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## Illinois Anti-Predatory Lending Database Program

### Certificate of Exemption



Doc#: 1526510061 Fee: \$220.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 09/22/2015 12:57 PM Pg: 1 of 92

**Report Mortgage Fraud**  
**800-532-8785**

The property identified as: **PIN: 17-16-204-022-0000**

**Address:**

**Street:** 100 West Monroe Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60603

**Lender:** 100 West Monroe Funding, LLC

**Borrower:** Integrated Clark Monroe LLC

**Loan / Mortgage Amount:** \$61,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 77/70 et seq. because it is commercial property.

**Certificate number:** 7B5E5F68-4B62-43BB-847E-71C2423A76CC

**Execution date:** 9/21/2015

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**THIS DOCUMENT PREPARED  
BY AND AFTER RECORDING  
RETURN TO:**

Stroock & Stroock & Lavan LLP  
200 South Biscayne Boulevard  
Suite 3100  
Miami, Florida 33131  
Attention: Ronald A. Kriss, Esq.

---

**INTEGRATED CLARK MONROE LLC**  
an Illinois limited liability company  
as mortgagor  
(Borrower)

To

**100 WEST MONROE FUNDING LLC,**  
a Delaware limited liability company,  
as mortgagee  
(Lender)

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**MORTGAGE,  
ASSIGNMENT OF LEASES AND RENTS  
AND SECURITY AGREEMENT**

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Dated: September 21, 2015  
Location: Cook County, Illinois

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Property of Cook County Clerk's Office

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THIS MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "**Security Instrument**") is made as of the 21st day of September, 2015, by **INTEGRATED CLARK MONROE LLC**, an Illinois limited liability company having an address at 181 West Madison Street, Suite 4700, Chicago, Illinois 60602 ("**Borrower**"), to **100 WEST MONROE FUNDING LLC**, a Delaware limited liability company, having an address at 270 Park Avenue, 9th Floor, New York, New York 10017 ("**Lender**").

## RECITALS:

A. Borrower is the owner of the fee simple estate in the Real Estate (as hereinafter defined).

B. Borrower, by its promissory note of even date herewith given to Lender, is indebted to Lender in the principal sum of **SIXTY-ONE MILLION AND NO/100 DOLLARS (\$61,000,000)** in lawful money of the United States of America (the note, together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the "**Note**"), 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.

C. Borrower desires to secure the payment and performance of the Obligations as defined in **Section 1.1** hereof.

## ARTICLE I

### GRANT OF SECURITY AND WARRANTY OF TITLE

1.1 **Property Mortgaged.** Borrower does hereby irrevocably mortgage, grant, bargain, sell, pledge, assign, warrant, transfer and convey with mortgage covenants to Lender, and grant a security interest to Lender in, the following property, rights, interests and estates now owned, or hereafter acquired by Borrower (collectively, the "**Property**") described in the following paragraphs (a) through (q), inclusive (collectively, the "**Granting Clause**");

(a) All that certain real property owned in fee simple absolute situated in the County of Cook, State of Illinois, and more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference, as the description of such property may be amended, modified or supplemented from time to time, together with all of the easements (in gross and/or appurtenant), rights-of-way, strips and gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights, air rights, development rights and powers, and located on the real estate described on **Exhibit A** or under, above or adjacent to the same or any part or parcel thereof, and all rights, privileges, franchises, tenements, hereditaments, and appurtenances and additions now or hereafter belonging or in any way appertaining thereto, and all of the estate, right, title, interest, claim and demand whatsoever of Borrower in or to such property, either at law or in equity, in possession or in expectancy, now owned or hereafter acquired (collectively, the "**Real Estate**");

(b) All structures, buildings and improvements of every kind and description now or at any time hereafter located or placed on the Real Estate, including, without limitation, those improvements known as the "**Hyatt Centric The Loop Chicago**", including, without

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limitation, all gas and electric fixtures, radiators, heaters, washing machines, dryers, refrigerators, ovens, engines and machinery, boilers, ranges, elevators and motors, plumbing and heating fixtures, antennas, carpeting and other floor coverings, water heaters, awnings and storm sashes, and cleaning apparatus which are or shall be attached to, contained in or used in connection with the Real Estate or said buildings, structures or improvements and all appurtenances and additions thereto and betterments, renewals, substitutions and replacements thereof (collectively, the "**Improvements**");

