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Doc#: 1023841038 Fee: \$52.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 08/26/2010 11:01 AM Pg: 1 of 9

INSTRUMENT PREPARED BY:
Allen C. Wesolowski
MARTIN & KARCAZES, LTD.
161 N. Clark Street
Suite 550
Chicago, Illinois 60601

MAIL TO:
ARCHER BANK
4970 S. Archer Ave.
Chicago, IL 60632

ST5117033
210030008

JUNIOR MORTGAGE

This mortgage made and entered into this 11th day of August, 2010, by and between KASS HOSPITALITY LLC, an Illinois limited liability company, (hereinafter referred to as the "mortgagor") and ARCHER BANK (hereinafter referred to as the "mortgagee"), which maintains an office and place of business at 4970 S. Archer Ave., Chicago IL 60632.

WITNESSETH, that for the consideration hereinafter stated, receipt of which is hereby acknowledged, the mortgagor does hereby mortgage, sell, grant, assign and convey unto the mortgagee, its successors and assigns, all of the following described property situated and being in the County of COOK, State of ILLINOIS, commonly known as 21609 Governors Highway, Matteson, Illinois, and legally described as follows:

THE WEST 50 FEET OF LOT 3, AND LOT 4, EXCEPT THAT PART DESCRIBED AS FOLLOWS:

THAT PART OF LOT 4 IN THE SUBDIVISION OF PART OF LOT 3 LYING NORTH OF THE NORTH RIGHT OF WAY LINE OF THE ELGIN, JOLIET AND EASTERN RAILROAD COMPANY AS LOCATED THROUGH SAID LOT 3 IN MILLER, LEWIS AND MILLER'S SUBDIVISION OF THE WEST 1/2 OF THE WEST 1/2 OF SECTION 26, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 4; THENCE ON AN ASSUMED BEARING OF SOUTH 89 DEGREES, 52 MINUTES, 36 SECONDS EAST ON THE NORTH LINE OF SAID LOT 4, A DISTANCE OF 27 FEET; THENCE SOUTHWESTERLY ON A CURVED LINE CONVEX TO THE NORTHWEST HAVING A RADIUS OF 55 FEET, A CHORD BEARING OF SOUTH 62 DEGREES, 40 MINUTES, 08 SECONDS WEST, A CHORD DISTANCE OF 30.37 FEET, A DISTANCE OF 30.76 FEET TO A POINT ON THE WEST LINE OF LOT 4, SAID POINT BEING 14 FEET SOUTH OF THE

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BOX 333-CT

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NORTHWEST CORNER OF SAID LOT 4; THENCE NORTH 00 DEGREES,05 MINUTES, 54 SECONDS WEST ON THE WEST LINE OF SAID LOT 4, A DISTANCE OF 14 FEET TO THE POINT OF BEGINNING;

ALSO

THE WEST 150 FEET OF LOT 5 AND ALL OF LOTS 6, 7, 8, 9, 10, 11 AND 12 IN THE SUBDIVISION OF PART OF LOT 3 LYING NORTH OF THE NORTH RIGHT OF WAY LINE OF THE ELGIN, JOLIET AND EASTERN RAILROAD COMPANY AS LOCATED THROUGH SAID LOT 3 IN MILLER, LEWIS AND MILLER'S SUBDIVISION OF THE WEST 1/2 OF THE WEST 1/2 OF SECTION 26, TOWNSHIP 35 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

PIN: 31-26-106-002-0000; 31-26-106-005-0000; 31-26-106-006-0000; 31-26-106-007-0000; 31-26-106-008-0000; 31-26-106-009-0000; 31-26-106-011-0000; and 31-26-106-029-0000.

together with and including all buildings, all fixtures including but not limited to all plumbing, heating, lighting, ventilating, refrigerating, incinerating, air conditioning apparatus, and elevators (the mortgagor hereby declaring that it is intended that the items herein enumerated shall be deemed to have been permanently installed as part of the realty), and all improvements now or hereafter existing thereon; the hereditaments and appurtenances and all other rights thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, all rights of redemption, and the rents, issues and profits of the above described property (provided, however, that the mortgagor shall be entitled to the possession of said property and to collect and retain the rents, issues, and profits until default hereunder). To have and to hold the same unto the mortgagee and the successors in interest of the mortgagee forever in fee simple or such other estate, if any, as is stated herein.

