

UNOFFICIAL COPY



PREPARED BY AND UPON
RECORDATION RETURN TO:

Doc#: 1231816055 Fee: \$82.00
Eugene "Gene" Moore RHSP Fee:\$10.00
Cook County Recorder of Deeds
Date: 11/13/2012 12:19 PM Pg: 1 of 23

Winstead PC
2400 Hearst Tower
214 North Tryon Street
Charlotte, North Carolina 28202
Attention: Jeffrey J. Lee, Esq.

Property of Cook County Clerk's Office

HRH CHICAGO, LLC

(Lessor)

and

BECKER VENTURES, L.L.C.,

(Lessee)

to

LADDER CAPITAL FINANCE LLC, as assignee

(Lender)

ASSIGNMENT AND SUBORDINATION OF LEASE AND CONSENT OF LESSEE

Dated: As of November 8, 2012

Location: 230 N. Michigan Avenue
Chicago, Illinois

County: Cook County.

60F10 NCS-5704H9

UNOFFICIAL COPY

ASSIGNMENT AND SUBORDINATION OF LEASE AND CONSENT OF LESSEE

THIS ASSIGNMENT AND SUBORDINATION OF LEASE AND CONSENT OF LESSEE (this "**Assignment**") is made as of November 8, 2012, by **HRH CHICAGO, LLC**, an Illinois limited liability company ("**Lessor**") the master tenant of the Property (as defined herein), and **BECKER VENTURES, L.L.C.**, a Michigan limited liability company ("**Lessee**"), to **LADDER CAPITAL FINANCE LLC**, as assignee, a Delaware limited liability company, having an address at 345 Park Avenue, 8th Floor, New York, New York 10154 (together with its successors and assigns, collectively, "**Lender**").

WITNESSETH:

A. This Assignment is given in connection with a loan in the principal sum of Forty-Eight Million and No/100 Dollars (\$48,000,000.00) (the "**Loan**") made by Lender to Lessor and HRHC Delaware, LLC, a Delaware limited liability company (hereinafter individually and/or collectively, as the context requires, "**Borrower**") pursuant to that certain Loan Agreement dated as of the date hereof between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**") and evidenced by that certain Promissory Note dated the date hereof made by Borrower to Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Note**"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Loan Agreement.

B. The Note is secured by that certain Fee and Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated the date hereof (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Mortgage**") made by Borrower for the benefit of Lender, which grants Lender a first lien on the property encumbered thereby (the "**Property**") and Lessor's interest in the Lease (defined below).

C. Lessor, as landlord, and Lessee (as successor in interest to John Marks and Mark IV Realty, Inc. ("**Original Lessee**") pursuant to that certain Settlement Agreement and Release dated November 30, 2006 among Original Lessee, Borrower, and certain other parties), as tenant, have entered into that certain Lease Agreement dated October 25, 2001 (as the same may be amended, modified, renewed, extended or substituted from time to time, the "**Lease**"), a true and correct copy of which is attached hereto as Exhibit A.

D. Lender requires as a condition to the making of the Loan that Lessor assign the Lease to Lender and that Lessee consent to the Loan and agree with Lender and Borrower as to certain matters more particularly described herein.

E. Lessor is the master Tenant of the Property, and Lessee is the owner of an indirect equity interest in Borrower, and both will derive a substantial benefit from the making of the Loan.

UNOFFICIAL COPY

NOW THEREFORE, for good and valuable consideration the parties hereto agree as follows:

AGREEMENT

1. Assignment of Lease. As additional collateral security for the Loan, Lessor hereby conditionally transfers, sets over and assigns to Lender all of Lessor's right, title and interest in and to the Lease, said transfer and assignment to automatically become a present, unconditional assignment, at Lender's option, in the event of a default by Lessor under the Note, the Mortgage or any of the other Loan Documents, and the failure of Lessor to cure such default within any applicable grace period (an "**Event of Default**").

2. Lessee's Consent to Assignment. Lessee hereby consents to the assignment of Lessor's interest in the Lease by Lessor to Lender as additional security for the Loan. Lessee agrees that for so long as this Assignment remains in existence, Lessee will include in each sublease of the Lease an automatic attornment provision, applicable in the event that Lender succeeds to Lessor's interest in the Lease, so that all such sublessees will automatically recognize Lender or Lender's nominee or successor as the landlord under the Lease in the event such sublease is not terminated by Lender in connection therewith.

