender for the Damage; and (iii) Lender may apply the insurance proceeds in any order it determines (1) to reimburse Lender for all Costs (defined below) related to collection of the proceeds and (2) subject to Section 3.07(c) and at Lender's option, to (A) payment (without any Breakage Fee) of all or part of the Obligations, whether or not then due and payable, in the order determined by Lender (provided that if any Obligations remain outstanding after this payment, the unpaid Obligations shall continue in full force and effect and Borrower shall not be excused in the payment thereof); (B) the cure of any default under the Documents; or (C) the Restoration. Any Net Proceeds (defined below) held by Lender and not applied to the Obligation shall be held in an interest-bearing account for the benefit of Borrower. If Borrower receives any Net Proceeds for the Damage and the amount of such Net Proceeds exceeds Seven Hundred Thousand and No/100 Dollars (\$700,000.00), Borrower shall promptly deliver such Net Proceeds to Lender, less reasonable expenses incurred by Borrower in connection with the collection of such proceeds. Notwithstanding anything in this Instrument or at law or in equity to the contrary, none of the insurance proceeds paid to Lender shall be deemed trust funds and Lender may dispose of these proceeds as provided in this Section. Borrower expressly assumes all risk of loss from any Damage, whether or not insurable or insured against. Notwithstanding anything to the contrary contained in this Section 3.07, to the extent that the amount of the insurance proceeds exceeds Eight Million and No/100 Dollars (\$8,000,000.00), or any portion of the Property cannot be replaced due to the Damage, Lender reserves the right to apply such proceeds against the Obligations.

(c) Application of Proceeds to Restoration. Lender shall make the Net Proceeds

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available to Borrower for Restoration if: (i) no Event of Default under the Documents has occurred (unless Lender has accepted cure of such Event of Default by specific written statement from Lender to Borrower acknowledging Lender's acceptance of such cure, and Borrower specifically understands and agrees that Lender shall have no obligation whatsoever to accept the cure of any Event of Default); (ii) the Damage occurs at least twelve (12) months prior to the Maturity Date (as defined in the Note); (iii) Lender shall be satisfied that Restoration can be completed prior to the Maturity Date; (iv) the amount of the Net Proceeds does not exceed Eight Million and No/100 Dollars (\$8,000,000.00); (v) Borrower shall have entered into a general construction contract acceptable in all material respects to Lender, in its reasonable discretion, for Restoration, which contract must include provision for retainage of not less than ten percent (10%) until final completion of the Restoration; and (vi) in Lender's reasonable judgment, after Restoration has been completed, the net cash flow of the Property will be sufficient to cover all costs and operating expenses of the Property, including payments due and reserves required under the Documents. Notwithstanding any provision of this Instrument to the contrary, the Net Proceeds shall be payable to Borrower for Restoration or repayment of the Loan, as Borrower shall determine, provided that (i) no Event of Default under the Documents has occurred (or Lender has accepted cure of such Event of Default by specific written statement from Lender to Borrower acknowledging Lender's acceptance of such cure, and Borrower specifically understands and agrees that Lender shall have no obligation whatsoever to accept the cure of any Event of Default), and (ii) the amount of such Net Proceeds does not exceed Seven Hundred Thousand and No/100 Dollars (\$700,000.00). Notwithstanding any provision of this Instrument to the contrary, with respect to any Damage for which the Net Proceeds exceed Seven Hundred Thousand and No/100 Dollars (\$700,000.00), Lender shall not be obligated to make any portion of the Net Proceeds available for Restoration unless, at the time of the disbursement request, Lender has determined in its reasonable discretion that (y) Restoration can be completed at a cost which does not exceed the aggregate of the remaining Net Proceeds and any funds deposited with Lender by Borrower ("**Additional Funds**") and (z) the aggregate of any loss of rental income insurance proceeds which the carrier has acknowledged to be payable ("**Rent Loss Proceeds**") and any funds deposited with Lender by Borrower are sufficient to cover, during the period of Restoration, (1) all fixed rent, additional rent, and other amounts (whether or not specifically denoted as fixed rent or additional rent) that would have been payable by Operating Lessee to Borrower pursuant the Operating Lease absent such Damage, (2) any other costs and operating expenses of the Property that would have been payable by Borrower absent such Damage, and (3) all payments due and reserves required under the Documents.

(d) Disbursement of Proceeds. If, with respect to Net Proceeds in excess of Seven Hundred Thousand and No/100 Dollars (\$700,000.00), Lender elects or is required to make such Net Proceeds available for Restoration, Lender shall, through a disbursement procedure established by Lender, periodically make available to Borrower in installments the net amount of all insurance proceeds received by Lender after deduction of all reasonable costs and expenses incurred by Lender in connection with the collection and disbursement of such proceeds ("**Net Proceeds**") and, if any, the Additional Funds. The amounts periodically disbursed to Borrower shall be based upon the amounts currently due under the construction contract for Restoration and Lender's receipt of (i) appropriate lien waivers, (ii) a certification of the percentage of Restoration completed by an architect or engineer acceptable to Lender, and (iii) title insurance protection against materialmen's and mechanic's liens. At Lender's election, the disbursement of funds may be handled by a disbursing agent selected by Lender, and such agent's reasonable fees

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and expenses shall be paid by Borrower. The Net Proceeds, Rent Loss Proceeds, and any Additional Funds shall constitute additional security for the Loan and Borrower shall execute, deliver, file and/or record, at its expense, such instruments as Lender requires to grant to Lender a perfected, first-priority security interest in these funds. If the Net Proceeds in excess of Seven Hundred Thousand and No/100 Dollars (\$700,000.00) are made available for Restoration and (x) Borrower refuses or fails to complete the Restoration, (y) an Event of Default occurs, or (z) the Net Proceeds or Additional Funds are not applied to Restoration, then any undisbursed portion may, at Lender's option, be applied to the Obligations in any order of priority, and any application to principal shall be deemed a voluntary prepayment subject to the Breakage Fee.

(e) Ground Lease and Declaration. Notwithstanding anything to the contrary contained herein, (A) to the extent the Ground Lease or the Declaration requires insurance proceeds to be applied toward restoration of the Property, Lender shall disburse any insurance proceeds held by Lender to Borrower for such restoration and (B) any proceeds of insurance reimbursed to Borrower in accordance with the terms and provisions of this Instrument, the Ground Lease and the Declaration shall be reduced by the reasonable costs (if any) incurred by Lender in the adjustment and collection thereof and in the reasonable costs incurred by Lender of paying out such proceeds (including, without limitation, reasonable attorneys' fees and costs paid to third parties for inspecting the restoration, repair, replacement and rebuilding and reviewing the plans and specifications therefor).

Section 3.08 Condemnation.

(a) Borrower's Obligations. Promptly after learning of same, Borrower will notify Lender of any threatened or instituted proceedings for the condemnation or taking by eminent domain of the Property including any change in any street (whether as to grade, access, or otherwise) (a "**Taking**"). Borrower shall, at its expense, (i) diligently prosecute these proceedings, (ii) deliver to Lender copies of all papers served by or upon Borrower in connection therewith, and (iii) consult and cooperate with Lender in the handling of these proceedings. No settlement of these proceedings shall be made by Borrower without Lender's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Lender may participate in these proceedings (but shall not be obligated to do so) to the extent reasonably required to protect Lender's interests, and Borrower will sign and deliver all instruments reasonably requested by Lender to permit this participation.

(b) Lender's Rights to Award. All condemnation awards, judgments, decrees, or proceeds of sale in lieu of condemnation ("**Award**") are assigned and, if an Award exceeds Seven Hundred Thousand and No/100 Dollars (\$700,000.00), such Award, less reasonable expenses incurred by Borrower in connection with the collection of such Award, shall be paid to Lender. Borrower authorizes Lender to collect and receive them, to give receipts for them, to accept them in the amount received without question or appeal, and/or to appeal any judgment, decree, or award. Borrower will sign and deliver all instruments reasonably requested by Lender to permit these actions. Any Award held by Lender and not applied to the Obligations shall be held in an interest-bearing account for the benefit of Borrower. Notwithstanding anything to the contrary contained in this Section 3.08, to the extent that the amount of the Award exceeds Three Million and No/100 Dollars (\$3,000,000.00), or any portion of the Property cannot be replaced due to the Taking, Lender reserves the right to apply such proceeds against the then-outstanding

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Loan balance.

(c) Application of Award. Lender shall have the right to apply any Award in excess of Seven Hundred Thousand and No/100 Dollars (\$700,000.00), less reasonable expenses incurred by Borrower in connection with the collection of such Award, subject to Section 3.08(d), as per Section 3.07 for insurance proceeds held by Lender, including the waiver of Breakage Fee. If Borrower receives any Award in excess of Seven Hundred Thousand and No/100 Dollars (\$700,000.00), Borrower shall promptly deliver such Award, less reasonable expenses incurred by Borrower in connection with the collection of such Award, to Lender. Notwithstanding anything in this Instrument or at law or in equity to the contrary, none of the Award paid to Lender shall be deemed trust funds and Lender may dispose of these proceeds as provided in this Section.

(d) Application of Award to Restoration. Lender shall permit the application of the Award to Restoration in accordance with the provisions of Section 3.07 if: (i) no more than (A) twenty percent (20%) of the gross area of the Improvements or (B) ten percent (10%) of the parking spaces is materially and adversely affected by the Taking, (ii) the amount of the loss does not exceed Three Million and No/100 Dollars (\$3,000,000.00); (iii) the Taking does not materially and adversely affect access to the Property from any public right-of-way; (iv) no Event of Default under the Documents has occurred (or Lender has accepted cure of such Event of Default by specific written statement from Lender to Borrower acknowledging Lender's acceptance of such cure, and Borrower specifically understands and agrees that Lender shall have no obligation whatsoever to accept the cure of any Event of Default); (v) after Restoration, the Property and its use will be in compliance with all Laws; (vi) the Taking occurs at least twelve (12) months prior to the Maturity Date; and (vii) in Lender's reasonable judgment, Restoration is practical and can be completed prior to the Maturity Date. Any portion of the Award that is (i) for loss of property or (ii) in excess of the cost of any Restoration permitted above, may, in Lender's sole discretion, be applied against the Obligations or paid to Borrower. Notwithstanding anything to the contrary contained in this Section 3.08, any Award shall be payable to Borrower for Restoration or repayment of the Loan, as Borrower shall determine, provided that (i) no Event of Default under the Documents has occurred (or Lender has accepted cure of such Event of Default by specific written statement from Lender to Borrower acknowledging Lender's acceptance of such cure, and Borrower specifically understands and agrees that Lender shall have no obligation whatsoever to accept the cure of any Event of Default), (ii) the Taking does not impact any revenue-producing portions of the Property; and (iii) the amount of such Award does not exceed Seven Hundred Thousand and No/100 Dollars (\$700,000.00).

(e) Effect on the Obligations. Notwithstanding any Taking, Borrower shall continue to pay and perform the Obligations as provided in the Documents. Any reduction in the Obligations due to application of the Award shall take effect only upon Lender's actual receipt and application of the Award to the Obligations. If the Property shall have been foreclosed or transferred by deed-in-lieu of foreclosure prior to Lender's actual receipt of the Award, Lender may apply the Award received to the extent of any deficiency upon such sale and Costs incurred by Lender in connection with such sale.

(f) Ground Lease and Declaration. Notwithstanding anything to the contrary

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contained herein, (A) to the extent the Ground Lease or the Declaration requires any award to be applied toward restoration of the Property, Lender shall disburse such award held by Lender to Borrower for such restoration and (B) any award reimbursed to Borrower in accordance with the terms and provisions of this Security Instrument shall be reduced by the reasonable costs (if any) incurred by Lender in the adjustment and settlement thereof and in the reasonable costs incurred by Lender of paying out such award (including, without limitation, reasonable attorneys' fees and costs paid to third parties for inspecting the restoration, repair, replacement and rebuilding and reviewing the plans and specifications therefor).