(c) To the extent the same are not Improvements, all fixtures, appliances, machinery, furniture, furnishings, decorations, tools and supplies, now owned or hereafter acquired or leased by Borrower, including, without limitation, radios, televisions, carpeting, telephones, cash registers, computers, lamps, glassware, restaurant and kitchen equipment, and all building materials and equipment hereafter situated on or about the Real Estate to be attached to or used in or in connection with the Improvements, including, without limitation, all heating, lighting, incinerating, waste removal and power equipment and fixtures, engines, pipes, tanks, motors, conduits, switchboards, security and alarm systems, plumbing, lifting, cleaning, fire prevention and fire extinguishing apparatus, refrigeration systems, washing machines, dryers, stoves, ranges, refrigerators, ventilating, and communications apparatus, air cooling and air conditioning apparatus, escalators, elevators, ducts and compressors, materials and supplies, beds, bureaus, chiffoniers, chests, chairs, desks, mirrors, bookcases, tables, rugs, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, food carts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, medical equipment, potted plants, fittings, plants, apparatus, laundry machines, engines, dynamos, motors, boilers, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, and other customary hotel equipment and all other goods, equipment, machinery, apparatus, chattels, tangible personal property, fixtures and fittings now owned or hereafter acquired by Borrower wherever located, together with all additions, replacements, substitutions, parts, fittings, accessions, attachments, accessories, modifications and alterations of any of the foregoing, and all warranties and guaranties relating to the foregoing (collectively, the "**Personal Property**");

(d) All minerals, flowers, shrubs, crops, trees, timber and other emblements or landscaping features now or hereafter serving the Real Estate or located on the Real Estate or under, above or adjacent to the same or any part or parcel thereof;

(e) All water, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights which are appurtenant to, located on, under or above or used in connection with the Real Estate or the Improvements, or any part thereof, whether now existing or hereafter created or acquired;

(f) All funds (including, all reserve funds), accounts (including, operating accounts), deposits, and other rights and evidence of rights to cash, now or hereafter created or held by Lender pursuant to this Security Instrument or any other of the Loan Documents (as

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hereinafter defined), including, without limitation, all funds now or hereafter on deposit with the Depository (as hereinafter defined) pursuant to Section 2.8, Section 2.14, Section 2.15, Section 2.16, and Article XI, of this Security Instrument;

(g) All the ground leases, leases, subleases, lettings, licenses, concessions, occupancy and surrender agreements of the Real Estate or the Improvements now or hereafter entered into, and all estates, rights, titles, liberties, privileges, interests, tenements, hereditaments and appurtenances, reversions and remainders whatsoever, in any way belonging, relating or appertaining to the Real Estate or any part thereof, or which shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Borrower, including without limitation, that certain Master Lease dated as of November 27, 2013, as amended, between Borrower, as Master Landlord, and MT Clark Monroe LLC, as Master Tenant, and all deposits, liens, security interests and other collateral given, pledged, or assigned to Borrower as security for the obligations of the tenant under said Master Lease, that certain Sublease dated as of November 27, 2013 between MT Clark Monroe LLC, an Illinois limited liability company, as sublandlord, and 100 Monroe Restaurant LLC, an Illinois limited liability company, as subtenant, and all deposits, liens, security interests and other collateral given, pledged, or assigned to said sublandlord as security for the obligations of the tenant under said Sublease, and that certain Sublease dated as of November 27, 2013 between MT Clark Monroe LLC, an Illinois limited liability company, as sublandlord, and 100 Monroe Rooftop LLC, an Illinois limited liability company, as subtenant, and all deposits, liens, security interests and other collateral given, pledged, or assigned to said sublandlord as security for the obligations of the tenant under said Sublease (collectively, the "Leases") and all rents (whether denoted as advance rent, minimum rent, percentage rent, additional rent or otherwise), maintenance payments, assessments, receipts, issues, income, royalties, profits, earnings, revenues, proceeds, bonuses, deposits (whether denoted as security deposits or otherwise), lease termination fees or payments, rejection damages, buy-out fees and any other fees made or to be made in lieu of rent, any award made hereafter to Borrower in any court proceeding involving any tenant, subtenant, lessee, licensee or concessionaire under any Leases in any bankruptcy, insolvency or reorganization proceedings in any state or federal court, and all other payments, rights and benefits of whatever nature from time to time arising from the use or enjoyment of all or any portion of the Real Estate or the Improvements or from any Lease, or any license, concession, occupancy agreement or other agreement pertaining thereto or arising from any of the Contracts (as hereinafter defined) or any of the General Intangibles (as hereinafter defined), including, without limitation, (i) rights to payment earned under Leases for space in the Improvements for the operation of ongoing businesses, if any, and (ii) all other income, consideration, issues, accounts, profits or benefits of any nature arising from the ownership, possession, use or operation of the Property, including, without limitation, all revenues, receipts, income, receivables and accounts relating to or arising from rentals, rent equivalent income, income and profits from vending machines, telephone and television systems, laundry facilities, 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 agent, operator or manager of the Property 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,