3. Subordination of Lease; Non-Disturbance. The Lease as the same may hereafter be modified, amended or extended, and all of Lessee's right, title and interest in and to the Property, are, and all rights and privileges of Lessee to any management fee paid thereunder are hereby and shall at all times be subject and subordinate to all the terms, conditions and provisions of the Mortgage and the lien thereof and to each and every advance made or hereafter made under the Mortgage, and to all renewals, modifications, consolidations, replacements, substitutions and extensions of the Mortgage, the Note and the other Loan Documents and the rights, privileges, and powers of Lender thereunder, so that at all times the Mortgage shall be and remain a lien on the Property prior and superior to the Lease for all purposes. Notwithstanding anything in the Lease to the contrary, Lender shall have no obligation of non-disturbance with respect to Lessee or the Lease; provided, however, that with respect to any sublease of the Lease that Lender has approved, Lender shall not disturb the tenancy of such sub-lessee so long as such sub-lessee is in compliance with all the terms and conditions of its sublease and has agreed in its sublease or by separate agreement to recognize and attorn to Lender or Lender's nominee following Lender's foreclosure or acceptance of a deed-in-lieu thereof and termination of the Lease.

4. Termination of Assignment. At such time as the Loan is paid in full and the Mortgage is released or assigned of record, this Assignment and all of Lender's right, title and interest hereunder with respect to the Lease shall terminate.

5. Lessee Estoppel. Lessor and Lessee represent and warrant that (a) the Lease is in full force and effect and has not been modified, amended or assigned by Lessor or Lessee other than pursuant to this Assignment, (b) neither party is in default under any of the terms, covenants or provisions of the Lease and neither party knows of any event which, but for the passage of time or the giving of notice or both, would constitute an event of default under the Lease, (c) neither party to the Lease has commenced any action or given or received any notice

UNOFFICIAL COPY

for the purpose of terminating the Lease prior to its expiration according to the terms of the Lease; (d) there is no outstanding allowance or other payment owed by Lessor to Lessee under the Lease; and (e) there is no security deposit outstanding with respect to the Lease.

6. Release from Liability. In the event Lender exercises any rights pursuant to this Assignment, Borrower and Lessee hereby release Lender from any liability, costs, damages or other obligations of Lender to Borrower or Lessee as a result of such exercise of rights including, without limitation, any liability for any security deposit or other advance payment made by Lessee under the Lease.

7. No Termination of Lease. Notwithstanding anything in the Lease to the contrary, there shall be no termination, cancellation, surrender, amendment or modification of the Lease so long as any portion of the Loan remains outstanding other than with the prior written consent of Lender, which consent may be given or withheld in Lender's sole and absolute discretion.

8. Lender's Right to Terminate. Notwithstanding anything contained in the Lease to the contrary, Lender, or Lessor at Lender's direction pursuant to the Loan Documents, shall have the right to terminate the Lease upon, or at any time after, (a) Lessee shall become insolvent or a debtor in a bankruptcy proceeding, (b) an Event of Default has occurred, or (c) a default has occurred under the Lease, by giving Lessee written notice of such termination. Lessee agrees not to look to Lender for any payments owed under the Lease at any time prior to Lender assuming the role of landlord under the Lease. In the event of any such termination, Lessee shall apply all rents, security deposits, issues, proceeds and profits of the Property in accordance with Lender's written directions to Lessee, which directions shall be in accordance with the terms and conditions of the Loan Documents.

9. Casualty and Condemnation. Lessee agrees that, notwithstanding any provision hereof or in the Lease to the contrary, the terms of the Loan Documents, including the Mortgage, shall govern with respect to the disposition of any insurance proceeds or eminent domain awards, and any obligations of Lessor to restore the Property.

10. Further Assurances. Lessor and Lessee further agree to (a) execute such affidavits and certificates as Lender shall reasonably require to further evidence the agreements contained herein, (b) on written request from Lender, furnish Lender with copies of any information relating to the Property or the Lease, and (c) cooperate with Lender's representative in any inspection of all or any portion of the Property or exercise any other right under the Loan Documents with respect to the Property. Lessee agrees that upon termination of the Lease, Lessee shall assign to Lessor, Lender or Lender's nominee, as directed by Lender, all of Lessee's interest in all subleases of the Lease, at Lessor's expense.

11. Governing Law. (a) **THIS ASSIGNMENT WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY LESSOR AND LESSEE AND ACCEPTED BY LENDER IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTE WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL**

UNOFFICIAL COPY

RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS ASSIGNMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, LESSOR AND LESSEE HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS ASSIGNMENT, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS AND THIS ASSIGNMENT, THE NOTE AND/OR THE OTHER LOAN DOCUMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER, LESSOR OR LESSEE ARISING OUT OF OR RELATING TO THIS ASSIGNMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND LESSOR AND LESSEE WAIVE ANY OBJECTIONS WHICH THEY MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND LESSOR AND LESSEE HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

12. Notices. All notices or other written communications hereunder shall be delivered in accordance with the Loan Agreement

13. WAIVER OF TRIAL BY JURY. EACH OF LESSOR AND LESSEE AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND FOREVER WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST, WITH REGARD TO THIS ASSIGNMENT, THE NOTE, THE MORTGAGE OR THE

UNOFFICIAL COPY

OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY LESSOR AND LESSEE AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. LENDER IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY LESSOR AND LESSEE.