Section 3.09 Liens and Liabilities. Borrower shall pay, bond, or otherwise discharge (or cause Operating Lessee to pay, bond or otherwise discharge pursuant to the terms of the Operating Lease) all claims and demands of mechanics, materialman, laborers, and others which, if unpaid, could, in Lender's reasonable judgment, result in a lien or encumbrance on the Property or the Rents (collectively, "Liens") and Borrower shall, at its sole expense, do everything necessary to preserve the lien and security interest created by this Instrument and its priority provided; however, so long as no Event of Default has occurred and is continuing, Borrower may, at its sole expense, contest any Lien and not pay any sums to the holder of such Lien prior to the entry of a final, non-appealable judgment or order from a court of competent jurisdiction requiring Borrower to make such payment if (i) Borrower gives Lender prior written notice of its intent to contest such Lien; (ii) Borrower demonstrates to Lender's reasonable satisfaction that (1) the Property will not be sold to satisfy the Lien prior to the final determination of the legal proceedings, (2) it has taken such actions as are required or permitted to accomplish a stay of any such sale, or (3) it has furnished a bond or surety (satisfactory to Lender in form and amount) sufficient to prevent a sale of the Property; (iii) at Lender's option, Borrower has deposited the full amount necessary to pay any unpaid portion of the Lien with Lender if there is a reasonable risk that failure to do so will result in loss or forfeiture of the Property or the imposition of a lien superior to Lender's rights, which will not be satisfied by Borrower from other available resources; and (iv) such proceeding shall be permitted under any other instrument to which Borrower or the Property is subject. Nothing in the Documents shall be deemed or construed as constituting the consent or request by Lender, express or implied, to any contractor, subcontractor, laborer, mechanic or materialman for the performance of any labor or the furnishing of any material for any improvement, construction, alteration, or repair of the Property. Borrower further agrees that Lender does not stand in any fiduciary relationship to Borrower. Any contributions made, directly or indirectly, to Borrower by or on behalf of any of its partners, members, principals or any party related to such parties shall be treated as equity and shall be subordinate and inferior to the rights of Lender under the Documents.

Section 3.10 Intentionally omitted.

Section 3.11 Intentionally omitted.

Section 3.12 Environmental Representations, Warranties, and Covenants.

(a) Environmental Representations and Warranties. Borrower represents and warrants, as of the date hereof, to Borrower's knowledge and based upon that certain Phase I environmental site assessment report of the Property which has been delivered to and approved by Lender in connection with the Loan (the "**Environmental Report**"), that except as disclosed

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in the Environmental Report or otherwise disclosed to Lender in writing: (i) there are no Hazardous Materials (defined below) or underground storage tanks affecting the Property (“affecting the Property” shall mean “in, on, under, stored, used or migrating from the Property”) except for (A) routine office, cleaning, janitorial and other similar materials and supplies necessary to operate the Property for its current use and (B) Hazardous Materials that are (1) in compliance with Environmental Laws (defined below), (2) have all required permits, and (3) are in only the amounts necessary or appropriate to operate the Property; (ii) there are no past, present or threatened Releases (defined below) of Hazardous Materials in violation of any Environmental Law affecting the Property; (iii) there is no past or present non-compliance with Environmental Laws or with permits issued pursuant thereto; (iv) Borrower does not know of, and has not received, any written notice from any person relating to Hazardous Materials affecting the Property in violation of any Environmental Law; and (v) Borrower has provided to Lender, in writing, all information relating to Hazardous Materials affecting the Property known to Borrower or contained in Borrower’s files. “Environmental Law” means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other government directives or requirements, as well as common law, that apply to Borrower or the Property and relate to Hazardous Materials including the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act. “Hazardous Materials” shall mean petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; Microbial Matter, infectious substances, asbestos or asbestos-containing materials in any form that is or could be reasonably likely to become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Property is prohibited by any federal, state or local authority; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any Environmental Law. “Release” of any Hazardous Materials includes any release, deposit, discharge, emission, leaking, spilling, seeping, migrating, pumping, pouring, escaping, dumping, disposing or other movement of Hazardous Materials. “Microbial Matter” shall mean the presence of fungi or bacterial matter which reproduces through the release of spores or the splitting of cells, including, but not limited to, mold, mildew and viruses, whether or not such Microbial Matter is living, in quantities or concentrations that pose a hazard to the Property or to the health and safety of persons on or about the Property.

(b) Environmental Covenants. Borrower covenants and agrees that: (i) all use and operation of the Property shall be in material compliance with all Environmental Laws and required permits; (ii) there shall be no Releases of Hazardous Materials affecting the Property except for (A) routine office, cleaning, janitorial and other similar materials and supplies necessary to operate the Property for its current use and that are in compliance with Environmental Laws (defined below) and (B) other Hazardous Materials that are (1) in compliance with Environmental Laws, (2) have all required permits, and (3) are in only the amounts necessary or appropriate to operate the Property; (iii) there shall be no Hazardous Materials affecting the Property except for those which are either described in the Environmental Report, if any, or approved by Lender in writing or (A) routine office, cleaning, janitorial and other similar materials and supplies necessary to operate the Property for its current use and that are in compliance with Environmental Laws and (B) other Hazardous Materials that are (1) in

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compliance with Environmental Laws, (2) have all required permits, and (3) are in only the amounts necessary or appropriate to operate the Property; (iv) Borrower shall keep the Property free and clear of all liens and encumbrances imposed by any Environmental Laws due to any act or omission by Borrower or any person (the “**Environmental Liens**”); (v) Borrower shall, at its sole expense, fully and expeditiously cooperate in all activities in Section 3.12(c) including providing all relevant information and making knowledgeable persons available for interviews; (vi) Borrower shall, at its sole expense, (A) perform any environmental site assessment or other investigation of environmental conditions at the Property upon Lender’s request based on Lender’s reasonable belief that the Property is not in compliance with all Environmental Laws, (B) share with Lender the results and reports, and Lender and the Indemnified Parties (defined below) shall be entitled to rely on such results and reports, but Borrower shall have no liability for the accuracy or completeness of such reports and (C) complete any remediation of Hazardous Materials affecting the Property or other actions required by any Environmental Laws; (vii) Borrower shall not allow any Tenant or other user of the Property to violate any Environmental Law; and (viii) Borrower shall immediately notify Lender in writing after it becomes aware of (A) the presence, Release, or threatened Release of Hazardous Materials affecting the Property other than such presence as is expressly permitted hereunder, (B) any non-compliance of the Property with any Environmental Laws, (C) any actual or potential Environmental Lien, (D) any required or proposed remediation of environmental conditions relating to the Property, or (E) any written notice from any person relating to Hazardous Materials affecting the Property, and (ix) if an Asbestos Operation and Maintenance Plan and any other Operation and Maintenance Plan (collectively, the “**O&M Plan**”) is in effect (or required to be implemented by Lender) at the time of the closing of the Loan, then Borrower shall, at its sole expense, implement and continue the O&M Plan (with any modifications required to comply with applicable Laws), until payment and full satisfaction of the Obligations.

(c) Lender’s Rights. Lender and any person designated by Lender may enter the Property at reasonable times upon reasonable prior notice to assess the environmental condition of the Property and its use including (i) conducting any environmental assessment or audit (the scope of which shall be determined by Lender) and (ii) taking samples of soil, groundwater or other water, air, or building materials, and conducting other reasonable invasive testing at all reasonable times when (A) an Event of Default has occurred under the Documents, (B) Lender reasonably believes that a Release has occurred or the Property is not in material compliance with all Environmental Laws, or (C) with respect only to the assessment described in (i), but not (ii), above, the Loan is being considered for sale; provided, however, (1) Lender and any person designated by Lender to enter upon the Property shall use reasonable efforts not to disrupt Operating Lessee or any Tenant or interfere with operations at the Property and shall be responsible for any damage or injury to the Property or any portion thereof or any Person thereat resulting from the exercise of Lender’s rights pursuant to this Section 3.12(c), (2) Lender shall deliver to Borrower copies of all tests and reports prepared for Lender with respect to any such assessment of environmental conditions affecting the Property and (3) except as otherwise required by applicable law, Lender shall not disclose any information regarding any environmental assessment of the Property to any person other than Borrower or agents or representatives of Lender or Borrower reasonably determined to have a need to know such information or to Lender’s successors or assigns or as permitted by Section 9.06 of this Instrument. Borrower shall cooperate with and provide access to Lender and such person.

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Section 3.13 Electronic Payments. Unless directed otherwise in writing by Lender, all payments due under the Documents shall be made by electronic funds transfer debit entries to Borrower's account at an Automated Clearing House member bank satisfactory to Lender or by similar electronic transfer process selected by Lender. Each payment due under the Documents shall be initiated by Lender through the Automated Clearing House network (or similar electronic process) for settlement on the Payment Date (as defined in the Note) for the payment. Borrower shall, at Borrower's sole cost and expense, direct its bank in writing to permit such electronic fund transfer debit entries (or similar electronic transfer) to be made by Lender. Prior to each payment Payment Date under the Documents, Borrower shall deposit and/or maintain sufficient funds in Borrower's account to cover each debit entry. Any charges or costs, if any, by Borrower's bank for the foregoing shall be paid by Borrower.

Section 3.14 Inspection. Borrower shall allow Lender and any person designated by Lender, at Lender's sole cost and expense, to enter upon the Property during normal business hours (or such other time as may be agreed upon by Borrower and Lender) on prior advance notice to inspect the Property; provided, however, (1) Lender and any person designated by Lender to enter upon the Property shall use reasonable efforts not to disrupt Operating Lessee or any Tenant or interfere with operations at the Property and shall be responsible for any damage or injury to the Property or any portion thereof or any Person thereat resulting from the exercise of Lender's rights pursuant to this Section 3.14, (2) Lender shall deliver copies of all tests and reports prepared for Lender with respect to any such inspection and (3) except as otherwise required by applicable law, Lender shall not disclose any information regarding any such inspection to any person other than Borrower or agents or representatives of Lender or Borrower reasonably determined to have a need to know such information or to Lender's successors and assigns or as permitted by 9.06 of this Instrument. Borrower shall assist Lender and such person in effecting said inspection.

Section 3.15 Financial Statements and Books and Records. Borrower shall (and shall cause Operating Lessee to) keep accurate books and records of account of the Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Upon reasonable prior written notice, Lender and its duly authorized representatives shall have the right, at Lender's cost and expense, to examine, copy and audit Borrower's records and books of account at all reasonable times; provided that following an Event of Default that is continuing, Borrower shall pay Lender's cost and expense to so examine, copy and audit. So long as this Instrument continues in effect, Borrower shall (or shall cause Operating Lessee to) provide to Lender, in addition to any other financial statements required hereunder or under any of the Documents, the following financial statements and information, all of which must be certified to Lender as being true and correct in all material respects by Borrower or the person or entity to which they pertain, as applicable, be prepared in accordance with generally accepted accounting principles consistently applied and be in form and substance acceptable to Lender in its reasonable discretion:

- (a) copies of all tax returns filed by Borrower, within thirty (30) days after the date of filing;
- (b) monthly operating statements and rent rolls for the Property within fifteen (15) days after the end of each month during the first six (6) months of the term of the loan secured

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hereby;

(c) annual balance sheets together with a statement of income and expenses for the Property, annual financial statements for Borrower, each member in Borrower, and a statement of changes in financial position for each of the foregoing, all of which shall be in reasonable detail prepared on a compilation basis by a certified public accountant acceptable to Lender and certified as true, complete and correct in all material respects by the responsible officer of Borrower, within one hundred twenty (120) days after the end of each fiscal year; and

(d) such other information with respect to the Property, Borrower, each member in Borrower, and each other indemnitor and guarantor, if any, under any indemnity or guaranty executed in connection with the loan secured hereby, which may be requested from time to time by Lender, within a reasonable time after the applicable request.

If any of the aforementioned materials are not furnished to Lender within the applicable time periods or Lender is dissatisfied with the contents of any of the foregoing and has notified Borrower of its dissatisfaction, in addition to any other rights and remedies of Lender contained herein, Lender shall have the right, but not the obligation, to obtain the same by means of an audit by an independent certified public accountant selected by Lender if the same are not provided within fifteen (15) days after demand, in which event Borrower agrees to pay, or to reimburse Lender for, any expense of such audit and further agrees to provide all necessary information to said accountant and to otherwise cooperate in the making of such audit.

Section 3.16 Borrower's Certificates. Within ten (10) days after Lender's request, which request shall not be made more frequently than once in any twelve month period, Borrower shall furnish a written certification to Lender and any Investors (defined below) as to (a) the amount of the Obligations outstanding; (b) the interest rate, terms of payment, and maturity date of the Note; (c) the date to which payments have been paid under the Note; (d) whether, to Borrower's knowledge, any offsets or defenses exist against the Obligations and a detailed description of any listed; (e) whether all Leases are in full force and effect and have not been modified (or if modified, setting forth all modifications); (f) the date to which the Rents have been paid; (g) whether, to the best knowledge of Borrower, any defaults exist under the Leases and a detailed description of any listed; (h) the security deposit held by Borrower under each Lease and that such amount is the amount required under such Lease; (i) whether, to Borrower's knowledge, there are any defaults (or events which with the passage of time and/or notice would constitute a default) under the Documents and a detailed description of any listed; (j) whether the Documents are in full force and effect; and (k) any other matters reasonably requested by Lender related to the Leases, the Obligations, the Property, or the Documents.

Section 3.17 Survival of Warranties. All representations and warranties of Borrower are made as of the date thereof and shall survive the execution and delivery of the Documents.