The mortgagor hereby releases and waives all rights under and by virtue of the homestead exemption laws of the State of ILLINOIS. The property in question is not homestead property.

The mortgagor covenants that it is lawfully seized and possessed of and has the right to sell and convey said property, that the same is free from all encumbrances except as hereinabove recited; and that it hereby binds itself and its successors in interest to warrant and defend the title aforesaid thereto and every part thereof against the claims of all persons whomsoever.

This instrument is given to secure (i) the payment of a promissory note dated AUGUST 11, 2010, in the principal sum of \$850,000.00, signed by SKAM HOSPITALITY LLC, an Illinois limited liability company (the "borrower"), including the principal thereof and interest and premium, if any, thereon and

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all extensions and renewals thereof in whole or in part and any and all other sums which may at any time be due and owing or required to be paid as provided for in the note or herein or in accordance with the terms and conditions of the loan agreement of even date herewith between the mortgagor and the mortgagee; and (ii) any other indebtedness of the mortgagor, borrower, Oak Lawn Hospitality Inc., Shashank Bhatt, Kishore Chugh, Devkaran Patel, or Mohammed Allahrakha, either jointly or singly, payable to the mortgagee, howsoever created, evidenced or arising, whether direct or indirect, absolute or contingent, now due or to become due, or now existing or hereafter arising (herein collectively called the "Indebtedness Hereby Secured"). At no time shall the principal amount of the Indebtedness Hereby Secured, not including the sums advanced in accordance herewith to protect the security of this mortgage, exceed the original amount of the note, plus Two Million (\$2,000,000.00) Dollars.

1. The mortgagor covenants and agrees as follows:

a. It will promptly pay the Indebtedness Hereby Secured.

b. It will pay all taxes, assessments, water rates, and other governmental or municipal charges, fines, or impositions, for which provision has not been made hereinbefore, and will promptly deliver the official receipts therefore to the mortgagee.

c. It will pay such expenses and fees as may be incurred in the protection and maintenance of said property, including the reasonable fees of any attorney employed by the mortgagee for the collection of any or all of the indebtedness hereby secured, or foreclosure by the mortgagee's sale, or court proceedings, or in any other litigation or proceeding affecting said property. Attorneys' fees reasonably incurred in any other way shall also be paid by the mortgagor.

d. For better security of the Indebtedness Hereby Secured, upon the request of the mortgagee, its successors or assigns, it shall execute and deliver a supplemental mortgage or mortgages covering any additions, improvements, or betterments made to the property hereinabove described and all property acquired by it after the date hereof (all in form satisfactory to the mortgagee). Furthermore, should the mortgagor fail to cure any default in the payment of a prior or inferior encumbrance on the property described by this instrument, the mortgagor hereby agrees to permit the mortgagee to cure such default, but the mortgagee is not obligated to do so; and such advances shall become part of the indebtedness secured by this instrument, subject to the same terms and conditions.

e. The rights created by this conveyance shall remain in full force and effect during any postponement or extension of the time of the payment of the

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Indebtedness Hereby Secured.

f. It will continuously maintain hazard insurance, of such type or types and in such amounts as the mortgagee may from time to time require on the improvements now or hereafter on said property, and will pay promptly when due any premiums thereof. All insurance shall be carried in companies acceptable to the mortgagee and the policies and renewals thereof shall be held by the mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to the mortgagee. In event of loss, the mortgagor will give immediate notice in writing to the mortgagee, and the mortgagee may make proof of loss if not made promptly by the mortgagor, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to the mortgagee instead of to the mortgagor and the mortgagee jointly, and the insurance proceeds, or any part thereof, may be applied by the mortgagee at its option either to the reduction of the Indebtedness Hereby Secured or to the restoration or repair of the property damaged or destroyed. In event of foreclosure of this mortgage, or other transfer of title to said property in extinguishment of the Indebtedness Hereby Secured, all right, title, and interest of the mortgagor in and to any insurance policies then in force shall pass to the purchaser or the mortgagee or, at the option of the mortgagee, may be surrendered for a refund. **Unless the mortgagor provides the mortgagee with evidence of the insurance coverage required herein, the mortgagee may purchase insurance at the mortgagor's expense to protect the mortgagee's interest in the property. This insurance may, but need not, protect the mortgagor's interests. The coverage that the mortgagee purchases may not pay any claim that the mortgagor makes or any claim that is made against the mortgagor in connection with the property. The mortgagor may later cancel any insurance purchased by the mortgagee, but only after providing the mortgagee with written evidence that the mortgagor has obtained insurance as required herein. If the mortgagee purchases insurance for the property, the mortgagor will be responsible for the costs of that insurance, including interest and any other charges the mortgagee may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Indebtedness Hereby Secured. The costs of the insurance may be more than the cost of insurance the mortgagor may be able to obtain on the mortgagor's own.**