14. Exculpation. The provisions of Section 11.22 of the Loan Agreement are hereby incorporated by reference into this Assignment to the same extent and with the same force as if fully set forth herein.

15. No Oral Change. This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Lessor, Lessee or Lender, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

16. Conflict of Terms. In case of any conflict between the terms of this Assignment and the terms of the Loan Agreement, the terms of the Loan Agreement shall prevail.

17. Successors and Assigns. This Assignment shall be binding upon and shall inure to the benefit of Lessor, Lessee and Lender and their respective successors and permitted assigns forever. Lender may sell, assign, pledge, participate, delegate or transfer, as applicable, to one or more Persons, all or any portion of its rights under this Assignment in connection with any assignment of the Loan and the Loan Documents. Any assignee or transferee of Lender shall be entitled to all the benefits afforded to Lender under this Assignment. Neither Lessor nor Lessee shall have the right to assign, delegate or transfer its rights or obligations under this Assignment without the prior written consent of Lender, as provided in the Loan Agreement, and any attempted assignment, delegation or transfer without such consent shall be null and void.

18. Inapplicable Provisions. If any provision of this Assignment is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of this Assignment, such provision shall be fully severable and this Assignment shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Assignment, and the remaining provisions of this Assignment shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Assignment, unless such continued effectiveness of this Assignment, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

19. Headings, Etc. The headings and captions of the various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

UNOFFICIAL COPY

20. Duplicate Originals, Counterparts. This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single agreement. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

21. General Definitions. Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Lessor" shall mean "each Lessor and any subsequent owner or owners of the Property or any part thereof or interest therein," the words "Lessee" shall mean "each Lessee and any subsequent holder or holders of the leasehold estate created by the Lease or any part thereof or interest therein", the word "Lender" shall mean "Lender and any subsequent holder of the Note, the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Loan Agreement," the word "Property" shall include any portion of the Property and any interest therein, the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorney's, paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder; whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

22. No Transfer. Without the consent of Lender, Lessee shall not sell, transfer, or assign any of Lessee's interest in the Lease.

23. Miscellaneous. Wherever pursuant to this Assignment it is provided that Lessor shall pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable legal fees and disbursements of Lender obtained outside law firms.

24. Survival of Agreement. Notwithstanding anything to the contrary contained herein, all provisions contained in this Assignment that pertain to the relationship of the Lessee to the Lender or the Lender's nominee in the event that the Lender or its nominee have succeeded to the interests of the Lessor as landlord under the Lease, the terms of this Assignment shall survive until such time as the Lender or its nominee is no longer the landlord under the Lease.

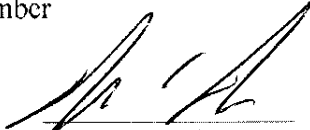
[NO FURTHER TEXT ON THIS PAGE]

UNOFFICIAL COPY

LESSOR:

HRH CHICAGO, LLC, an Illinois limited liability company

By: 230 N. Michigan Manager, Inc., a Delaware corporation, its managing member

By: 
Name: Charles E. Becker
Title: President

[CORPORATE SEAL]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF Michigan

COUNTY OF Wayne

The foregoing instrument was acknowledged before me this 6 day of November, 2012 by Charles E. Becker, the President of 230 N. Michigan Manager, Inc., a Delaware corporation, the managing member of HRH CHICAGO, LLC, an Illinois limited liability company, on behalf of the limited liability company.

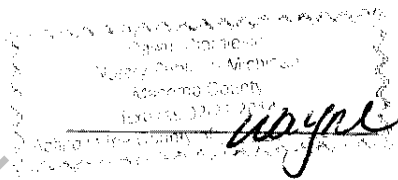
Property of Cook County Clerk's Office

Dawn J
Notary Public

Printed Name: Dawn Gordjevic

(SEAL)

My Commission Expires



UNOFFICIAL COPY

EXHIBIT A

LEASE

(Attached Hereto)

Property of Cook County Clerk's Office

A large, irregularly shaped area of the document is completely blacked out, indicating redacted information. The redaction covers approximately the middle third of the page's vertical space.

UNOFFICIAL COPY**LEASE AGREEMENT****COPY**

THIS LEASE AGREEMENT (this "Lease") is made this ^{15th} day of October, 2001, between HRH Chicago, LLC, an Illinois limited liability company, ("Landlord") and John Marks and Mark IV Realty, Inc., an Illinois corporation (collectively "Tenant").