Section 3.18 Additional Security. No other security now existing or taken later to secure the Obligations shall be affected by the execution of the Documents and all additional security shall be held as cumulative. The taking of additional security, execution of partial releases, or extension of the time of payment obligations of Borrower shall not diminish the effect and lien of this Instrument and shall not affect the liability or obligations of any maker or guarantor. Neither

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the acceptance of the Documents nor their enforcement shall prejudice or affect Lender's right to realize upon or enforce any other security now or later held by Lender. Lender may enforce the Documents or any other security in such order and manner as it/either of them may determine in its/their discretion.

Section 3.19 Further Acts. Borrower shall (and shall cause Operating Lessee to) take all necessary actions to (i) keep valid and effective the lien and rights of Lender under the Documents and (ii) protect the lawful owner of the Documents. Promptly upon request by Lender, and at Borrower's sole expense, Borrower shall execute additional instruments and take such actions as Lender reasonably believe are necessary or desirable to (a) maintain or grant Lender a first-priority, perfected lien on the Property, (b) grant to Lender, to the fullest extent permitted by Laws, the right to foreclose on, or transfer title to, the Property non-judicially, subject to Borrower's rights and Lender's obligations under the Documents, (c) correct any ministerial error or omission in the Documents, and (d) effect the intent of the Documents, including filing/recording the Documents, additional mortgages, financing statements, and other instruments.

Section 3.20 Compliance With Anti-Terrorism Regulations.

(a) Borrower hereby covenants and agrees that neither Borrower, nor Operating Lessee, nor any persons or entities holding any legal or beneficial interest whatsoever in Borrower, Operating Lessee (whether directly or indirectly), will conduct business with or engage in any transaction with any person or entity named on any of the OFAC Lists or any person or entity included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in the OFAC Lists.

(b) Borrower hereby covenants and agrees that it will (and will cause Operating Lessee pursuant to the terms of the Operating Lease to) comply at all times with the requirements of Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56; the Iraqi Sanctions Act, Pub. L. 101-513, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 and any similar laws are regulation currently in force or hereafter enacted (collectively, the "**Anti-Terrorism Regulations**").

(c) Borrower hereby covenants and agrees that if it becomes aware or receives any notice that Borrower, Operating Lessee, or the Property, or any person or entity holding any legal or beneficial interest whatsoever (whether directly or indirectly) in Borrower, Operating Lessee, or in the Property, is named on any of the OFAC Lists (such occurrence, an "**OFAC Violation**"), Borrower will immediately (i) give notice to Lender of such OFAC Violation, and (ii) comply with all Laws applicable to such OFAC Violation (regardless of whether the party included on

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any of the OFAC Lists is located within the jurisdiction of the United States of America), including, without limitation, the Anti-Terrorism Regulations, and Borrower hereby authorizes and consents to Lender's taking any and all steps Lender deems necessary, in its sole discretion, to comply with all Laws applicable to any such OFAC Violation, including, without limitation, the requirements of the Anti-Terrorism Regulations (including the "freezing" and/or "blocking" of assets).

(d) Upon Lender's request from time to time during the term of the Loan, Borrower agrees to deliver a certification confirming that the representations and warranties set forth in Section 2.09 above remain true and correct as of the date of such certificate and confirming Borrower's, Operating Lessee's, and any guarantor's compliance with this Section 3.20.

ARTICLE IV - - ADDITIONAL ADVANCES; EXPENSES; SUBROGATION

Section 4.01 Expenses and Advances. Borrower shall pay all reasonable appraisal, recording, filing, registration, brokerage, abstract, title insurance (including premiums), title searches and examinations, surveys and similar data and assurances with respect to title, U.C.C. search, escrow, attorneys', engineers', environmental engineers', environmental testing, and architects' fees, costs (including travel), expenses, and disbursements and outlays for documentary and expert evidence, stenographers' charges and publication costs incurred by Borrower or Lender and (a) reasonable fees charged by Lender in connection with the granting and closing of the Loan and Documents or (b) attributable to Borrower as owner of the Property. The term "Costs" shall mean any of the foregoing incurred in connection with (a) any default by Borrower under the Documents, (b) the servicing of the Loan, or (c) the exercise, enforcement, compromise, defense, litigation, or settlement of any of Lender's rights or remedies under the Documents or relating to the Loan or the Obligations. If Borrower fails to pay any amounts or perform any actions required under the Documents, Lender may (but shall not be obligated to) advance sums to pay such amounts or perform such actions. Borrower grants Lender the right to enter upon and take possession of the Property to prevent or remedy any such failure and the right to take such actions in Borrower's name. No advance or performance shall be deemed to have cured a default by Borrower. All (a) sums advanced by or payable to Lender per this Section or under applicable Laws, (b) except as expressly provided in the Documents, payments due under the Documents which are not paid in full when due, and (c) all Costs, shall: (i) be deemed demand obligations, (ii) bear interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, until paid if not paid on demand, (iii) be part of, together with such interest, the Obligations, and (iv) be secured by the Documents. Lender, upon making any such advance, shall also be subrogated to rights of the person receiving such advance.

Section 4.02 Future Advances. In addition to any other Obligation secured by this Instrument, this Instrument shall also secure (i) future obligations and advances up to 200% of the original principal amount of the Note to the same extent as if the future obligations and advances were made on the date of execution of this Instrument and (ii) future modifications, extensions and renewals of any indebtedness or obligations secured by this Instrument.

Section 4.03 Subrogation. If any proceeds of the Note were used to extinguish, extend or renew any indebtedness on the Property, then, to the extent of the funds so used, (a) Lender shall be subrogated to all rights, claims, liens, titles and interests existing on the Property held by the

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holder of such indebtedness and (b) these rights, claims, liens, titles and interests are not waived but rather (i) shall continue in full force and effect in favor of Lender, and (ii) are merged with the lien and security interest created by the Documents as cumulative security for the payment and performance of the Obligations.

ARTICLE V - - SALE, TRANSFER, OR ENCUMBRANCE OF THE PROPERTY

Section 5.01 Transfers. Due-on-Sale or Encumbrance. Except as otherwise expressly permitted by the Documents, it shall be an Event of Default and, at the sole option of Lender, Lender may accelerate the Obligations and the entire Obligations (including any Breakage Fee) shall become immediately due and payable, if, without Lender's prior written consent (which, except as may otherwise be expressly provided in the Documents, may be withheld for any or no reason, including the possibility of an ERISA violation or the proposed transferee's failure to agree in writing to Lender increasing the interest payable on the Obligations to any rate, changing any other terms (including maturity) of the Obligations or Documents, or requiring the payment of a transfer fee) any of the following shall occur:

- (i) Borrower shall sell, convey, assign, transfer, dispose of or be divested of its title to, convey security title to the Property, mortgage, encumber or cause to be encumbered (except for the imposition of mechanics' or materialmen's liens) the Property or any interest therein, in any manner or way, whether direct or indirect, voluntary or involuntary; or
- (ii) in the event of any merger, consolidation, sale, transfer, assignment, or dissolution involving all or substantially all of the assets of Borrower or any managing general partner or managing member of the original Borrower; or
- (iii) in the event of the assignment, transfer, pledge, voluntary or involuntary sale, or encumbrance (or any of the foregoing at one time or over any period of time) of:
 1. ten percent (10%) or more of (1) the ownership interest of Borrower, regardless of the type or form of entity of Borrower, (2) the voting stock or ownership interest of any corporation or limited liability company which is, respectively, general partner or managing member of Borrower or any corporation or limited liability company directly or indirectly owning ten percent (10%) or more of any such corporation or limited liability company, (3) the ownership interests of any owner of ten percent (10%) or more of the beneficial interests in Borrower if Borrower is a trust; or
 2. any general partnership interest in (1) Borrower, (2) a partnership which is in Borrower's chain of ownership and which is derivatively liable for the obligations of Borrower, or (3) any general partner who has the right to participate directly or indirectly in the control of the management or operations of Borrower; or
- (iv) in the event of the conversion of any general partnership interest in Borrower to a limited partnership interest; or

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(v) in the event of any change, removal, or resignation of any general partner of Borrower; or

(vi) in the event of any change, removal, addition or resignation of a managing member (or if no managing member, any member) if Borrower is a limited liability company; or

(vii) Borrower shall obtain any unsecured debt except for ordinary course of business trade payables and loans ("**Member Loans**") from members or other entities or their affiliates which directly or indirectly own an interest in Borrower provided such Member Loans, which may be unsecured or secured (if they are expressly subordinate to the lien of this Instrument, which subordination shall be pursuant to documentation acceptable to Lender), do not exceed in the aggregate Five Hundred Thousand Dollars (\$500,000.00).

The provisions set forth above shall not apply to transfers under any will or applicable law of descent.

Section 5.02 Permitted Transfers. Notwithstanding anything to the contrary contained in Section 5.01 above, any transfers permitted by that certain Limited Liability Company Agreement of Borrower dated as of the date hereof, as the same may be amended (the "**Borrower LLC Agreement**"), shall be permitted under this Instrument, provided that (a) such transfers are performed in accordance with the provisions of the Borrower LLC Agreement, and (b) at the time of such transfer, there is no Event of Default (or event which with the passage of time or the giving of notice or both would constitute an Event of Default under the Documents).

ARTICLE VI - - DEFAULTS AND REMEDIES

Section 6.01 Events of Default. The following shall be an "**Event of Default**":

(a) if Borrower fails to make any payment required under the Documents when due and such failure continues for five (5) days after written notice;

(b) except for defaults listed in the other subsections of this Section 6.01, if Borrower fails to perform or comply with any other provision contained in the Documents and the default is not cured within thirty (30) days following written notice thereof by Lender to Borrower (the "**Grace Period**"); provided, however, that Lender may extend the Grace Period up to an additional sixty (60) days (for a total of ninety (90) days from the date of default) if (i) Borrower immediately commences and diligently pursues the cure of such default and delivers (within the Grace Period) to Lender a written request for more time and (ii) Lender determines in good faith that (1) such default cannot be cured within the Grace Period but can be cured within ninety (90) days after the default, (2) no lien or security interest created by the Documents will be impaired prior to completion of such cure, and (3) Lender's immediate exercise of any remedies provided hereunder or by law is not necessary for the protection or preservation of the Property or Lender's security interest;

(c) if any written representation made by Borrower to Lender in connection with the Loan or Obligations shall be intentionally false or misleading in any material respect;

(d) if any default under Article V occurs;

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(e) if Borrower shall (i) become insolvent, (ii) make a transfer in fraud of creditors, (iii) make an assignment for the benefit of its creditors, (iv) not be able to pay its debts as such debts become due, or (v) admit in writing its inability to pay its debts as they become due;

(f) if any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding, or any other proceedings for the relief of debtors, is instituted by or against Borrower, and, if instituted against Borrower, is allowed, consented to, or not dismissed within the earlier to occur of (i) ninety (90) days after such institution or (ii) the filing of an order for relief;

(g) intentionally omitted;

(h) if the Property shall be taken, attached, or sequestered on execution or other process of law in any action against Borrower, other than in connection with a condemnation proceeding, a mechanic's lien or other Lien being contested by Borrower as expressly permitted by the Documents;

(i) if Borrower shall fail at any time to obtain, maintain, renew, or keep in force the insurance policies required by Section 3.06 within ten (10) days after written notice, or if after Borrower provides insurance coverage for the Property and Lender provides written notice to Borrower that such insurance coverage is not in compliance with Section 3.06, Borrower shall fail to obtain, maintain, or keep in force the insurance policies required by Section 3.06 within sixty (60) days after written notice;

(j) if Borrower shall be in default under any other mortgage, deed of trust, or security agreement covering any part of the Property, whether it be superior or junior in lien to this Instrument;

(k) if any claim of priority (except based upon a Permitted Encumbrance) to the Documents by title, lien, or otherwise shall be upheld by any court of competent jurisdiction or shall be consented to by Borrower in writing;

(l) intentionally omitted;

(m) if, without Lender's prior consent, there is any material adverse change in that certain Owner Agreement dated as of the date hereof (the "**Owner Agreement**"), between Marriott International, Inc. ("**Franchisor**") and Borrower, or any successor owner agreement; provided, however, that Lender's consent to any material adverse change to the Owner Agreement shall not be unreasonably withheld, conditioned or delayed if there has been a material default of the Franchisor under the Owner Agreement that continued beyond any applicable cure period under the Owner Agreement;

(n) if, without Lender's prior consent, Borrower shall consent to any material adverse change to that certain Franchise Agreement dated as of the date hereof (the "**Franchise Agreement**"), between Franchisor and Operating Lessee, or any successor franchise agreement; provided, however, that Lender's consent to any such material adverse change to the Franchise Agreement shall not be unreasonably withheld, conditioned or delayed if there has been a material default of the Franchisor under the Franchise Agreement that continued beyond any

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applicable cure period under the Franchise Agreement;

(o) if, without Lender's prior consent, there is any material adverse change in the Ground Lease; provided, however, that Lender's consent to any material adverse change to the Ground Lease shall not be unreasonably withheld, conditioned or delayed if there has been a material default of the ground lessor under the Ground Lease that continued beyond any applicable cure period under the Ground Lease;

(p) if, without Lender's prior consent, there is any material change in the Declaration; provided, however, that Lender's consent to any such change to the Declaration shall not be unreasonably withheld, conditioned or delayed;

(q) if Borrower shall fail to observe or perform any term, covenant, condition or agreement in the Ground Lease beyond any cure period contained therein, or if the Ground Lease shall be cancelled or terminated for any reason; or

(r) if a default has occurred and continues beyond any applicable cure period under the Declaration.