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lease, sublease and concession fees and rentals, Borrower's right and interest in health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance, and the provision or sale of other goods and services, including those now existing or hereafter created, substitutions therefor, and proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) (collectively, the "**Rents and Profits**") and all cash or securities deposited to secure performance by the tenants, subtenants, lessees or licensees, as applicable, of their obligations under any such Leases, whether said cash or securities are to be held until the expiration of the terms of said Leases or applied to one or more of the installments of rent coming due prior to the expiration of said terms;

(h) All contracts and agreements (including any license or franchise agreements) now or hereafter entered into relating to any part of the Real Estate or the Improvements or any other portion of the Property (collectively, the "**Contracts**") and all revenue, income and other benefits thereof, including, without limitation, management agreements, operating agreements, parking agreements, masterplan documents, condominium documents, declarations, reciprocal easement agreements, development agreements, service contracts, maintenance contracts, equipment leases, personal property leases, agreements relating to collection of receivables or the use of customer or tenant lists or other information, and any contracts or documents relating to construction on any part of the Real Estate or the Improvements or other portions of the Property (including, without limitation, plans, drawings, surveys, tests, reports, bonds and governmental approvals) or to the management or operation of any part of the Real Estate or the Improvements; and that certain Hotel Management Agreement by and between Borrower and Interstate Management Company, LLC., a Delaware limited liability company (the "**Hotel Manager**"), dated as of October 1, 2013, as assigned by Borrower to MT Clark Monroe LLC, an Illinois limited liability company, by Assignment of Management Agreement, Consent and Agreement of Manager dated as of November 27, 2013, and as amended, modified or extended, the "**Hotel Management Agreement**";

(i) All present and future monetary deposits given to any public or private utility with respect to utility services furnished to any part of the Real Estate or the Improvements;

(j) All present and future funds, goods, accounts, instruments, accounts receivable, documents, causes of action, claims, general intangibles (including without limitation, reservation systems, copyrights, trademarks, trade names, intellectual property rights, servicemarks and symbols) now or hereafter used in connection with any part of the Real Estate or the Improvements, all names by which the Real Estate or the Improvements may be operated or known, subject, in all respects, to the express terms of the Franchise Agreement (as defined herein), all rights to carry on business under such names, and all rights, interest and privileges which Borrower has or may have as developer or declarant under any covenants, restrictions or declarations now or hereafter relating to the Real Estate or the Improvements and all notes or chattel paper now or hereafter arising from or by virtue of any transactions related to the Real Estate or the Improvements, and all customer or tenant lists, other lists and business information relating in any way to the Real Estate, the Improvements, other portions of the Property or the use thereof (collectively, the "**General Intangibles**");

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(k) All water taps, sewer taps, certificates of occupancy, permits (including any building permits and approvals), licenses (including liquor licenses, hotel or innkeeper's licenses and licenses to use trade names), franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Real Estate or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Real Estate or the Improvements; and that certain Hyatt Hotel Franchise Agreement by and between Borrower and Hyatt Franchising L.L.C., a Delaware limited liability company (the "**Franchisor**"), dated July 3, 2013, as amended, modified or extended (the "**Franchise Agreement**"), subject, in all respects, to the terms of that certain Franchise Comfort Letter from Franchisor in favor of Lender dated as of the date hereof (the "**Franchise Comfort Letter**");