RECITALS

A. Landlord is the tenant of certain real property located in the City of Chicago, State of Illinois, as described on Exhibit A to this Lease (the "Leasehold Estate");

B. The Leasehold Estate contains an existing building and other improvements, and Landlord will be causing its master lessor, St. George Hotel, L.L.C., an Illinois limited liability company ("St. George Hotel") to construct a hotel development project commonly known as the Hard Rock Hotel (the "Hotel").

C. Tenant desires to lease from Landlord and Landlord is willing to lease to Tenant all of the 24th, 37th and 38th floors of the Hotel as further described on Exhibit B to this Lease (the "Premises") in accordance with the terms and upon the conditions set forth herein.

NOW THEREFORE, in consideration of the foregoing and the agreements set forth herein and intending to be legally bound hereby, the parties agree as follows:

1. **PREMISES.** Landlord hereby leases to Tenant and Tenant leases for the duration of the Term and in accordance with the terms and upon the conditions set forth herein, the Premises, together with the right to use all the appurtenances thereto, including but not limited to, the exclusive use of the rooftop areas of the 24th floor. Tenant shall have all rights of ingress and egress for Tenant and its invitees and employees through the lobbies and elevators servicing the applicable floors, consistent with the operation of the Hotel which elevator may contain security provisions as specified by Tenant to limit access to authorized personnel.
2. **TERM.** The term of this Lease shall commence on the date the Landlord delivers the Premises to Tenant, in full accordance with the provisions set forth in Section 7 of this Lease and shall continue as long as Landlord or St. George Hotel, or any affiliate of Landlord or St. George Hotel, owns the Hotel. Upon any sale, transfer or other disposition of the Hotel by Landlord or St. George Hotel to an unaffiliated third party, this Lease shall terminate. This Lease shall also terminate at any such time that Niki Development, L.L.C., an Illinois limited liability company, ceases to be a member of St. George Hotel.
3. **NO RENT.** Tenant shall pay no rent to Landlord or any other party in consideration of Tenant's use and occupancy of the Premises throughout the Term.
4. **REAL PROPERTY TAXES.** Landlord shall pay for all real property taxes, assessments and fees levied upon and applicable to the Hotel and/or Premises.

UNOFFICIAL COPY

8. **RULES AND REGULATIONS.** Tenant shall observe and comply, and shall cause its subtenants, assignees, invitees, employees, contractors and agents to observe and comply, with such reasonable rules and regulations as Landlord may make from time to time. Landlord shall not be liable for failure of any person to obey such rules and regulations. Landlord shall not be obligated to enforce such rules and regulations against any person, and the failure of Landlord to enforce any such rules and regulations shall not constitute a waiver thereof or relieve Tenant from compliance therewith.

9. MAINTENANCE AND REPAIRS

A. Landlord's Obligations. Landlord, at Landlord's expense, shall keep in good order, condition and repair the foundations, exterior walls, exterior windows, and exterior roof of the Hotel and the Premises. Landlord shall also keep in good order, condition and repair all plumbing, heating, air conditioning, ventilation, electrical and lighting systems of the Hotel and the Premises. It shall be Landlord's obligation to arrange and pay for regular trash and refuse removal from the Premises.

B. Tenant's Obligations. Tenant, at Tenant's expense, shall keep in good order, condition and repair, the fixtures, interior walls, interior surface of exterior walls, ceilings, flooring, doors, plate glass, and skylights located within the Premises. Tenant at Tenant's expense shall install all fixtures and other improvements at the Premises other than those to be provided by Landlord under Section 7 of this Lease.

10. **ALTERATIONS.** Tenant shall have the right to make any and all alterations and improvements to, and decoration of, the interior of the Premises as appropriate in its sole judgment for its intended purposes, provided that, prior to the commencement of any such alterations or improvements, Landlord has approved in writing the plans and specifications, which consent shall not be unreasonably withheld. All such additions, improvements, or alterations (i) must not, individually or in the aggregate, lessen the fair market value of the Hotel (ii) shall be completed expeditiously in a good and workmanlike manner, and in compliance with all legal requirements and all insurance requirements, and (iii) shall become part of the Premises and subject to this Lease and upon termination, the property of Landlord (subject to the provisions of Section 16 of this Lease). Tenant's contractors shall have access to the freight elevators as reasonably necessary to permit completion of Tenant Improvements, provided that the Landlord's contractors shall have priority for Landlord's work.