Section 6.02 Remedies. If an Event of Default occurs, Lender, or any person designated by Lender, may (but shall not be obligated to) take any action (separately, concurrently, cumulatively, and at any time and in any order) permitted under any Laws, without notice, demand, presentment, or protest (all of which are hereby waived), to protect and enforce Lender's rights under the Documents or Laws including the following actions:

(a) accelerate and declare the entire unpaid Obligations (except for unaccrued interest) immediately due and payable, except for defaults under Section 6.01 (f), (g), or (h) which shall automatically make the Obligations (except for unaccrued interest) immediately due and payable;

(b) judicially or otherwise, (i) completely foreclose this Instrument or (ii) partially foreclose this Instrument for any portion of the Obligations due and the lien and security interest created by this Instrument shall continue unimpaired and without loss of priority as to the remaining Obligations not yet due;

(c) intentionally omitted;

(d) recover judgment on the Note either before, during or after any proceedings for the enforcement of the Documents and without any requirement of any action being taken to (i) realize on the Property or (ii) otherwise enforce the Documents;

(e) seek specific performance of any provisions in the Documents;

(f) apply for the appointment of a receiver, custodian, trustee, liquidator, or conservator of the Property without (i) notice, except as required by law, to any person, (ii) regard for (A) the adequacy of the security for the Obligations or (B) the solvency of Borrower or any person liable for the payment of the Obligations; and Borrower and any person so liable waives or shall be deemed to have waived the foregoing and any other objections to the fullest

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extent permitted by Laws and consents or shall be deemed to have consented to such appointment;

(g) with or without entering upon the Property, (i) exclude Borrower and any person from the Property without liability for trespass, damages, or otherwise; (ii) take possession of, and Borrower shall surrender on demand, all books, records, and accounts relating to the Property; (iii) give notice to Tenants or any person, make demand for, collect, receive, sue for, and recover in its own name all Rents and cash collateral derived from the Property; (iv) use, operate, manage, preserve, control, and otherwise deal with every aspect of the Property including (A) conducting its business, (B) insuring it, (C) making all repairs, renewals, replacements, alterations, additions, and improvements to or on it, (D) completing the construction of any Improvements in manner and form as Lender deems advisable, and (E) executing, modifying, enforcing, and terminating new and existing Leases on such terms as Lender deems advisable and evicting any Tenants in default; (v) apply the receipts from the Property to payment of the Obligations, in any order or priority determined by Lender, after first deducting all Costs, expenses, and liabilities incurred by Lender in connection with the foregoing operations and all amounts needed to pay the Impositions and other expenses of the Property, as well as just and reasonable compensation for the services of Lender and its attorneys, agents, and employees; and/or (vi) in every case in connection with the foregoing, exercise all rights and powers of Borrower, or Lender with respect to the Property, either in Borrower's name or otherwise;

(h) release any portion of the Property for such consideration, if any, as Lender may require without, as to the remainder of the Property, impairing or affecting the lien or priority of this Instrument or improving the position of any subordinate lienholder with respect thereto, except to the extent that the Obligations shall have been actually reduced, and Lender may accept by assignment, pledge, or otherwise any other property in place thereof as Lender may require without being accountable for so doing to any other lienholder;

(i) apply any Deposited Sums (defined below) to the following items in any order and in Lender's sole discretion: (A) the Obligations, (B) Costs, (C) advances made by Lender under the Documents, and/or (D) Impositions;

(j) take all actions permitted under the U.C.C. of the Property State including (i) the right to take possession of all tangible and intangible personal property now or hereafter included within the "**Personal Property**" owned by Borrower and take such actions as Lender deems advisable for the care, protection and preservation of the Personal Property owned by Borrower and (ii) request Borrower at its expense to assemble the Personal Property owned by Borrower and make it available to Lender at a convenient place acceptable to Lender. Any notice of sale, disposition or other intended action by Lender with respect to the Personal Property owned by Borrower sent to Borrower at least five (5) days prior to such action shall constitute commercially reasonable notice to Borrower;

(k) take any other action permitted under any Laws;

(l) intentionally omitted;

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(m) whether or not proceedings to foreclose this Instrument have been commenced, Lender shall be entitled, ex parte without notice, to the extent permitted by applicable law, to the appointment of a receiver of the Property and right to become a mortgagee in possession with all the powers which a receiver would have and all of the earnings, revenues, rents, issues, profits, and incomes thereof, with or without further notice to Borrower, except as required by applicable law, and without regard to the adequacy of the security for any indebtedness secured hereby. Lender may, if permitted by law, enter upon, possess, manage and operate the Property or any part thereof; make, terminate, enforce or modify leases of the Property upon such terms and conditions as Lender deems proper; make repairs, alterations and improvements to the Property and complete construction of any Improvements to be constructed on the Property, for the purpose of protecting or enhancing the security hereof. Borrower agrees to pay all reasonable expenses of action taken under this subparagraph with interest thereon from the date of expenditure at the Default Rate, and payment thereof shall be secured hereby. All sums realized by Lender under this subparagraph, less all costs and expenses incurred by it and payable by Borrower under this subparagraph, including reasonable attorneys' fees, and less such sum as Lender deems appropriate as a reserve to meet future expenses under this paragraph, shall be applied on any indebtedness secured hereby in such order as Lender shall determine. Neither the application of said sums to said indebtedness nor any other action taken by Lender under this paragraph shall cure or waive any default or notice of default hereunder or nullify the effect of any such notice of default. Any action taken under this paragraph may be taken by Lender or any employee or agent of Lender, with or without bringing any action or proceeding, or may be taken by a receiver appointed by a court, and any such action may be taken without regard to the adequacy of the security for the secured indebtedness and whether or not the secured indebtedness have been declared immediately due and payable and, if permitted by applicable law, whether or not notice of election and demand has been filed.

If Lender exercises any of its rights under Section 6.02(g), Lender shall not (a) be deemed to have entered upon or taken possession of the Property except upon the exercise of its option to do so, evidenced by its demand and overt act for such purpose; (b) be deemed a beneficiary or mortgagee in possession by reason of such entry or taking possession; nor (c) be liable (i) to account for any action taken pursuant to such exercise other than for Rents actually received by Lender, (ii) for any loss sustained by Borrower resulting from any failure to lease the Property, or (iii) any other act or omission of Lender except for losses caused by the Lender's willful misconduct, gross negligence, illegal act, breach of an obligation expressly stated in a Document or fraud. THE FOREGOING RELEASES AND EXCULPATIONS SHALL INCLUDE CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, CAUSES OF ACTION, JUDGMENTS, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES) RESULTING FROM THE NEGLIGENCE OF LENDER OR TRUSTEE OR ANY STRICT LIABILITY, BUT NOT THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, ILLEGAL ACT, BREACH OF AN OBLIGATION EXPRESSLY STATED IN A DOCUMENT OR FRAUD OF LENDER OR TRUSTEE. Borrower hereby consents to, ratifies, and confirms the exercise by Lender of its rights under this Instrument and appoints Lender as its attorney-in-fact, which appointment shall be deemed to be coupled with an interest and irrevocable, for such purposes.

Section 6.03 Expenses. All reasonable Costs, expenses, or other amounts paid or incurred by Lender in the exercise of their rights under the Documents, together with interest thereon at the

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applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, shall be (a) part of the Obligations, (b) secured by this Instrument, and (c) allowed and included as part of the Obligations in any foreclosure, decree for sale, or other judgment or decree enforcing Lender's rights under the Documents.

Section 6.04 Rights Pertaining to Sales. To the extent permitted under (and in accordance with) any Laws, the following provisions shall, as Lender may determine in its sole discretion, apply to any sales of the Property under Article VI, whether by judicial proceeding, judgment, decree, foreclosure or otherwise: (a) Lender may conduct multiple sales of any part of the Property in separate tracts or in its entirety and Borrower waives any right to require otherwise; (b) any sale may be postponed or adjourned by public announcement at the time and place appointed for such sale or for such postponed or adjourned sale without further notice; and (c) Lender may bid for and acquire the Property or any part thereof at such sale and, in lieu of paying cash, may make settlement for the purchase price by crediting the Obligations, or any portion thereof, upon the sale price, after deducting therefrom, if and to the extent permitted by applicable Laws, any sums which Lender is authorized to deduct under the provisions of the Documents.

Section 6.05 Application of Proceeds. Any proceeds received from any sale or disposition under Article VI or otherwise, together with any other sums held by Lender, shall, except as expressly provided to the contrary, be applied in the order determined by Lender to: (a) payment of all reasonable Costs and expenses of any enforcement action, foreclosure sale, or otherwise, including interest thereon at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws, (b) all unpaid taxes, Assessments, and other charges unless the Property was sold subject to these items, (c) payment of the Obligations in such order as Lender may elect; (d) payment of any other sums secured or required to be paid by Borrower; and (e) payment of the surplus, if any, to any person lawfully entitled to receive it. Borrower and Lender intend and agree that during any period of time between any foreclosure judgment that may be obtained and the actual foreclosure sale that the foreclosure judgment will not extinguish the Documents or any rights contained therein including the obligation of Borrower to pay all Costs and to pay interest at the applicable interest rate specified in the Note, which shall be the Default Rate unless prohibited by Laws.

Section 6.06 Additional Provisions as to Remedies. No failure, refusal, waiver, or delay by Lender to exercise any rights under the Documents upon any default or Event of Default shall impair Lender's rights or be construed as a waiver of, or acquiescence to, such or any subsequent default or Event of Default. No recovery of any judgment by Lender and no levy of an execution upon the Property or any other property of Borrower shall affect the lien and security interest created by this Instrument and such liens, rights, powers, and remedies shall continue unimpaired as before. Lender may resort to any security given by this Instrument or any other security now given or hereafter existing to secure the Obligations, in whole or in part, in such portions and in such order as Lender may deem advisable, and no such action shall be construed as a waiver of any of the liens, rights, or benefits granted hereunder. Acceptance of any payment after any Event of Default shall not be deemed a waiver or a cure of such Event of Default and such acceptance shall be deemed an acceptance on account only. If Lender has started enforcement of any right by foreclosure, sale, entry, or otherwise and such proceeding shall be discontinued, abandoned, or determined adversely for any reason, then Borrower, Lender shall be restored to

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their former positions and rights under the Documents with respect to the Property, subject to the lien and security interest hereof.

Section 6.07 Waiver of Rights and Defenses. To the fullest extent Borrower may do so under Laws, Borrower (a) will not at any time insist on, plead, claim, or take the benefit of any statute or rule of law now or later enacted providing for any appraisal, valuation, stay, extension, moratorium, redemption, or any statute of limitations; (b) for itself, its successors and assigns, and for any person ever claiming an interest in the Property (other than Lender), waives and releases all rights of redemption, valuation, appraisal, notice of intention to mature or declare due the whole of the Obligations, all rights to a marshaling of the assets of Borrower, including the Property, or to a sale in inverse order of alienation, in the event of foreclosure of the liens and security interests created under the Documents; (c) shall not be relieved of its obligation to pay the Obligations as required in the Documents nor shall the lien or priority of the Documents be impaired by any agreement renewing, extending, or modifying the time of payment or the provisions of the Documents (including a modification of any interest rate), unless expressly released, discharged, or modified by such agreement. Regardless of consideration and without any notice to or consent by the holder of any subordinate lien, security interest, encumbrance, right, title, or interest in or to the Property, Lender may (a) release any person liable for payment of the Obligations or any portion thereof or any part of the security held for the Obligations or (b) modify any of the provisions of the Documents without impairing or affecting the Documents or the lien, security interest, or the priority of the modified Documents as security for the Obligations over any such subordinate lien, security interest, encumbrance, right, title, or interest.

ARTICLE VII - - INTENTIONALLY OMITTED

ARTICLE VIII - - LIMITATION ON PERSONAL LIABILITY

Section 8.01 Limited Recourse Liability. The provisions of the Note are incorporated into this Instrument as if such provisions were set forth in their entirety in this Instrument.