(l) All building materials, supplies and equipment now or hereafter placed on the Real Estate or in the Improvements, or to be attached to or used in connection with the Improvements, and all architectural renderings, models, drawings, plans, specifications, studies and data now or hereafter relating to the Real Estate or the Improvements;

(m) All right, title and interest of Borrower in any insurance policies or binders now or hereafter relating to and to the extent of the Property (whether or not Borrower is required to carry such insurance by Lender hereunder), including, without limitation, any unearned premiums thereon, proceeds of hazard, title and other insurance and proceeds (including, without limitation, those proceeds received pursuant to any sales or rental agreements of Borrower in respect of the property described in these Granting Clauses), and all judgments, damages, awards, settlements and compensation (including, without limitation, interest thereon) heretofore or hereafter made to the present and all subsequent owners of the Real Estate and/or any other property or rights conveyed or encumbered hereby for any injury to or decrease in the value thereof for any reason;

(n) All proceeds, products, substitutions, and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation or other awards, any awards for any change of grade of streets and all refunds, rights or credits arising from a reduction in real estate taxes, assessments and/or other Impositions (as hereinafter defined) charged against the Real Estate or the Improvements as a result of tax certiorari or any other applications or proceedings for reduction of any Impositions;

(o) All other or greater rights and interests of every nature in the Real Estate or the Improvements and in the possession or use thereof and income therefrom, whether now owned or hereafter acquired by Borrower;

(p) All extensions, additions, improvements, betterments, renewals and replacements, substitutions, or proceeds of any of the foregoing, and all inventory, accounts, chattel paper, documents, instruments, equipment, fixtures, farm products, consumer goods, general intangibles and other property of any nature constituting proceeds acquired with proceeds of any of the property described hereinabove; and

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(q) any and all other rights of Borrower in and to the items set forth in clauses (a) through (p) above.

## FOR THE PURPOSE OF SECURING:

(1) The indebtedness (hereinafter sometimes referred to as the "Loan") evidenced by the Note in the original principal amount of **SIXTY-ONE MILLION DOLLARS (\$61,000,000)**, together with interest, fees, late charges and any and all other amounts as provided in the Note, this Security Instrument and the other Loan Documents (including, without limitation, interest at the Default Rate and any Late Charges (as such terms are defined in the Note));

(2) The full and prompt payment and performance of all of the provisions, agreements, covenants and obligations herein contained and contained in any other agreements, documents or instruments now or hereafter evidencing, securing or otherwise relating to the indebtedness evidenced by the Note;

(3) Any and all additional advances made by Lender to protect or preserve the Property or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Borrower's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents; and

(4) Any and all other indebtedness and obligations now owing or which may hereafter be owing by Borrower or any other Borrower Party (as hereinafter defined) to Lender arising from, in connection with or in any way relating to the Loan and/or any of the Property, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, consolidations, replacements and extensions thereof.

All of the indebtedness and other obligations and matters referred to in Paragraphs (1) through (4) above are herein sometimes referred to collectively as the "Obligations". The Note, this Security Instrument and such other agreements, documents and instruments executed and/or delivered in connection with the Loan, including, without limitation, each of the following documents, each dated as of the date hereof:

(5) Assignment of Leases and Rents from Borrower, as assignor, to Lender, as assignee (the "Assignment of Leases and Rents");

(6) Guaranty from **John T. Murphy** ("Indemnitor") in favor of Lender (the "Guaranty");

(7) Environmental Indemnity Agreement from Borrower and Indemnitor in favor of Lender (the "Environmental Indemnity");

(8) Assignment of Hotel Management Agreement from Borrower in favor of Lender and consented to by Hotel Manager (the "Assignment of Hotel Management Agreement");

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(9) Assignment of Franchise Agreement from Borrower in favor of Lender (the "**Assignment of Franchise Agreement**");

(10) Compliance with Law Certificate from Borrower in favor of Lender;

(11) No Adverse Change Certificate from Borrower in favor of Lender;

(12) Diligence Delivery Certificate from Borrower in favor of Lender;

(13) Property Leases Certificate from Borrower in favor of Lender; and

(14) Uniform Commercial Code ("**UCC**") Financing Statements by Borrower, as debtor, in favor of Lender, as secured party;

together with any and all renewals, amendments, extensions and modifications of any of the foregoing, are sometimes collectively referred to herein as the "**Loan Documents**". Each of Borrower and Indemnitee are sometimes referred to herein, individually, as a "**Borrower Party**", and collectively, as the "**Borrower Parties**").