11. **COVENANT AGAINST LIENS.** Nothing contained in this Lease shall authorize or empower Tenant to do any act which shall in any way encumber Landlord's or St. George Hotel's title to the Building, nor in any way subject Landlord's or St. George Hotel's title to any claims by way of lien or encumbrance whether by operation of law or by virtue of any expressed or implied contract of Tenant, and any claim to a lien upon the Hotel arising from any act or omission of Tenant shall attach only against Tenant's interest and shall in all respects be subordinate to the title of Landlord and that of St. George Hotel to the Hotel. If Tenant has not removed any such lien or encumbrance within thirty (30) days after written notice to Tenant by Landlord, Landlord may, but shall not be obligated to pay the amount necessary to remove such lien or encumbrance, without being responsible for making any investigation as to the validity or accuracy thereof, and the amount so paid, together with all costs and expenses (including

UNOFFICIAL COPY

reasonable attorneys' fees) incurred by Landlord in connection therewith, shall be due and payable immediately by Tenant. Tenant may, however, contest in good faith any such lien by appropriate legal proceedings diligently prosecuted, but only if Tenant shall furnish to Landlord such security or indemnity as the Landlord reasonably requires.

12. INSURANCE

A. Landlord Insurance. Landlord shall obtain and keep in force during the Term of this Lease a policy or policies of insurance covering Landlord's loss or damage to the Hotel, including the Premises, in the amount of the full replacement value thereof, providing protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief and special extended perils (all risk), which policy shall contain a clause pursuant to which the insurance carrier waives all right of subrogation against the Tenant with respect to losses payable under such policy.

B. Tenant Insurance. Tenant shall, at its expense, obtain and keep in force the following policies of insurance (i) commercial general liability insurance with respect to the Premises in an amount not less than \$1,000,000 single occurrence/\$2,000,000 combined and (ii) property loss and damage insurance covering the fixtures, equipment, or property of Tenant and leasehold improvements situated within the Premises. Tenant has provided Landlord with its certificate of insurance relative to such coverages which are acceptable to Landlord.

C. Waiver of Claims. Each of Tenant and Landlord, and their respective owners, directors, managers, officers and employees waive all claims for property damage against the other to the extent the loss or damage is covered by casualty insurance.

13. **FIRE AND CASUALTY.** If all or a substantial part of the Premises is rendered untenable by reason of fire or other casualty, Landlord may, at its option, either restore the Premises or terminate this Lease effective as of the date of such fire or other casualty. Landlord agrees to give Tenant written notice within sixty (60) days after the occurrence of any such fire or other casualty designating whether Landlord elects to so restore or terminate this Lease. If Landlord elects to restore, Landlord's obligation to restore the Premises shall be limited to restoring those improvements in the Premises existing as of the date of such fire or other casualty which were made at Landlord's expense and shall exclude any furniture, equipment, fixtures, additions, alterations or improvements in or to the Premises which were made at Tenant's expense.

14. **CONDEMNATION.** If the Premises are rendered untenable by reason of a condemnation (or by a deed given in lieu thereof), then either party may terminate this Lease by giving written notice of termination to the other party within thirty (30) days after such condemnation, in which event this Lease shall terminate effective as of the date of such condemnation. If such condemnation does not render the Premises untenable, this Lease shall continue in effect and Landlord shall promptly restore the portion not condemned to the extent reasonably possible to the condition existing prior to the condemnation. In such event, however, Landlord shall not be required to expend an amount in excess of the proceeds received by Landlord from the condemning authority. Landlord reserves all rights to compensation for any

UNOFFICIAL COPY

condemnation, except that Tenant make a separate claim for compensation for the termination of Tenant's leasehold interest under this Lease or interference with Tenant's business.

15. ASSIGNMENT AND SUBLETTING.

A. Tenant's Right to Assign or Sublet. Subject to the provisions of this Section 15, Tenant shall be permitted to assign this Lease or sublet all or any portion of the Premises. Tenant shall not be released from its obligation to perform all obligations to be performed by Tenant under this Lease in the event any such assignee or subtenant shall not comply with the terms and conditions of this Lease, unless such release is expressly agreed to by Landlord.

B. Right of First Refusal. In the event that Tenant has received a third-party offer for the assignment of this Lease or the sublease of the Premises (or a portion thereof) Tenant shall provide written notice to Landlord of such offer and shall in the same notice offer to assign or sublease the Premises (or a portion thereof) on the same terms and conditions of such third-party offer. The notice shall provide in reasonable detail the terms of such third-party offer as well as the name and address of the proposed assignee or subleasee. Landlord shall have thirty (30) days following the receipt of such notice to accept in writing the proposed assignment or sublease on the identical terms as contained in Tenant's written notice. If Landlord shall fail to accept in writing the assignment or sublease of the Premises (or a portion thereof), or shall expressly indicate its rejection of such offer, then Tenant may assign or sublease the Premises (or a portion thereof) on the same terms contained in the aforesaid notice, provided that such assignment or sublease occurs within ninety (90) days following the end of the aforesaid thirty (30) day right of first refusal period.