ARTICLE IX - - ADDITIONAL PROVISIONS

Section 9.01 Usury Savings Clause. All agreements in the Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid under the Documents for the use, forbearance, or detention of money exceed the highest lawful rate permitted by Laws. If, at the time of performance, fulfillment of any provision of the Documents shall involve transcending the limit of validity prescribed by Laws, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. If Lender shall ever receive as interest an amount which would exceed the highest lawful rate, the receipt of such excess shall be deemed a mistake and (a) shall be canceled automatically or (b) if paid, such excess shall be (i) credited against the principal amount of the Obligations to the extent permitted by Laws or (ii) rebated to Borrower if it cannot be so credited under Laws. Furthermore, all sums paid or agreed to be paid under the Documents for the use, forbearance, or detention of money shall to the extent permitted by Laws be amortized, prorated, allocated, and spread throughout the full stated term of the Note until payment in full so that the rate or amount of interest on account of the Obligations does not exceed the maximum lawful rate of interest from time to time in effect and

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applicable to the Obligations for so long as the Obligations are outstanding. It is the intent of Borrower and Lender in the making of the Loan to contract in strict compliance with applicable usury law. In the furtherance thereof, Borrower and Lender stipulate and agree that none of the terms and provisions contained herein, or in any of the applicable Documents, or in any other instrument executed in connection herewith, shall ever be construed to create a contract to pay for the use, forbearance, or detention of money, interest at a rate in excess of the maximum interest rate permitted to be charged by applicable law; neither Borrower nor any guarantor, endorser, or other party now or hereafter becoming liable for payment of the Loan shall ever be required to pay interest on the Loan at a rate in excess of the maximum interest that may be lawfully charged under applicable law, and the provisions of this Section 9.01 shall control over all other provisions of this Instrument, the Note, any Document, and any other instruments now or hereafter executed in connection herewith which may be in apparent conflict herewith. Lender expressly disavows any intention to charge or collect excessive unearned interest or finance charges in the event that maturity of the Loan is accelerated. If the maturity of the Loan shall be accelerated for any reason or if the principal of the Loan is paid prior to the end of the term of the Loan, and as a result thereof the interest received for the actual period of existence of the Loan exceeds the applicable maximum lawful rate, Lender shall, at its option, either refund to Borrower the amount of such excess or credit the amount of such excess against the principal balance of the loan then outstanding and thereby shall render inapplicable any and all penalties of any kind provided by applicable law as a result of such excess interest. In the event that Lender or any other holder of the Loan shall contract for, charge, or receive any amount or amounts which are deemed to constitute interest which would increase the effective interest rate on the Loan to a rate in excess of that permitted to be charged by applicable law, all such amounts deemed to constitute interest in excess of the lawful rate shall, upon such determination, at the option of Lender (or other holder of the Loan), be either immediately returned to Borrower or credited against the principal balance of the Loan then outstanding, in which event any and all penalties of any kind under applicable law as a result of such excess interest shall be inapplicable. By execution of this Instrument, Borrower acknowledges that it believes the Loan to be non-usurious, and agrees that if, at any time, Borrower should have reason to believe that the Loan is in fact usurious, it will give Lender (or other holder of the Loan) notice of such condition, and Borrower agrees that Lender (or other holder of the Loan) shall have ninety (90) days in which to make appropriate refund or other adjustment in order to correct such condition if in fact such exists. The term "applicable law" as used in this Instrument shall mean the laws of the State of Illinois or the laws of the United States, whichever laws allow the greater rate of interest, as such laws now exist or may be changed or amended or come into effect in the future.

Section 9.02 Notices. Any notice, request, demand, consent, approval, direction, agreement, or other communication (any "notice") required or permitted under the Documents shall be in writing and shall be validly given if sent by a nationally-recognized courier that obtains receipts, delivered personally by a courier that obtains receipts, or mailed by United States certified mail (with return receipt requested and postage prepaid) addressed to the applicable person as follows:

If to Borrower:

O'HARE CHICAGO HOTEL LLC
c/o Tishman Realty Corporation
666 Fifth Avenue

With a copy of notices sent to Borrower to:

O'HARE CHICAGO HOTEL ACQUISITION
LLC
c/o J.P. Morgan Investment Management, Inc.

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New York, New York 10103
Attention: Mr. Timothy D. Haskin

522 Fifth Avenue, 9th Floor
New York, New York 10036
Attention: Mr. Uday P. Shah

and

TISHMAN REALTY CORPORATION
666 Fifth Avenue
New York, New York 10103
Attention: Ms. Jennifer Williams

and

FRIED, FRANK HARRIS, SHRIVER &
JACOBSON LLP
One New York Plaza
New York, New York 10004
Attention: Lee Parks, Esq.

and

STROOCK & STROOCK & LAVAN LLP
180 Maiden Lane
New York, New York 10038-4982
Attention: Brian Diamond, Esq.

If to Lender:

O'HARE CHICAGO FUNDING COMPANY
LLC
c/o J.P. Morgan Investment Management, Inc.
522 Fifth Avenue, 9th Floor
New York, New York 10036
Attention: Mr. Steven Greenspan

With a copy of notices sent to Lender to:

STROOCK & STROOCK & LAVAN LLP
180 Maiden Lane
New York, New York 10038-4982
Attention: Brian Diamond, Esq.

Each notice shall be effective upon being so sent, delivered, or mailed, but the time period for response or action shall run from the date of receipt as shown on the delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed address for which no notice was given shall be deemed receipt. Any party may periodically change its address for notice and specify up to two (2) additional addresses for copies by giving the other party at least ten (10) days' prior notice.

Section 9.03 Sole Discretion of Lender. Except as otherwise expressly stated, whenever Lender's judgment, consent, or approval is required or Lender shall have an option or election under the Documents, such judgment, the decision as to whether or not to consent to or approve the same, or the exercise of such option or election shall be in the sole and absolute discretion of

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Lender.

Section 9.04 Applicable Law and Submission to Jurisdiction. The Documents shall be governed by and construed in accordance with the laws of the Property State and the applicable laws of the United States of America, without regard to conflicts of law. Without limiting Lender's right to bring any action or proceeding against Borrower or the Property relating to the Obligations (an "Action") in the courts of other jurisdictions, Borrower irrevocably (a) submits to the jurisdiction of any state or federal court in Cook County, Illinois, (b) agrees that any Action may be heard and determined in such court, and (c) waives, to the fullest extent permitted by Laws, the defense of an inconvenient forum to the maintenance of any Action in such jurisdiction.

Section 9.05 Construction of Provisions. The following rules of construction shall apply for all purposes of this Instrument unless the context otherwise requires: (a) all references to numbered Articles or Sections or to lettered Exhibits are references to the Articles and Sections hereof and the Exhibits annexed to this Instrument and such Exhibits are incorporated into this Instrument as if fully set forth in the body of this Instrument; (b) all Article, Section, and Exhibit captions are used for convenience and reference only and in no way define, limit, or in any way affect this Instrument; (c) words of masculine, feminine, or neuter gender shall mean and include the correlative words of the other genders, and words importing the singular number shall mean and include the plural number, and vice versa; (d) no inference in favor of or against any party shall be drawn from the fact that such party has drafted any portion of this Instrument; (e) all obligations of Borrower hereunder shall be performed and satisfied by or on behalf of Borrower at Borrower's sole expense; (f) the terms "include," "including," and similar terms shall be construed as if followed by the phrase "without being limited to"; (g) the terms "Property", "Land", "Improvements", and "Personal Property" shall be construed as if followed by the phrase "or any part thereof"; (h) the term "Obligations" shall be construed as if followed by the phrase "or any other sums secured hereby, or any part thereof"; (i) the term "person" shall include natural persons, firms, partnerships, corporations, governmental authorities or agencies, and any other public or private legal entities; (j) the term "provisions," when used with respect hereto or to any other document or instrument, shall be construed as if preceded by the phrase "terms, covenants, agreements, requirements, and/or conditions"; (k) the term "lease" shall mean "tenancy, subtenancy, lease, sublease, or rental agreement," the term "lessor" shall mean "landlord, sublandlord, lessor, and sublessor," and the term "Tenants" or "lessee" shall mean "tenant, subtenant, lessee, and sublessee"; (l) the term "owned" shall mean "now owned or later acquired"; (m) the terms "any" and "all" shall mean "any or all"; and (n) the term "on demand" or "upon demand" shall mean "within five (5) business days after written notice".

Section 9.06 Intentionally omitted.

Section 9.07 Miscellaneous. If any provision of the Documents shall be held to be invalid, illegal, or unenforceable in any respect, this shall not affect any other provisions of the Documents and such provision shall be limited and construed as if it were not in the Documents. If title to the Property becomes vested in any person other than Borrower, Lender may, without notice to Borrower, deal with such person regarding the Documents or the Obligations in the same manner as with Borrower without in any way vitiating or discharging Borrower's liability

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under the Documents or being deemed to have consented to the vesting. If both the lessor's and lessee's interest under any Lease ever becomes vested in any one person, this Instrument and the lien and security interest created hereby shall not be destroyed or terminated by the application of the doctrine of merger and Lender shall continue to have and enjoy all its rights and privileges as to each separate estate. Upon foreclosure of this Instrument, none of the Leases shall be destroyed or terminated as a result of such foreclosure (or sale), by application of the doctrine of merger or as a matter of law, unless Lender takes all actions required by law to terminate the Leases as a result of foreclosure or sale. All of Borrower's covenants and agreements under the Documents shall run with the land and time is of the essence. Borrower appoints Lender as its attorney-in-fact, which appointment is irrevocable and shall be deemed to be coupled with an interest, with respect to the execution, acknowledgment, delivery, filing or recording for and in the name of Borrower of any of the documents listed in Sections 3.04, 3.19, 4.01 and 6.02. The Documents cannot be amended, terminated, or discharged except in a writing signed by the party against whom enforcement is sought. No waiver, release, or other forbearance by Lender will be effective unless it is in a writing signed by Lender and then only to the extent expressly stated. The provisions of the Documents shall be binding upon Borrower and its heirs, devisees, representatives, successors, and assigns including successors in interest to the Property and inure to the benefit of Lender and its heirs, successors, substitutes, and assigns. Where two or more persons have executed the Documents, the obligations of such persons shall be joint and several, except to the extent the context clearly indicates otherwise. The Documents may be executed in any number of counterparts with the same effect as if all parties had executed the same document. All such counterparts shall be construed together and shall constitute one instrument, but in making proof hereof it shall only be necessary to produce one such counterpart. Upon receipt of an affidavit of an officer of Lender as to the loss, theft, destruction or mutilation of any Document which is not of public record, and, in the case of any mutilation, upon surrender and cancellation of the Document, Borrower will issue, in lieu thereof, a replacement Document, dated the date of the lost, stolen, destroyed or mutilated Document containing the same provisions. Any reviews, inspections, reports, approvals or similar items conducted, made or produced by or on behalf of Lender with respect to Borrower, the Property or the Loan are for loan underwriting and servicing purposes only, and shall not constitute an acknowledgment, representation or warranty of the accuracy thereof, or an assumption of liability with respect to Borrower, Borrower's contractors, architects, engineers, employees, agents or invitees, present or future tenants, occupants or owners of the Property, or any other party.

Section 9.08 Entire Agreement. The Documents constitute the entire understanding and agreement between Borrower and Lender with respect to the Loan and supersede all prior written or oral understandings and agreements with respect to the Loan and (b) neither Lender nor Borrower is relying on any representations or warranties of the other except as expressly set forth in the Documents.

Section 9.09 WAIVER OF TRIAL BY JURY. BORROWER AND LENDER HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY EITHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THE LOAN, THE APPLICATION FOR THE LOAN EVIDENCED BY THE NOTE, THIS LEASEHOLD MORTGAGE OR THE OTHER LOAN DOCUMENTS, OR ANY ALLEGED ACTS OR OMISSIONS OF BORROWER OR LENDER, OR THEIR

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RESPECTIVE OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.

Section 9.10 Interest Payable by Lender. Lender shall cause any amounts deposited by Borrower with Lender pursuant to Sections 3.07, 3.08 and/or 3.09, if any (collectively, the “**Deposited Sums**”), to be deposited into an interest-bearing account (the “**Deposit Accounts**”). Funds contributed by Borrower to such Deposited Sums shall earn interest at a rate equal to the average interest rate of money market accounts offered by banks located in 25 cities and/or metropolitan areas as such rating is published in the Bank Rate Monitor (referred to therein as the “**25 Market AVG**”), as determined and reset by Lender on a monthly basis, or based on some similar interest rate indicator customarily used by Lender or its servicing agent as a standard upon which to base interest payment credits on reserves, of the type customarily maintained by Lender or its servicing agent for the investment of similar reserves, which account may not yield the highest interest rate then available. Interest payable on any such Deposited Sums shall be computed based on the daily outstanding balance with respect to each such Deposit Account. Such interest shall be calculated on a simple, non-compounded interest basis based solely on contributions made by the Borrower to any such Deposit Accounts. All interest earned on amounts contributed to any such Deposit Accounts shall be retained by Lender and added to the balance of the applicable Deposited Sum and shall be disbursed for payment of the items for which other funds in such Deposit Account are to be disbursed.