TO HAVE AND TO HOLD the above granted and described Property unto and to the use and benefit of Lender, and the successors and assigns of Lender, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall pay to Lender the Obligations at the time and in the manner provided in the Note and this Security Instrument, shall perform the Obligations as set forth in this Security Instrument and shall abide by and comply with each and every covenant and condition set forth herein and in the Note, these presents and the estate hereby granted shall cease, terminate and be void.

1.2 **Warranty of Title.** Borrower hereby represents, warrants, covenants and certifies: (a) Borrower has good, marketable and insurable, indefeasible fee simple absolute title to the Real Estate and Improvements located thereon, free and clear of all Liens (as hereinafter defined), subject only to those exceptions shown in the title insurance policy insuring the lien of this Security Instrument (the "**Permitted Encumbrances**"); (b) Borrower has and covenants that it will continue to have full power and lawful authority to encumber and convey the Property as provided herein; (c) this Security Instrument is, and Borrower covenants that this Security Instrument will continue to remain a valid and enforceable first priority lien on and security interest in the Property; (d) other than Hotel Manager's right to receive management fees pursuant to the terms of the Hotel Management Agreement (which rights are subject to the Assignment of Hotel Management Agreement), Hotel Manager has no interest in any of the Property or the Collateral (as hereinafter defined); and (e) Borrower hereby warrants and will, so long as this Mortgage remains outstanding, warrant and defend such title and the validity, enforceability and priority of the lien and security interest hereof against the claims of all Persons and parties whomsoever.

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## ARTICLE II COVENANTS AND REPRESENTATIONS AND WARRANTIES OF BORROWER

2.1 General Covenants, Representations and Warranties. Borrower covenants, represents and warrants to Lender as follows:

(a) Payment of Obligations. Borrower shall punctually pay when due and perform the Obligations as and when due in accordance with the provisions set forth in this Security Instrument, the Note and the other Loan Documents.

(b) Authority; Continuation of Existence. Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois and has all necessary licenses, authorizations, registrations and/or approvals, and full power and authority, to own the Property. Borrower will maintain in good standing its existence, franchises, rights and privileges under the laws of the State of Illinois and its rights to transact business in the State of Illinois and will not, without the prior written consent of Lender, (i) dissolve, terminate or otherwise dispose, directly or indirectly or by operation of law, of all or substantially all of its assets or (ii) change its name or its legal structure or organizational form from a limited liability company organized under the laws of the State of Illinois.

(c) Further Assurances Borrower will, at Borrower's sole cost and expense, (i) promptly correct any defect or error which may be discovered in the contents of this Security Instrument or any other Loan Documents or any other agreement to which Borrower is a party or in the execution, acknowledgment or recordation thereof, and (ii) promptly do, execute, acknowledge and deliver, any and all such further acts, mortgages, security deeds, conveyances, deeds of trust, security agreements, assignments, estoppel certificates, financing statements and continuations thereof, assignments of rents or leases, notices of assignment, transfers, certificates, assurances and other instruments as Lender may reasonably require from time to time in order to carry out more effectively the purposes of this Security Instrument, the rights or interests covered or intended to be covered hereby, to perfect and maintain said lien and security interest, and to better assure, convey, grant, protect, continue, assign, transfer and confirm unto Lender the rights granted or intended to be granted to Lender hereunder or under any other instrument executed in connection with this Security Instrument or which Borrower may be or become bound to confirm, convey, bargain, sell, release, warrant, transfer, mortgage, pledge, grant, assure, set over or assign to Lender in order to carry out the intention or facilitate the performance of the provisions of this Security Instrument.