C. Landlord's Right to Assign. Landlord shall be permitted to assign this Lease, provided that the assignee under such an assignment agrees to comply with all of Landlord's obligations and duties under this Lease.

16. **SURRENDER.** Upon termination of the Term or Tenant's right to possession of the Premises, Tenant shall return the Premises to Landlord in good order and condition, ordinary wear and damage by fire or other insured casualty excepted. Landlord shall not require Tenant to remove any alterations that Tenant has made to the Premises in accordance with this Lease unless so specified at the time of Landlord's approval of plans and specifications for such alteration. Tenant shall remove its furniture, equipment, trade fixtures and all other items of personal property from the Premises at the time of the termination of the Term or Tenant's right to possession of the Premises. Tenant shall reimburse Landlord for any costs incurred to repair damages sustained to the Premises in connection with Tenant's removal of such items.

17. DEFAULTS AND REMEDIES.

A. Defaults. The occurrence of any of the following shall constitute a default (a "Tenant's Default") by Tenant under this Lease: (i) Tenant fails to perform any other provision of this Lease and such failure is not cured within thirty (30) days, except that if such failure cannot by its nature be cured within thirty (30) days and Tenant commences to cure such failure

UNOFFICIAL COPY

promptly after receipt of notice thereof and in all events diligently pursues the cure of such failure, then a Tenant's Default shall not be deemed to exist during said period of diligent curing; (ii) the leasehold interest of Tenant is levied upon or attached under process of law; or (iii) any voluntary or involuntary proceedings are filed by or against Tenant under any bankruptcy, insolvency or similar laws and, in the case of any involuntary proceedings, are not dismissed within sixty (60) days after filing.

B. Right of Re-Entry. Upon the occurrence of a Tenant's Default, Landlord may elect to terminate this Lease or, without terminating this Lease, terminate Tenant's right to possession of the Premises. Upon any such termination, Tenant shall immediately surrender and vacate the Premises and deliver possession thereof to Landlord. Tenant grants to Landlord the right to enter and repossess the Premises and to expel Tenant and any others who may be occupying the Premises and to remove any and all property therefrom, without being deemed in any manner guilty of trespass and without relinquishing Landlord's rights to rent or any other right given to Landlord hereunder or by operation of law.

C. Reletting. If Landlord terminates Tenant's right to possession of the Premises without terminating this Lease, Landlord may relet the Premises or any part thereof. In such case, Landlord shall use reasonable efforts to relet the Premises on such terms as Landlord shall reasonably deem appropriate which obligation shall not require Landlord to relet the Premises prior to letting other space under Landlord's control; provided, however, Landlord may first lease Landlord's other available space and shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant about such reletting.

D. Other Remedies. Any and all remedies set forth in this Lease: (i) shall be in addition to any and all other remedies Landlord may have at law or in equity; (ii) shall be cumulative and (iii) may be pursued successively or concurrently as Landlord may elect. The exercise of any remedy by Landlord shall not be deemed an election of remedies or preclude Landlord from exercising any other remedies in the future.

E. Default by Landlord. Landlord shall not be in default ("Landlord's Default") unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. Upon the occurrence of a Landlord's Default, Tenant shall be entitled to exercise any and all remedies available to it at law or in equity.

18. QUIET ENJOYMENT. As long as no Tenant Default exists, Tenant shall peacefully and quietly have and enjoy the Premises for the Term, free from interference by Landlord, subject, however, to the provisions of this Lease, and any mortgage.

19. SUBORDINATION, NONDISTURBANCE AND ATTORNMENT. This Lease is and shall be subject and subordinate to the lien of any mortgage, deed of trust, or other document

UNOFFICIAL COPY

of like nature, which now or at any time hereafter may be placed upon the Premises, and to any replacements, renewals, amendments, modifications, extensions or refinancing of any of the foregoing (unless the holder of any such mortgages or other like document requires in writing that this Lease be superior thereto); provided that the holder of such mortgage or other like document agrees in writing that so long as no Default is continuing, Tenant's right to quiet enjoyment under this Lease, shall not be interfered with or disturbed. Tenant agrees at any time hereafter, and from time to time within thirty (30) days after demand of Landlord, to execute and deliver to Landlord or St. George Hotel any instruments, releases or other documents that reasonably may be required to effect or confirm the subordination or superiority of this Lease to the lien of any such mortgage or like document. If any mortgagee shall succeed to the rights of Landlord or St. George Hotel under this Lease or to ownership of the Premises, whether through foreclosure or the delivery of a deed in lieu thereof, then upon the written request of such mortgagee, and provided that such mortgagee agrees in writing to assume and be bound by all of Landlord's obligations hereunder, Tenant shall attorn to and recognize such mortgagee as Tenant's landlord under this Lease, and shall execute and deliver any instrument that such mortgagee may reasonably request to evidence such attornment.