ARTICLE X -- HOTEL PROVISIONS

Section 10.01 Additional Operating Statements and Reports. In addition to the operating statements, financial statements, and other reports required by Section 3.15 hereof,

(a) Borrower shall furnish to Lender the following quarterly statements and reports, as soon as available, but no later than ninety (90) days after the end of the quarter in question, each in form and substance reasonably satisfactory to Lender:

(i) A comparative balance sheet;

(ii) An operating statement (including a comparison to the budget and the previous year’s position) with both monthly and year-to-date information, including detailed department and undistributed expense schedules, detail for collection of lease income, parking and health club operations (if any), the overall occupancy and rate, and schedules showing rate and room nights by market segment (which schedules shall compare actual to forecast and to the previous year);

(iii) A capital expenditure and FF&E expenditure report detailing each project’s status, including the amounts spent to date, the amounts needed for completion and all budget variances;

(iv) a rolling re-forecast regarding calendar year end projected occupancy, average rate, profit and loss.

(b) Borrower shall furnish the following annual statements and reports to Lender:

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(i) As soon as available, but no later than sixty (60) days after the end of the fiscal year in question, each in form and substance reasonably satisfactory to Lender, financial statements for Borrower for the prior year prepared in accordance with generally accepted accounting principles and certified by an authorized person, partner or official;

(ii) As soon as available, but no later than one hundred twenty (120) days after the end of the Borrower's fiscal year, audited operating statements for the Property for the prior year prepared in accordance with generally accepted accounting principles and certified by an authorized person, partner or official, together with such additional information as Lender may reasonably request,

(iii) If and when actually provided to Borrower, a general manager's critique including (1) a discussion of the fiscal year's operating performance as compared to the budget and the previous year; (2) specific steps to be taken in response to any adverse budget variances; (3) comments regarding the current market conditions and the Hotel's competitive position with the market; (4) narrative on the progress of all capital projects; and (5) such other information as shall be reasonably or customary under all facts and circumstances; and

(iv) No later than one hundred twenty days after the end of Borrower's fiscal year, satisfactory competitive hotel information, such as year-to-date occupancy and average daily room rate estimates and special projects at competitive hotels. Such information shall include the most recent STARR Report (i.e. from Smith Travel, including each year end report) showing both penetration and yield versus the competitive set.

(c) Borrower shall furnish to Lender (i) whenever available, a duplicate copy of any appraisal, and (ii) such other information and market reports as Lender may reasonably request.

Section 10.02 Additional Hotel Provisions.

(a) In addition to all other representations made by Borrower in the Documents, Borrower hereby makes the following representations as of the date hereof:

(i) (A) Borrower has not received notice that (x) the Owner Agreement is not in full force and effect, or that there is any material uncured default, breach or violation existing thereunder by any party thereto, or (y) the Franchise Agreement, pursuant to which Operating Lessee has the right to operate the Property under a name and/or hotel system controlled by Franchisor, is not in full force and effect, or that there is any material uncured default, breach or violation existing thereunder by any party thereto, and (B) to Borrower's knowledge, no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a material default, breach or violation by any party under the Owner Agreement or the Franchise Agreement.

(ii) Borrower has not received notice that (x) the Hotel Management Agreement, pursuant to which Hotel Manager shall operate the Property as a hotel, is not in full force and effect, or (y) there is any material uncured default, breach or violation existing thereunder by any party thereto and, to Borrower's knowledge, no event has occurred (other than payments due but not yet delinquent) that, with the passage of time or the giving of notice, or both, would constitute a material default, breach or violation by any party thereunder.

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(iii) Neither the execution and delivery of the Documents, Borrower's performance thereunder nor the recordation of this Instrument will violate the terms of the Owner Agreement, the Franchise Agreement or the Hotel Management Agreement.

(b) In addition to all other covenants and agreements made by Borrower in the Documents, Borrower hereby makes the following covenants and agreements:

(i) Borrower shall at all times comply with the terms of the Owner Agreement;

(ii) Borrower shall cause Operating Lessee pursuant to the terms of the Operating Lease to cause the hotel located on the Property to be operated pursuant to the Operating Lease, that certain Management Agreement dated as of the date hereof (the "**Hotel Management Agreement**") between Operating Lessee and THC Chicago Airport Management LLC ("**Hotel Management**") and the Franchise Agreement.

(iii) Borrower shall cause Operating Lessee pursuant to the terms of the Operating Lease to maintain FF&E/structural reserves in accordance with the term of the Hotel Management Agreement and/or the Franchise Agreement.

(iv) Any successor hotel management agreements, owner agreements, and/or franchise agreements shall be in form and substance acceptable to Lender in its reasonable discretion, not to be unreasonably withheld, conditioned or delayed.

(v) Borrower covenants and agrees that it shall (or shall cause Operating Lessee pursuant to the terms of the Operating Lease to):

(A) (1) promptly perform and/or observe all of the covenants and agreements required to be performed and observed by Borrower under the Owner Agreement (and any successor owner agreement) and do all things necessary to preserve and to keep unimpaired its material rights thereunder, (2) promptly perform and/or observe all of the covenants and agreements required to be performed and observed by Operating Lessee under the Hotel Management Agreement and the Franchise Agreement (and any successor hotel management agreement and/or franchise agreement), and (3) do all things necessary to preserve and to keep unimpaired its material rights under the Owner Agreement (and any successor owner agreement) and Operating Lessee's material rights under the Hotel Management Agreement and the Franchise Agreement (and any successor hotel management agreement and/or franchise agreement);

(B) deliver to Lender, within three (3) days after receipt of the same by Borrower or Operating Lessee, copies of all notices sent to Borrower or Operating Lessee by the Hotel Manager and/or the Franchisor (or any successor manager and/or franchisor) relating to the Owner Agreement, the Hotel Management Agreement and/or the Franchise Agreement (or any successor hotel management agreement, owner agreement, and/or franchise agreement) to the extent that such notices are required to be sent in writing pursuant to the terms of the Hotel Management Agreement, the Owner Agreement, and/or the Franchise Agreement

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(or any successor hotel management agreement, owner agreement, and/or franchise agreement);

(C) promptly notify Lender of any material default by any party under the Hotel Management Agreement, the Owner Agreement, and/or the Franchise Agreement (and any successor hotel management agreement, owner agreement, and/or franchise agreement) of which it is aware;

(D) promptly enforce the performance and observance of all of the material covenants and agreements required to be performed and/or observed by the Hotel Manager under the Hotel Management Agreement and/or the Franchisor under the Owner Agreement and the Franchise Agreement (or any successor hotel management agreement, owner agreement, and/or franchise agreement).

(vi) Borrower consents and agrees that it shall not permit or consent to, without Lender's prior written consent:

(A) the surrender, termination or cancellation of the Hotel Management Agreement, the Owner Agreement, and/or the Franchise Agreement (or any successor hotel management agreement, owner agreement, and/or franchise agreement); provided, however, that Lender's consent to the termination or cancellation of the Hotel Management Agreement, the Owner Agreement, and/or the Franchise Agreement shall not be unreasonably withheld, conditioned or delayed if there has been a material default of the Hotel Manager under the Hotel Management Agreement and/or of the Franchisor under the Owner Agreement and/or the Franchise Agreement that continues beyond any applicable cure period thereunder;

(B) the reduction of the term of the Hotel Management Agreement, the Owner Agreement, and/or the Franchise Agreement (or any successor hotel management agreement, owner agreement, and/or franchise agreement);

(C) the increase of the amount of any charges payable by Borrower or the Operating Lessee under the Hotel Management Agreement, the Owner Agreement, and/or the Franchise Agreement (or any successor hotel management agreement, owner agreement, and/or franchise agreement), which consent of Lender shall not be unreasonably withheld or delayed; or

(D) any other modification, change, supplement, alteration or amendment in any material adverse respect of any of the provisions of the Hotel Management Agreement, the Owner Agreement, and/or the Franchise Agreement (or any successor management agreement, owner agreement, and/or franchise agreement) or any of the rights and remedies of Borrower or the Operating Lessee under the Hotel Management Agreement, the Owner Agreement, and/or the Franchise Agreement (or any successor hotel management agreement, owner agreement, and/or franchise agreement), which consent of Lender shall not be unreasonably withheld or delayed.

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(vii) The Hotel Management Agreement and any successor hotel management agreement shall be expressly subordinate to the Loan.

Section 10.03 Intentionally omitted.

Section 10.04 Inventory Levels. At all times during the term of the Loan, Borrower shall maintain or cause to be maintained reasonable inventory levels of linens; tableware; kitchen utensils and equipment; and tables, chairs and equipment for the other amenities located on the Property.

ARTICLE XI - LOCAL LAW PROVISIONS

Section 11.01 Principles of Construction. In the event of any inconsistencies between the other terms and provisions of this Instrument and this Article XI, the terms and provisions of this Article XI shall govern and control.

Section 11.02 Business Loan. Borrower represents and warrants that the amounts secured by this Instrument will be used for the purposes specified in Paragraph 815 I.L.C.S. 205/4(1)(c), and that the Obligations secured hereby constitute a "business loan" within the purview of said paragraph and that the Loan is "a loan secured by a mortgage on real estate" within the purview and operation of Section 815 I.L.C.S. 205.4(1)(l).

Section 11.03 Maximum Principal Indebtedness. This Instrument is given to secure not only existing indebtedness, but also future advances resulting from any act or omission of Borrower, whether such advances are obligatory or are to be made at the option of Lender, or otherwise, and whether such advances are made before, during or after the pendency of any proceedings to foreclose the lien of this Instrument or otherwise enforce the rights of Lender hereunder as if such future advances were made on the date of the execution of this Instrument. The total amount of indebtedness that may be so secured may decrease or increase from time to time, but the total unpaid principal balance so secured at one time shall not exceed \$58,000,000.00, plus interest thereon, and any disbursements made for the payment of taxes, levies or insurance on the property encumbered by this Instrument, with interest on such disbursements at the rate provided in the Note or other Documents. The provisions of this paragraph shall not be construed to imply any obligation on Lender to make any future advances, it being the intention of the parties that any future advances shall be solely at the discretion and option of the Lender. Any reference in this Instrument or other Documents shall be construed to include any future advances pursuant to this Instrument.

Section 11.04 Waiver of Statutory Rights. Borrower hereby waives, to the extent now or hereafter permitted by law, all rights of redemption and reinstatement of this Security Instrument pursuant to the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15 1101 et seq. ("IMFL"), on behalf of itself and all those taking by, through or under Borrower.

Section 11.05 Compliance with Illinois Mortgage Foreclosure Law. In the event that any provision of this Instrument shall be inconsistent with any provision of IMFL, the provisions of IMFL shall take precedence over the provisions of this Instrument, but shall not invalidate or render unenforceable any other provision of this Instrument that can be construed in a manner consistent with IMFL. If any provision of this Instrument shall grant to Lender any rights or

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remedies upon any Event of Default by Borrower which are more limited than the rights that would otherwise be vested in Lender under IMFL in the absence of said provision Lender shall be vested with the rights granted in IMFL to the full extent permitted by law. Without limiting the generality of the foregoing, all expenses incurred by Lender to the extent reimbursable under IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not encumbered in this Instrument, shall be added to the indebtedness secured by this Instrument or by judgment of foreclosure.

Section 11.06 Waiver of Redemption Rights. Borrower agrees, to the full extent permitted by law, that in case of an Event of Default, neither Borrower nor anyone claiming through or under it will set up, claim or seek to take advantage of any appraisal, valuation, stay or extension laws now or hereafter in force, or take any other action which would prevent or hinder the enforcement or foreclosure of this Instrument or the absolute sale of the Property or the final and absolute putting in possession thereof, immediately after such sale, of the purchaser thereat. Borrower, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that Lender or any court having jurisdiction to foreclose such lien may sell the Property in part or as an entirety. Borrower acknowledges that the transaction of which this Instrument is a part is a transaction which does not include either agricultural real estate (as defined in Section 15-1201 of the IMFL) or residential real estate (as defined in Section 15-1219 of the IMFL). Borrower hereby voluntarily and knowingly waives any and all rights of redemption as allowed under Section 15-1601 of the IMFL.

Section 11.07 Financing Statement. This Instrument also constitutes a financing statement for the purpose of Section 9-402 of the Illinois Uniform Commercial Code (Illinois Revised Statutes, Section 26) and shall constitute a "fixture filing" under such statutes and shall be filed in the real estate records of Cook County, Illinois.

(1)	Name of Debtor:	O'Hare Chicago Hotel LLC
	Debtor's Mailing Address:	c/o Tishman Realty Corporation 666 Fifth Avenue New York, New York 10103
	Address of Property:	8500 West Bryn Mawr Avenue Chicago, Illinois 60611
	Name of Secured Party:	O'HARE CHICAGO FUNDING COMPANY LLC
	Address of Secured Party:	522 Fifth Avenue New York, New York 10036

(2) This financing statement covers the following types or items of property: the property described in this instrument, and all other items of personal property now or at any time hereafter owned by Borrower and used in connection with the Land and Improvements.