(d) Recordation and Re-Recordation of Security Instrument. Borrower will, at the request of Lender, promptly record and re-record, file and refile and register and re-register this Security Instrument, any financing or continuation statements and every other instrument in addition or supplemental to any thereof that shall be required by any present or future law in order to perfect and maintain the validity, effectiveness and priority of this Security Instrument and the lien and security interest intended to be created hereby, or to subject after-acquired property of Borrower to such lien and security interest, in such manner and places and within such times as may be necessary to accomplish such purposes and to preserve and protect the rights and remedies of Lender. Borrower will furnish to Lender evidence satisfactory to Lender of every such recording, filing or registration. Lender may, at Borrower's sole expense, file

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copies or reproductions of this instrument as financing statements at any time and from time to time at Lender's option without further authorization from Borrower. It is further agreed that Borrower hereby 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 and filing, registering or recording for and in the name of Borrower of any of the documents or instruments referred to in this **Section 2.1**.

(e) **Defense of Title and Litigation**. If the lien, security interest, validity, enforceability or priority of this Security Instrument, or if title or any of the rights of Borrower or Lender in or to the Property, shall be endangered or questioned, or shall be attacked directly or indirectly, or if any action or proceeding is instituted against Borrower or Lender with respect thereto, Borrower will promptly notify Lender thereof and will diligently cure any defect which may be developed or claimed, and will take all necessary and proper steps for the defense of such action or proceeding, including, without limitation, the employment of counsel, the making of a demand for such defense under Borrower's title insurance policy, the prosecution or defense of litigation and, subject to Lender's prior written approval, the compromise, release or discharge of any and all adverse claims. Lender (whether or not named as a party to such actions or proceedings) is hereby authorized and empowered (but shall not be obligated) to take such additional steps as it may deem reasonably necessary or proper for the defense of any such action or proceeding for the protection of the lien, security interest, validity, enforceability or priority of this Security Instrument or of such title or rights, including the employment of counsel, the prosecution or defense of litigation, the compromise, release or discharge of such adverse claims, the purchase of any tax title and the removal of such prior liens and security interests. Borrower shall, on demand, pay or reimburse Lender for all reasonable expenses (including attorneys' fees and disbursements) incurred by it in connection with the foregoing matters. All such reasonable costs and expenses of Lender, until paid or reimbursed by Borrower, shall be part of the Obligations and shall be and shall be deemed to be secured by this Security Instrument. It is further agreed that Borrower hereby 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 taking of such steps as may be necessary or proper in the sole discretion of Lender with respect to the matters referred to in this **Section 2.1(e)**.

(f) **SPE Covenants**. Borrower:

(1) has not owned, does not own and will not own any asset or property other than (i) the Property and (ii) incidental personal property necessary for the ownership, management or operation of the Property.

(2) has not engaged, does not engage, and will not engage in any business other than the ownership, management and operation of the Property and Borrower will conduct and operate its business as presently conducted and operated.

(3) has not entered and is not a party to and will not enter into or be a party to any contract or agreement with any Affiliate of Borrower, any constituent party of Borrower or any Affiliate of any constituent party, except in the ordinary course of business and on terms and conditions that are disclosed to Lender in advance and that are intrinsically fair,

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commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties other than any such party.

(4) has not made and will not make any loans or advances to any Person (including any affiliate or constituent party), and has not acquired and shall not acquire obligations or securities of its affiliates.

(5) is and intends to remain solvent and Borrower has paid and will pay its debts and liabilities (including, as applicable, shared personnel and overhead expenses) from net operating income and available reserve funds, as the same shall become due; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

(6) has done or caused to be done and will do all things necessary to observe organizational formalities and preserve its existence, and Borrower will not, nor will Borrower permit any SPC Party (as hereinafter defined) to, (i) terminate or fail to comply with the provisions of its organizational documents, or (ii) unless Lender has consented, amend, modify or otherwise change its partnership certificate, partnership agreement, articles of incorporation and bylaws, operating agreement, trust or other organizational documents.

(7) has maintained and will maintain all of its accounts, books, records, financial statements and bank accounts separate from those of its Affiliates and any other Person. Borrower's assets have not been and will not be listed as assets on the financial statement of any other Person; provided, however, that Borrower's assets may be included in a consolidated financial statement of its affiliates if (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of Borrower and such affiliates and to indicate that Borrower's assets and credit are not available to satisfy the debts and other obligations of such affiliates or any other Person, and (ii) such assets shall be listed on Borrower's own separate balance sheet. Borrower has and will file its own tax returns (to the extent Borrower is required to file any such tax returns) and will not file a consolidated federal income tax return with any other Person. Borrower has maintained and shall maintain its books, records, resolutions and agreements as official records.