g. It will keep all buildings and other improvements on said property in good repair and condition; will permit, commit, or suffer no waste, impairment, deterioration of said property or any part thereof; in the event of failure of the mortgagor to keep the buildings on said premises and those erected on said premises, or improvements thereon, in good repair, the mortgagee may make such repairs as in its discretion it may deem necessary for the proper preservation thereof; and the full amount of each and every such

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payment shall be immediately due and payable; and shall be secured by the lien of this mortgage.

h. It will not voluntarily create or permit to be created against the property subject to this mortgage any lien or liens inferior or superior to the lien of this mortgage without the written consent of the mortgagee; and further, that he will keep and maintain the same free from the claim of all persons supplying labor or materials for construction of any and all buildings or improvements now being erected or to be erected on said premises. This mortgage is subject and subordinate to an existing mortgage recorded as Document No. 0824749010 in favor of mortgagee to secure an original indebtedness of \$700,000.00.

i. It will not rent or assign any part of the rent of said mortgaged property or demolish, or remove, or alter any building without the written consent of the mortgagee.

j. All awards of damages in connection with any condemnation for public use of or injury to any of the property subject to this mortgage are hereby assigned and shall be paid to the mortgagee, who may apply the same to payment of the installments last due under said note, and the mortgagee is hereby authorized, in the name of the mortgagor, to execute and deliver valid acquittances thereof and to appeal from any such award.

k. The mortgagee shall have the right to inspect the mortgaged premises at any reasonable time.

l. It has never received any written notice of any violations of federal, state or local laws, ordinances, rules, regulations or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials and, to its actual knowledge, there have been no actions commenced or threatened by any party for noncompliance;

m. It shall keep or cause the premises to be kept free of Hazardous Materials in accordance with applicable environmental laws, and, without limiting the foregoing, it shall not cause or permit the premises to be used to generate, manufacture, refine, transport, treat, store, handle, dispose of, transfer, produce, or process Hazardous Materials, except in compliance with all applicable federal, state and local laws and regulations, nor shall it cause or permit, as a result of any intentional or unintentional act or omission on its part, or on the part of any tenant, subtenant or occupant, a release of Hazardous Materials onto the premises or onto any other property.

n. It shall:

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(i) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials, on, under, from or affecting the premises in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations and policies, to the reasonable satisfaction of the mortgagee, and in accordance with the orders and directives of all federal, state and local governmental authorities; and

(ii) defend, indemnify and hold harmless the mortgagee, its employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise (excluding consequential and punitive damages except to the extent the mortgagee may be subject to the same by reason of any third party claim), arising out of, or in any way related to: (A) the presence, disposal, release or threatened release of any Hazardous Materials on, over, under, from, or affecting the Premises or the soil, water, vegetation, buildings, personal property, persons or animals thereon; (B) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (C) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials; and/or (D) any violation of laws, orders, regulations, requirements or demands of government authorities, or any policies or requirements of the mortgagee, which are based upon or in any way related to such Hazardous Materials including, without limitation, reasonable attorneys' and consultants' fees, investigation and laboratory fees, court costs, and litigation expenses; provided that this indemnity shall not apply where the claim is attributable to acts of the mortgagee or its agents. The mortgagee shall tender defense of any claim to the mortgagor for handling with counsel of the mortgagor's selection, and the mortgagor shall control any remediation, provided the mortgagor has not defaulted under the note, mortgage or any other agreement described herein. This indemnity shall survive the release of the lien of the mortgage, foreclosure or deed in lieu thereof or by an other action, and this covenant shall survive such reconveyance or extinguishment; provided, however, this indemnity shall not apply to any fact, event or circumstance occurring after the property described herein has been transferred by the mortgagor, by foreclosure, deed in lieu of foreclosure or otherwise.