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(3) Some of the above goods are or are to become fixtures on the real property described herein. Borrower is the record owner of the real property described herein upon which the foregoing fixtures and other items and types of property are located.

Section 11.08 UCC Rights.

(a) Borrower hereby irrevocably authorizes Lender at any time, and from time to time, to file in any jurisdiction any initial financing statements and amendments thereto that (i) indicate the collateral as all assets of Borrower (or words of similar effect), regardless of whether any particular asset comprised in the collateral falls within the scope of Article 9 of the Uniform Commercial Code, as amended, of the jurisdiction wherein such financing statement or amendment is filed, or as being of an equal or lesser scope or within greater detail, and (ii) contain any other information required by Section 5 of Article 9 of the Uniform Commercial Code, as amended, of the jurisdiction wherein such financing statement or amendment is filed regarding the sufficiency or filing office acceptance of any financing statement or amendment, including whether Borrower is an organization, the type of organization and any organization identification number issued to Borrower, and in the case of a financing statement filed as a fixture filing or indicating collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the collateral relates. Borrower agrees to furnish any such information to Lender promptly upon request. Borrower further ratifies and affirms its authorization for any financing statements and/or amendments thereto, executed and filed by Lender in any jurisdiction prior to the date of this Instrument.

(b) Borrower represents and warrants that:

(i) Borrower is the record owner of a leasehold interest in the Land and the Improvements;

(ii) Borrower state of organization is in the State of Delaware;

(iii) Borrower's exact legal name is O'Hare Chicago Hotel LLC;

(iv) Borrower's organizational identification number is: N/A; and

(v) Borrower's federal employer identification number is: 20-1716443.

(c) Borrower agrees that:

(i) Where collateral is in possession of a third party, Borrower will join with Lender in notifying the third party of Lender's interest and obtaining an acknowledgment from the third party that it is holding the collateral for the benefit of Lender;

(ii) Borrower will cooperate with Lender in obtaining control with respect to collateral consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(iii) Until the indebtedness secured by this Instrument is paid in full, Borrower

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will not change the state where it is located or change its name without giving Lender at least thirty (30) days' prior written notice in each instance.

Section 11.09 Usury. All agreements between Borrower and Lender (including, without limitation, those contained in this Instrument, the Note or any other Document) are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid to Lender exceed the highest lawful rate of interest permissible under the laws of the State of Illinois. If, from any circumstances whatsoever, fulfillment of any provision hereof or of the Note or any other documents securing the indebtedness, at the time performance of such provision shall be due, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then, shall involve the payment of interest exceeding the highest rate of interest permitted by law which a court of competent jurisdiction may deem applicable hereto, then ipso facto, the obligation to be fulfilled shall be reduced to the highest lawful rate of interest permissible under the laws of the State of Illinois; and if for any reason whatsoever, Lender shall receive as interest an amount which would be deemed unlawful, such interest shall be applied to the payment of the last maturing installment or installments of the indebtedness secured by this Instrument (whether or not then due and payable) and not to the payment of interest.

Section 11.10 Recovery of Expenses on Foreclosure. All expenses incurred by Lender to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether enumerated in this Instrument, shall be added to the indebtedness secured by this Mortgage or by the judgment of foreclosure.

ARTICLE XII - GROUND LEASE PROVISIONS

Section 12.01 Borrower Covenants. Borrower will: (i) pay the rent reserved by the Ground Lease as the same becomes due and payable; (ii) promptly perform and observe all of the covenants, agreements, obligations and conditions required to be performed and observed by the Borrower under the Ground Lease, and do all things necessary to preserve and keep unimpaired its rights thereunder; (iii) promptly notify Lender in writing of the commencement of a proceeding under the federal bankruptcy laws by or against Borrower or upon obtaining knowledge thereof, the ground lessor under the Ground Lease; (iv) if any of the indebtedness secured hereby remains unpaid at the time when notice may be given by the Lender under the Ground Lease of the exercise of any right to renew or extend the term of the Ground Lease, promptly give notice to the ground lessor of the exercise of such right of extension or renewal; (v) in case any proceeds of insurance upon the Property or any part thereof are deposited with any person other than Lender, promptly notify Lender in writing of the name and address of the person with whom such proceeds have been deposited and the amount so deposited; (vi) promptly notify the Lender in writing of the receipt by the Borrower of any notice (other than notices customarily sent on a regular periodic basis) from the ground lessor under the Ground Lease and of any notice noting or claiming any default by the Borrower in the performance or observance of any of the terms, covenants, or conditions on the part of the Borrower to be performed or observed under the Ground Lease; (vii) promptly notify the Lender in writing of the receipt by the Borrower of any notice from the ground lessor of any termination of the Ground Lease pursuant to the provisions of the Ground Lease; (viii) promptly cause a copy of each such notice described in clause (vi) or (vii) above received by the Borrower from the

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ground lessor under the Ground Lease to be delivered to the Lender, and (ix) promptly notify Lender in writing of any request made by either party to the Ground Lease to the other party thereto for arbitration or appraisal proceedings pursuant to the Ground Lease, and of the institution of any arbitration or appraisal proceedings and promptly deliver to Lender a copy of the determination of the arbitrators or appraisers in each such proceeding.

Section 12.02 No Surrender; Termination or Modification. Borrower will not surrender the Ground Lease or Borrower's leasehold estate and interest therein, nor terminate or cancel the Ground Lease; and will not, without the prior written consent of Lender modify, change, supplement, alter or amend the Ground Lease, either orally or in writing, and as further security for the repayment of the indebtedness hereby secured and for the performance of the covenants, agreements, obligations and conditions herein and in the Ground Lease contained, Borrower hereby assigns to Lender all of its rights, privileges and prerogatives as ground lessee under the Ground Lease to terminate, cancel, modify, change, supplement, alter or amend the Ground Lease and any such termination, cancellation, modification, change, supplement, alteration or amendment of the Ground Lease, without the prior written consent thereto by Lender, shall be void and of no force and effect. Without limiting the generality of the foregoing, Borrower will not reject the Ground Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, or allow the Ground Lease to be deemed rejected by inaction and lapse of time, and will not elect to treat the Ground Lease as terminated by the ground lessor's rejection of the Ground Lease pursuant to 11 U.S.C. Section 365(h)(1) or any successor law, and as further security for the repayment of the indebtedness secured hereby and for the performance of the covenants, agreements, obligations and conditions herein and in the Ground Lease contained, Borrower hereby assigns to Lender all of its rights, privileges and prerogatives of Borrower and Borrower's bankruptcy trustee to deal with the Ground Lease, which right may arise as a result of the commencement of a proceeding under the federal bankruptcy laws by or against Borrower or ground lessor under the Ground Lease, including, without limitation, the right to assume or reject, or to compel the assumption or rejection of the Ground Lease pursuant to 11 U.S.C. Section 365(a) or any successor law, the right to seek and obtain extensions of time to assume or reject the Ground Lease, the right to elect whether to treat the Ground Lease as terminated by the ground lessor's rejection of the Ground Lease or to remain in possession of the Property and offset damages pursuant to 11 U.S.C. Section 365(b)(1) or any successor law; and any exercise of such rights, privileges or prerogatives by Borrower or Borrower's bankruptcy trustee without the prior written consent thereto by Lender shall be void and of no force and effect. No release or forbearance of any of Borrower's obligations as ground lessee under the Ground Lease, whether pursuant to the Ground Lease or otherwise, shall release Borrower from any of its obligations under this Security Instrument, including, but not limited to, Borrower's obligations with respect to the payment of rent as provided for in the Ground Lease and the observance and performance of all of the covenants, agreements, obligations and conditions contained in the Ground Lease to be observed and performed by the ground lessee thereunder. Borrower hereby expressly grants to Lender, and agrees that Lender shall have, the absolute and immediate right (notwithstanding any cure periods applicable to acceleration of the Note or exercise of remedies provided for herein) to enter in and upon the Property or any part thereof, to such extent and as often as Lender, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by Borrower. Lender may immediately pay and expend such sums of money (notwithstanding any cure periods applicable to acceleration of the Note or exercise of remedies provided for herein) as Lender, in its sole discretion, deems necessary to prevent or cure any

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such default by Borrower, and Borrower hereby agrees to pay to Lender, immediately and without demand, all such sums so paid and expended by Lender, together with interest thereon from the date of each such payment at the Default Rate as specified in the Note. All sums so paid and expended by Lender, and the interest thereon, shall be added to and be secured by the lien of this Security Instrument. Unless Lender shall otherwise expressly consent in writing, the fee title to the real property demised by the Ground Lease and the leasehold estate thereunder shall not merge, but shall always remain separate and distinct, notwithstanding the union of such estates either in the Borrower or in a third party by purchase or otherwise.

Section 12.03 Estoppel Certificates. Borrower will, within ten (10) days after written demand from the Lender, but not more frequently than once per year, use its commercially reasonable efforts to obtain from the ground lessor under the Ground Lease and deliver to the Lender a certificate stating that such ground lease is in full force and effect, is unmodified, that no notice of termination thereon has been served on the Borrower, stating the date to which the net rent has been paid and stating whether or not there are any defaults thereunder and specifying the nature of such defaults, if any.

Section 12.04 Proof of Payment. The Borrower will furnish to the Lender, upon demand, proof of payment of all items which are required to be paid by the Borrower pursuant to the Ground Lease.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the undersigned have executed this Instrument as of the day first set forth above.

[Signature Page to Leasehold Mortgage and Security Agreement (With Fixture Filing)]

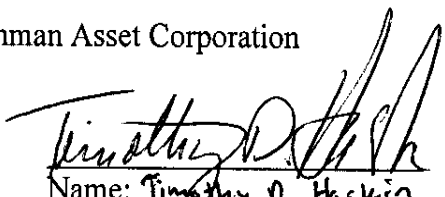
BORROWER:

O'HARE CHICAGO HOTEL LLC,
a Delaware limited liability company

By: THR Chicago Airport Investors LLC

By: THR Asset LP

By: Tishman Asset Corporation

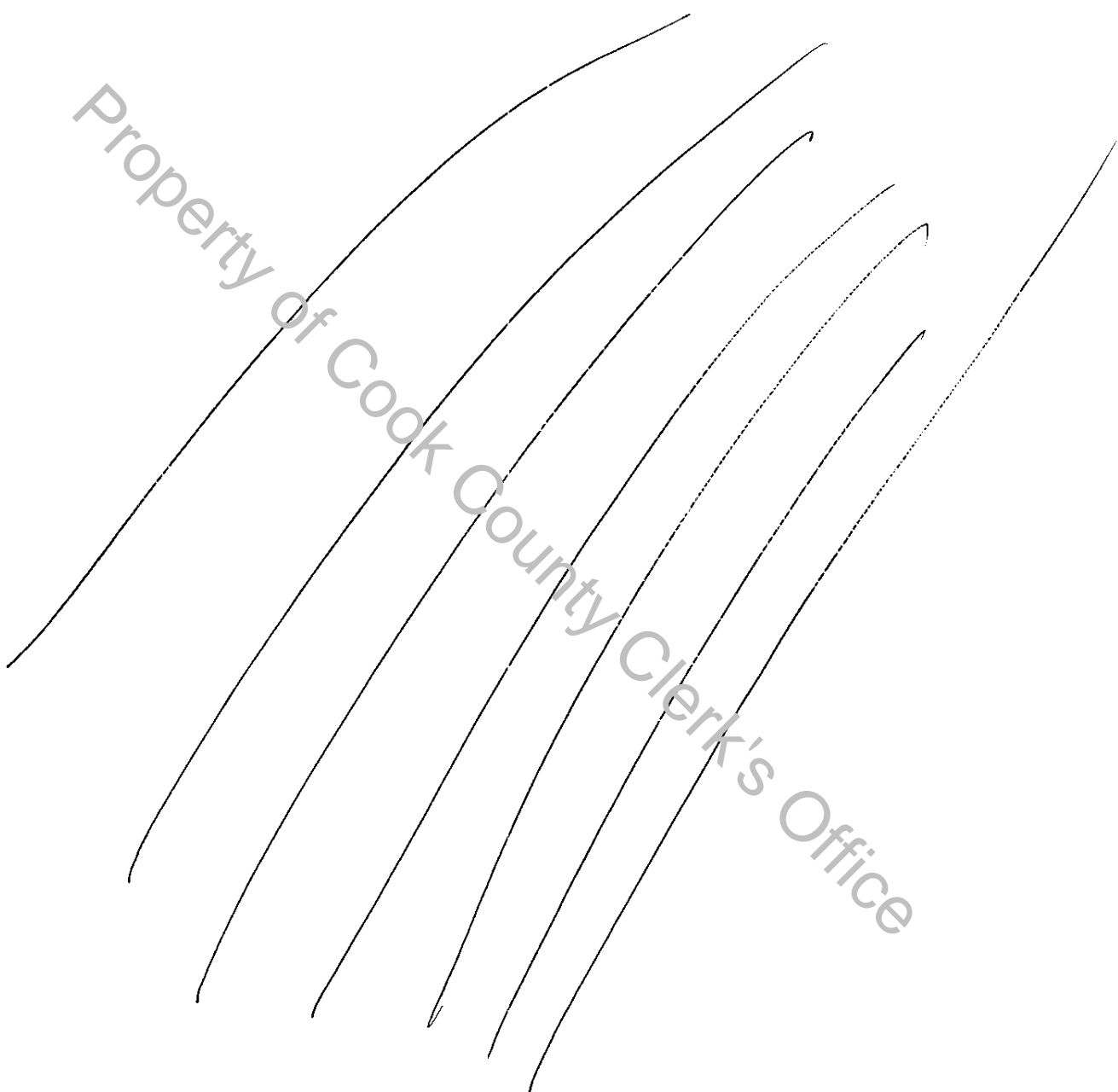
By: 
Name: Timothy D. Haskin
Title: vice president