(8) has been and will be, and has held and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of Borrower or any constituent party of Borrower), has corrected and shall correct any known misunderstanding regarding its status as a separate entity, has conducted and shall conduct business in its own name, has not identified and shall not identify itself or any of its Affiliates as a division or part of the other, and has maintained and shall maintain and utilize separate stationery, invoices and checks bearing its own name.

(9) has maintained and intends to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

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(10) has not, nor has any constituent party sought or will seek or effect the liquidation, dissolution, winding up, consolidation or merger, in whole or in part, of Borrower.

(11) has not commingled and will not commingle the funds and other assets of Borrower with those of any Affiliate or constituent party or any other Person, and has held and will hold all of its assets in its own name.

(12) has maintained and will maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or constituent party or any other Person.

(13) has not assumed or guaranteed or become obligated for the debts of any other Person and has not held itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person, and Borrower will not assume or guarantee or become obligated for the debts of any other Person and does not and will not hold itself out to be responsible for or have its credit available to satisfy the debts or obligations of any other Person.

(14) has not permitted and will not permit any Affiliate or constituent party independent access to its bank accounts.

(15) has paid and shall pay the salaries of its own employees (if any) from its own funds and has and shall maintain a sufficient number of employees (if any) in light of its contemplated business operations; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

(16) has compensated and shall compensate each of its consultants and agents from its funds for services provided to it and pay from its own assets all obligations of any kind incurred; provided, however, that the foregoing shall not require any direct or indirect member, partner or shareholder of Borrower to make any additional capital contributions to Borrower.

(17) has not, and without the unanimous consent of all of its members, partners, directors or managers (including each Independent Manager (as hereinafter defined)) will not, take any action that might reasonably be expected to cause Borrower to become insolvent.

(18) has allocated and will allocate fairly and reasonably any shared expenses, including shared office space.

(19) except in connection with the Loan, has not pledged and will not pledge its assets for the benefit of any other Person.

(20) either (i) has no, and will have no, obligation to indemnify its officers, directors, managers, members, shareholders or partners, as the case may be, or (ii) if it has any such obligation, such obligation is fully subordinated to the Obligations and will not



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constitute a claim against Borrower if cash flow in excess of the amount required to pay the Obligations is insufficient to pay such obligation.

(21) will consider the interests of Borrower's creditors in connection with all limited liability company or limited partnership actions.

(22) except as provided in the Loan Documents, has not and will not have any of its obligations guaranteed by any Affiliate.

(23) in its organizational documents shall provide that Borrower shall have (and Borrower shall at all times cause there to be) at least one general partner or managing member of Borrower (each, an "SPC Party") which shall be a Delaware limited liability company whose sole asset is its interest in Borrower, and each such SPC Party:

(i) will cause Borrower to comply with each of the representations, warranties and covenants contained in this Section 2.1(f);

(ii) will at all times comply with each of the representations, warranties and covenants contained in this Section 2.1(f) (other than subsections (1), (2), (4), and (25) of this Section 2.1(f)) as if such representation, warranty or covenant was made directly by such SPC Party;

(iii) has not owned does not own and will not own any asset or property other than (A) its interest in Borrower and (B) incidental personal property necessary for the ownership of such interest;

(iv) has not and will not engage in any business or activity other than owning an interest in Borrower and acting as the general partner of Borrower; and

(v) has not and will not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation) other than unsecured trade payables incurred in the ordinary course of business related to the ownership of an interest in Borrower that (A) do not exceed at any one time \$10,000.00, and (B) are paid within thirty (30) days after the date incurred.

Borrower's organizational documents shall provide that upon the withdrawal or the disassociation of an SPC Party from Borrower, Borrower shall immediately appoint a new SPC Party whose certificate of formation and limited liability company agreement are substantially similar to those of such SPC Party.