2. Default in any of the covenants or conditions of this instrument or of the note or of the loan agreement secured hereby, which, in the case of a monetary default, shall remain uncured for ten (10) days, or, in the case of a non-monetary default, shall remain uncured for thirty (30) days, shall, subject to the Illinois Mortgage Foreclosure Law, terminate the mortgagor's right to possession, use, and enjoyment of the property, at the option of the mortgagee or its assigns (it being agreed that the mortgagor shall have such right until default). Upon any such default, the mortgagee shall become the owner of all of

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the rents and profits accruing after default as security for the indebtedness secured hereby, with the right to possession, use and enjoyment of said property for the purpose of collecting such rents and profits, and to such extent this instrument shall constitute an assignment of rents in favor of mortgagee by mortgagor.

3. The mortgagor covenants and agrees that if it shall fail to pay the Indebtedness Hereby Secured or any part thereof when due, or shall fail to perform any covenant or agreement of this instrument or any note secured hereby, the entire Indebtedness Hereby Secured shall immediately become due, payable and collectible without notice, at the option of the mortgagee or assigns, regardless of the maturity, and the mortgagee or its assigns may before or after entry sell said property without appraisal (the mortgagor having waived and assigned to the mortgagee all rights of appraisal) pursuant to the laws of the State of Illinois governing the disposition of said property.

4. The proceeds of any sale of said property in accordance with the preceding paragraph shall be applied first to pay the costs and expenses of said sale, the expenses incurred by the mortgagee for the purpose of protecting and maintaining said property, and reasonable attorneys' fees; secondly, to pay the Indebtedness Hereby Secured; and thirdly, to pay any surplus or excess to the person or persons legally entitled thereto.

5. In the event said property is sold at a judicial foreclosure sale, and the proceeds are not sufficient to pay the Indebtedness Hereby Secured, the mortgagee will be entitled to a deficiency judgment for the amount of the deficiency without regard to appraisal.

6. In the event the mortgagor fails to pay any Federal, state, or local tax assessment, income tax or other tax lien, charge, fee, or other expense charged against the property the mortgagee is hereby authorized at its option to pay the same. Any sums so paid by the mortgagee shall be added to and become a part of the principal amount of the Indebtedness Hereby Secured, subject to the same terms and conditions applicable under this mortgage and any note or guaranty secured hereby. If the mortgagor shall pay and discharge the Indebtedness Hereby Secured, and shall pay such sums and shall discharge all taxes and liens and the costs, fees, and expenses of making, enforcing and executing this mortgage, then this mortgage shall be canceled and surrendered.

7. The covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all genders.

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8. No waiver of any covenant herein or of the obligation secured hereby shall at any time thereafter be held to be a waiver of the terms hereof or of the note secured hereby.

9. A judicial decree, order or judgment holding any provision of this instrument invalid or unenforceable shall not in any way impair or preclude the enforcement of the remaining provisions or portions of this instrument.

10. Any written notice to be issued to the mortgagor pursuant to the provisions of this instrument shall be addressed to the mortgagor at 21609 Governors Highway, Matteson, Illinois and any written notice to be issued to the mortgagee shall be addressed to the mortgagee at 4970 S. Archer Ave., Chicago, IL 60632.

11. The mortgagor, on behalf of it and each and every person or entity claiming by, through, or under it, hereby waives any and all rights of redemption, statutory or otherwise, without prejudice to the mortgagee's right to any remedy, legal or equitable, which the mortgagee may pursue to enforce payment or to affect collection of all or any part of the indebtedness secured by this mortgage, and without prejudice to the mortgagee's right to a deficiency judgment or any other appropriate relief in the event of foreclosure of this mortgage.

12. The undersigned person(s) executing this mortgage on behalf of the grantor represent and certify that they are duly elected officer(s) of grantor and have fully empowered by proper resolution of the Board of Directors of Mortgagor, to execute and deliver this mortgage; that the Mortgagor is a corporation in good standing and has full corporate capacity to convey the real estate described herein and that all necessary corporate action for the making of such conveyance has been taken and done.

IN WITNESS WHEREOF, the mortgagor has executed this instrument and the mortgagee has accepted delivery of this instrument as of the day and year aforesaid.

KASS HOSPITALITY LLC

By: 
Its Manager