20. **NOTICES.** All notices and demands to be give by one party to the other party under this Lease shall be given in writing, mailed or delivered to Landlord or Tenant, as the case may be, at the address as either party may hereafter designate. Notices shall be delivered by hand or by United States certified or registered mail, postage prepaid, return receipt requested, or by a nationally recognized overnight air courier service. Notices shall be considered to have been given upon the earlier to occur of actual receipt or two (2) business days after posting in the United States mail.

21. **INDEMNITY BY LANDLORD.** Landlord agrees to defend, indemnify and hold Tenant harmless from and against any third party claims (including reasonable attorneys' fees), including but not limited to claims for personal injury or property damage asserted against Tenant, as a result of Landlord's negligence or willful misconduct.

22. **INDEMNITY, RELEASE BY TENANT.**

A. Regarding Landlord. Tenant agrees to defend, indemnify and hold Landlord harmless from and against any third party claims (including reasonable attorneys' fees), including but not limited to claims for personal injury or property damage, asserted against Landlord as a result of Tenant's negligence or willful misconduct or as a result of incidents occurring within the Premises during the term of this Lease. The foregoing indemnity by Tenant shall not extend to any claim caused by the Landlord's negligence or willful misconduct.

B. Regarding Fit-Out. Tenant hereby releases any claim or redress against St. George Hotel or Landlord, in any manner whatsoever, with respect to the Tenant fit-out contemplated under Section 7 of this Lease, including but not limited to any claims or redress regarding the quality of the fit-out or its adherence to plans and specifications, the failure to complete the fit-out by certain dates or any personal injury or property damage arising out of said fit-out. Tenant agrees to defend, indemnify and hold St. George Hotel and Landlord harmless

UNOFFICIAL COPY

from and against any third party claims (including reasonable attorneys fees) asserted against St. George Hotel or Landlord as a result of, or arising out of or in connection with, said fit-out.

23. **HOLD OVER.** In the event Tenant holds over after the termination of this Lease, Tenant shall pay to Landlord as rent an amount equal to 150% of the fair rental value of the Premises.

24. MISCELLANEOUS

A. Successors and Assigns. Each provision of this Lease shall extend to, bind and inure to the benefit of Landlord and Tenant and their respective legal representatives, successors and assigns, and all references herein to Landlord and Tenant shall be deemed to include all such parties. Tenant shall execute such attornment certification as reasonably requested by Landlord or Landlord's successor in interest.

B. Entire Agreement. This Lease and the exhibits attached hereto, which are hereby made a part of this Lease, represent the complete agreement between Landlord and Tenant; and Landlord has made no representations or warranties except as expressly set forth in this Lease. No modifications or amendment of or waiver under this Lease shall be binding upon Landlord or Tenant unless in writing signed by Landlord and Tenant.

C. Time of Essence. Time is of the essence of this Lease and each and all of its provisions.

D. Severability. The invalidity or unenforceability of any provision of this Lease shall not affect or impair any other provisions.

E. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Illinois.

F. Captions. The headings and titles in this Lease are for convenience only and shall have no effect upon the construction or interpretation of this Lease.

G. No Waiver. No receipt of money by Landlord from Tenant after termination of this Lease or after the service of any notice or after the commencing of any suit or after final judgment for possession of the Premises shall renew, reinstate, continue or extend the Term or affect any such notice or suit. No waiver of any default of Tenant shall be implied from any omission by Landlord to take any action on account of such default if such default persists or be repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated.

H. Limitation of Liability. Any liability of Landlord under this Lease shall be limited solely to its interest in the Hotel, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord.

UNOFFICIAL COPY

I. Dispute Resolution. In the event of any dispute between Landlord and Tenant under this Lease, the parties shall follow the deadlock resolution and arbitration provisions referenced in the Operating Agreement of Landlord's Managing Member provided, however, that Landlord's designated representative shall mean the designated representative of those members who are not affiliated with Tenant and Tenant's designated representative shall mean John Marks. The foregoing obligation to follow certain deadlock resolution and arbitration provisions shall not apply in the event of a Tenant's Default or a Landlord's Default under this Lease, upon which Landlord or Tenant, as the case may be, shall have all remedies available to it as set forth under this Lease.

J. Joint and Several Liability. John Marks and Mark IV Realty, Inc. are jointly and severally liable for the obligations and covenants of Tenant under this Lease.

K. Prohibited Use Clause. Tenant agrees that it shall not conduct operations within or otherwise utilize the Premises in a manner that would violate Tenant's Exclusive Right, as such term is defined under that certain Retail Lease Agreement of even date herewith between Landlord and Hard Rock Café International (USA), Inc. d/b/a Hard Rock Hotel Retail Store-Chicago Hotel.