Property of Cook County Clerk's Office

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EXHIBIT A

LEGAL DESCRIPTION OF LAND



UNOFFICIAL COPY**PARCEL 1: (Leasehold Estate)**

THAT PART OF THE WEST 295.63 FEET (AS MEASURED AT RIGHT ANGLES) OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF SAID SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AND THE NORTH LINE OF THE SOUTH 510.03 FEET (AS MEASURED ON THE WEST LINE) OF SAID SOUTHEAST 1/4 OF THE SOUTHWEST 1/4; THENCE NORTH 00 DEGREE, 04 MINUTES, 44 SECONDS EAST ALONG SAID WEST LINE 123.97 FEET TO THE POINT OF BEGINNING; THENCE NORTH 88 DEGREES, 20 MINUTES, 37 SECONDS EAST, 53.38 FEET; THENCE SOUTH 01 DEGREE, 37 MINUTES, 50 SECONDS EAST, 10.36 FEET; THENCE NORTH 88 DEGREES, 22 MINUTES, 10 SECONDS EAST, 147.54 FEET; THENCE NORTH 01 DEGREE, 46 MINUTES, 55 SECONDS WEST, 9.17 FEET; THENCE NORTH 88 DEGREES, 58 MINUTES, 55 SECONDS EAST, 5.48 FEET; THENCE NORTH 01 DEGREE, 45 MINUTES, 00 SECOND WEST, 0.20 OF A FOOT; THENCE NORTH 88 DEGREES, 15 MINUTES, 00 SECOND EAST, 89.36 FEET TO THE EAST LINE OF THE WEST 295.63 FEET AFORESAID; THENCE NORTH 00 DEGREE, 04 MINUTES, 44 SECONDS EAST ALONG SAID EAST LINE 356.31 FEET; THENCE SOUTH 85 DEGREES, 32 MINUTES, 50 SECONDS WEST, 296.56 FEET TO THE WEST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AFORESAID; THENCE SOUTH 00 DEGREE, 04 MINUTES, 44 SECONDS WEST, 340.86 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2: (Easement Estate)

EASEMENTS FOR THE BENEFIT OF PARCEL 1 AS SET FORTH IN THE DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS RECORDED AS DOCUMENT 99260848 AND THE FIRST AMENDMENT THERETO RECORDED AS DOCUMENT 00029699, DESCRIBED AS FOLLOWS:

THAT PART OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 2, TOWNSHIP 40 NORTH, RANGE 12, EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: COMMENCING AT THE INTERSECTION OF THE EAST LINE OF NORTH DELPHIA AVENUE AS PER DOCUMENT 20512648 WITH THE NORTH LINE OF THE SOUTH 50 FEET OF THE SOUTHWEST 1/4 OF SAID SECTION 2; THENCE NORTH 88 DEGREES 10 MINUTES 00 SECONDS EAST ALONG THE NORTH LINE OF THE SOUTH 50.0 FEET AFORESAID 475.0 FEET; THENCE NORTH 01 DEGREES 50 MINUTES 00 SECONDS WEST 459.75 FEET TO THE NORTH LINE OF THE SOUTH 510.03 FEET (AS MEASURED ON THE WEST LINE) OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AFORESAID; THENCE SOUTH 88 DEGREES 10 MINUTES 00 SECONDS WEST ALONG THE NORTH LINE OF THE SOUTH 510.03 FEET AFORESAID 196.86 FEET TO THE POINT OF BEGINNING; THENCE SOUTH 00 DEGREES 04 MINUTES 44 SECONDS WEST 119.34 FEET; THENCE SOUTH 88 DEGREES 10 MINUTES 00 SECONDS WEST 267.80 FEET TO THE EAST LINE OF NORTH DELPHIA AVENUE AS PER DOCUMENT 20512648; THENCE NORTH 00 DEGREES 04 MINUTES 44 SECONDS EAST ALONG SAID EAST LINE 14.34 FEET; THENCE NORTH 88 DEGREES 10 MINUTES 00 SECONDS EAST 5.0 FEET TO ANOTHER EAST LINE OF NORTH DELPHIA AVENUE AFORESAID; THENCE NORTH 00 DEGREES 04 MINUTES 44 SECONDS EAST ALONG SAID EAST LINE AND ITS NORTHERLY EXTENSION 105.0 FEET TO THE NORTH LINE OF THE SOUTH 510.03 FEET AFORESAID; THENCE SOUTH 88 DEGREES 10 MINUTES 00 SECONDS WEST ALONG SAID NORTH LINE 33.02 FEET TO THE WEST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 2 AFORESAID; THENCE NORTH 00 DEGREES 04 MINUTES 44 SECONDS EAST ALONG SAID WEST LINE 123.97 FEET; THENCE NORTH 88 DEGREES 20 MINUTES 37 SECONDS EAST 53.38 FEET; THENCE SOUTH 01 DEGREE 37 MINUTES 50 SECONDS EAST 10.36 FEET; THENCE NORTH 88 DEGREES 22 MINUTES 10 SECONDS EAST 147.54 FEET; THENCE NORTH 01 DEGREE 46 MINUTES 55 SECONDS WEST 9.17 FEET; THENCE NORTH 88 DEGREES 58 MINUTES 55 SECONDS EAST 5.48 FEET; THENCE NORTH 01 DEGREE 45 MINUTES 00 SECONDS WEST 0.20 FEET; THENCE NORTH 88 DEGREES 15 MINUTES 00 SECONDS EAST 89.36 FEET TO THE EAST LINE OF THE WEST 295.63 FEET AFORESAID; THENCE SOUTH 00 DEGREES 04 MINUTES 44 SECONDS WEST ALONG SAID EAST LINE 122.08 FEET TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

THE ADDITIONAL ESTATE OR INTEREST IN THE ABOVE DESCRIBED LAND:

OWNERSHIP OF THE IMPROVEMENTS LOCATED ON THE LEASEHOLD PROPERTY.

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EXHIBIT B

DESCRIPTION OF PERSONAL PROPERTY SECURITY

1. All machinery, apparatus, goods, equipment, materials, fittings, fixtures, chattels, and tangible personal property, and all appurtenances and additions thereto and betterments, renewals, substitutions, and replacements thereof, owned by Borrower, wherever situate, and now or hereafter located on, attached to, contained in, or used or usable in connection with the real property described in Exhibit A attached hereto and incorporated herein (the "Land"), and all improvements located thereon (the "Improvements") or placed on any part thereof, though not attached thereto, including all screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture and furnishings, heating, electrical, lighting, plumbing, ventilating, air-conditioning, refrigerating, incinerating and/or compacting plants, systems, fixtures and equipment, elevators, hoists, stoves, ranges, vacuum and other cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, ducts, conduits, dynamos, engines, compressors, generators, boilers, stokers, furnaces, pumps, tanks, appliances, equipment, fittings, and fixtures, beds, bureaus, chiffonniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, mini-bars, liquor and other drink dispensers, icemakers, kitchen equipment, radios, television sets, cable t.v. equipment, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, reservation systems and related computer software, medical equipment, potted plants, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, fittings, plants, apparatus, stoves, ranges, refrigerators, cutlery and dishes, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, washers and dryers, other customary hotel equipment, and all building equipment, materials and supplies of any nature whatsoever owned by Borrower, or in which Borrower has or shall have an interest, now or hereafter located upon the Land and the Improvements, or appurtenant thereto, or usable in connection with the present or future operation, enjoyment and occupancy of the Land and the Improvements, and the right, title and interest of Borrower in and to any of the personal property which may be subject to any security interests, as defined in the Uniform Commercial Code, as adopted and enacted by the state or states where any of the Property is located (the "U.C.C.") superior in lien to the lien of this Security Instrument and all proceeds and products of the above.

2. All funds (including any reserve funds held by Lender to provide a cumulative reserve for the replacement and repair of furniture, fixtures and equipment), accounts, deposits, instruments, documents, contract rights, general intangibles, notes, chattel paper arising from or by virtue of any transaction related to the Land, the Improvements, or any of the personal property described in this Exhibit B, including, without limitation, all reservations, security interests, contractual liens, security deposits, rents, issues, profits, royalties, receivables, use and occupancy charges, income and revenues, (including, without limitation, room rents, revenues, accounts and receivables derived from the use or occupancy of all or any portion of the Land, the Improvements, or any of the personal property described in this Exhibit B), income and other benefits now or later derived from any portion or use of the Land, the Improvements, or any of

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the personal property described in this Exhibit B, and all cash, security deposits, advance rentals, or similar payments relating thereto, including, without limitation, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease (to the extent of Borrower's interest in such subleases), license, concession or other grant of the right of the use and occupancy of property or rendering of services by Borrower or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease (to the extent of Borrower's interest in such sublease) and concession fees and rentals, parking fees and revenues, health club membership fees, food and beverage wholesale and retail sales (including mini-bar revenues), service charges, vending machine sales and proceeds, if any, from rent loss, business interruption or other loss of income insurance.

3. All permits, licenses, franchises, certificates, and other rights and privileges now held or hereafter acquired by Borrower in connection with the Land, the Improvements, or any of the personal property described in this Exhibit B.

4. All right, title, and interest of Borrower in and to the name and style by which the Land and/or the Improvements is known, including trademarks and trade names relating thereto.

5. All right, title, and interest of Borrower in, to, and under all plans, specifications, maps, surveys, reports, permits, licenses, architectural, engineering and construction contracts, books of account, insurance policies, and other documents of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale, or operation of the Land and/or the Improvements.

6. All interests, estates, or other claims or demands, in law and in equity, which Borrower now has or may hereafter acquire in the Land, the Improvements, or the personal property described in this Exhibit B.

7. All right, title, and interest owned by Borrower in and to all options to purchase or lease the Land, the Improvements, or any other personal property described in this Exhibit B, or any portion thereof or interest therein, and in and to any greater estate in the Land, the Improvements, or any of the personal property described in this Exhibit B.

8. All of the estate, interest, right, title, other claim or demand, both in law and in equity, including claims or demands with respect to the proceeds of insurance relating thereto, which Borrower now has or may hereafter acquire in the Land, the Improvements, or any of the personal property described in this Exhibit B, or any portion thereof or interest therein, and any and all awards made for the taking by eminent domain, or by any proceeding or purchase in lieu thereof, of the whole or any part of such property, including without limitation, any award resulting from a change of any streets (whether as to grade, access, or otherwise) and any award for severance damages.

9. All right, title, and interest of Borrower in and to all contracts, permits,

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certificates, licenses, approvals, utility deposits, utility capacity, and utility rights issued, granted, agreed upon, or otherwise provided by any governmental or private authority, person or entity relating to the ownership, development, construction, operation, maintenance, marketing, sale, or use of the Land and/or the Improvements, including all of Borrower's rights and privileges hereto or hereafter otherwise arising in connection with or pertaining to the Land and/or the Improvements, including, without limiting the generality of the foregoing, all water and/or sewer capacity, all water, sewer and/or other utility deposits or prepaid fees, and/or all water and/or sewer and/or other utility tap rights or other utility rights, any right or privilege of Borrower under any loan commitment, lease, contract, declaration of covenants, restrictions and easements or like instrument, developer's agreement, or other agreement with any third party pertaining to the ownership, development, construction, operation, maintenance, marketing, sale, or use of the Land and/or the Improvements.

AND ALL PROCEEDS AND PRODUCTS OF THE FOREGOING PERSONAL PROPERTY DESCRIBED IN THIS EXHIBIT B.

A PORTION OF THE ABOVE DESCRIBED GOODS ARE OR ARE TO BE AFFIXED TO THE REAL PROPERTY DESCRIBED IN EXHIBIT A.

THE BORROWER IS THE RECORD TITLE HOLDER AND OWNER OF A LEASEHOLD INTEREST IN THE REAL PROPERTY DESCRIBED IN EXHIBIT A.