[signature page follows]

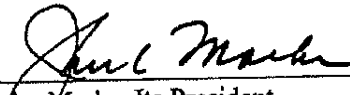
UNOFFICIAL COPY

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

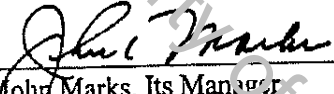
LANDLORD:
HRH CHICAGO, LLC

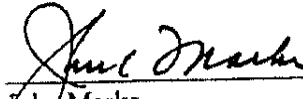
TENANT:
MARK IV REALTY, INC.

By: 230 North Michigan, LLC,
Its: Managing Member

By: 
John Marks, Its President

By: Marks/McDonald Management, LLC
Its: Authorized Member

By: 
John Marks, Its Manager


John Marks

PROPERTY OF COOK COUNTY CLERK'S OFFICE

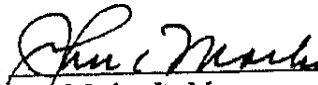
UNOFFICIAL COPY

NON-DISTURBANCE AGREEMENT BY MASTER LESSOR

The undersigned, St. George Hotel, L.L.C. is the master lessor of the Hotel under that certain Master Lease of even date herewith that it has entered into with Landlord as master lessee. In the event that Landlord defaults under said Master Lease or if Landlord's rights under said Master Lease otherwise terminate or expire, the undersigned agrees that it will recognize this Lease and will not terminate this Lease nor disturb any rights of Tenant hereunder so long as Tenant is not in default of any of the terms, covenants or conditions of this Lease.

ST. GEORGE HOTEL, L.L.C.

By: Niki Development, LLC,
Its: Authorized Member

By: 
John Marks, Its Manager

Property of Cook County Clerk's Office

UNOFFICIAL COPY

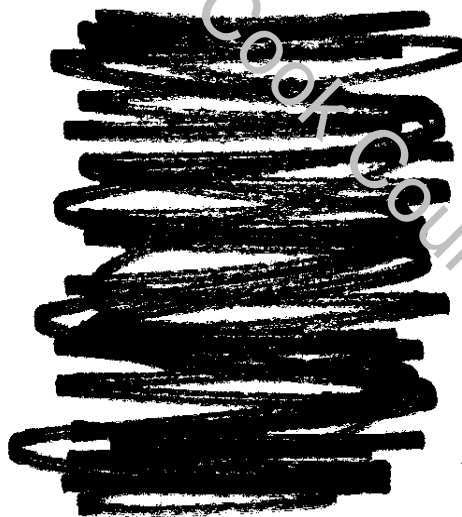
EXHIBIT A TO LEASE AGREEMENT

LEGAL DESCRIPTION

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

FIN: 17-10-303-024-0000

Commonly Known as: 230 N. Michigan Avenue
Chicago, Illinois

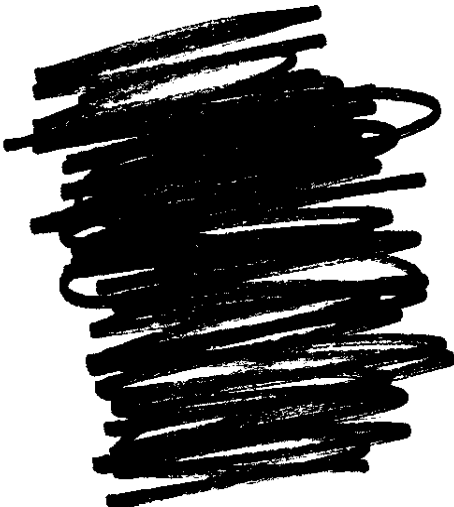
A large, irregular blacked-out redacted area covering approximately 10 lines of text in the middle-left section of the page.A large, irregular blacked-out redacted area covering approximately 10 lines of text in the bottom-right section of the page.

UNOFFICIAL COPY

EXHIBIT B TO LEASE AGREEMENT

PREMISES

The Premises are depicted in the plans and specifications prepared by Lucien LaGrange and Associates as listed in the drawing list dated as of 12/19/98 for a proposed Radisson St. George Hotel on the Leasehold Estate, as such plans and specifications are updated for purposes of the Hotel.



Property of Cook County Clerk's Office

UNOFFICIAL COPY

EXHIBIT A
"Legal Description"

Real property in the City of Chicago, County of Cook, State of Illinois, described as follows:

Lots 10, 11, 12, 13, 14 and 15 in Block 7 in Fort Dearborn Addition to Chicago in Section 10, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois.

230 N. Michigan Ave, Chicago IL

Tax No.: 17-10-303-024

Property of Cook County Clerk's Office