(24) The organizational documents of Borrower shall provide that as long as any portion of the Obligations remain outstanding, Borrower will not:

(i) dissolve, merge, liquidate or consolidate, except as provided in clause (25)(i) below;

(ii) except in connection with a sale or other transfer permitted under the Loan Documents, sell all or substantially all of its assets;

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(iii) amend its organizational documents with respect to the matters set forth in this Section 2.1(f), without (A) the prior written consent of Lender, (B) the affirmative vote of each SPC Party and (C) the affirmative vote of each Independent Manager of each SPC Party; or

(iv) without the affirmative vote of each of its members or partners, and without the affirmative vote of each Independent Manager of each SPC Party, take any Material Action with respect to itself or to any other entity in which it has a direct or indirect legal or beneficial ownership interest. For the purposes of this clause (iv) "Material Action" shall mean with respect to any Person, to institute proceedings to have such Person be adjudicated bankrupt or insolvent, or consent to the institution of bankruptcy or insolvency proceedings against such Person or file a petition seeking, or consent to, reorganization or relief with respect to such Person under any applicable federal, state, local or foreign law relating to bankruptcy, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of such Person or a substantial part of its property, or make any assignment for the benefit of creditors of such Person, or admit in writing such Person's inability to pay its debts generally as they become due, or declare or effectuate a moratorium on the payment of any obligation, or take action in furtherance of any such action.

(25) The organizational documents of Borrower shall provide that as long as any portion of the Obligations remain outstanding,

(i) Borrower will dissolve only upon the bankruptcy of each SPC Party;

(ii) the vote of a majority-in-interest of the remaining members or partners of Borrower is sufficient to continue the life of the limited liability company or partnership in the event of such bankruptcy of the SPC Party; and

(iii) if the vote of a majority-in-interest of the remaining members or partners of Borrower to continue the life of the limited liability company or limited partnership following the bankruptcy of the SPC Party is not obtained, Borrower may not liquidate the Property without the prior written consent of Lender for as long as the Loan is outstanding.

(26) The organizational documents of each SPC Party shall provide that there shall at all times be (and each SPC Party shall at all times cause there to be) at least one (1) duly appointed manager (each, an "**Independent Manager**") of such SPC Party:

(i) who shall be a natural Person who is provided by a nationally recognized professional service company;

(ii) who shall have at least three (3) years prior employment experience as an independent manager or director; and

(iii) who shall not have been at the time of such individual's appointment or at any time while serving as an Independent Manager, and shall not have ever been (A) a stockholder, member, director or manager (other than as an Independent Manager), officer, employee, partner, attorney or counsel of Borrower, any SPC Party or any Affiliate of

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Borrower or any SPC Party or any direct or indirect equity holder of any of them, (B) a creditor, customer, supplier, service provider or other Person who derives any of its revenues or purchases from its activities with Borrower, any SPC Party or any Affiliate of Borrower or any SPC Party, (C) a member of the immediate family of any such stockholder, member, director, manager, officer, employee, partner, attorney, counsel, creditor, customer, supplier, service provider or other Person, (D) a Person who is otherwise affiliated with Borrower, any SPC Party or any Affiliate of Borrower or any SPC Party or any direct or indirect equity holder of any of them or any such stockholder, member, director, manager, officer, employee, partner, attorney, counsel, creditor, customer, supplier, service provider or other Person, or (E) a Person controlling, controlled by or under common control with any of (A), (B), (C) or (D) above.

As used in this subsection (26), "nationally recognized professional service company" includes Corporation Services Company, CT Corporation, National Registered Agents, Inc., Stewart Management Company, Wilmington Trust Company and Lord Securities Corporation or, if none of those companies is then providing professional Independent Managers, another nationally-recognized company reasonably approved by Lender, in each case that is not an affiliate of Borrower and that provides professional Independent Managers and other corporate services in the ordinary course of business.

(iv) such SPC Party shall be dissolved, and its affairs shall be wound up, only upon the first to occur of the following: (A) the termination of the legal existence of the last remaining member of such SPC Party or the occurrence of any other event which terminates the continued membership of the last remaining member of such SPC Party in such SPC Party unless the business of such SPC Party is continued in a manner permitted by its operating agreement or the Delaware Limited Liability Company Act (the "Act"), or (B) the entry of a decree of judicial dissolution under Section 18-802 of the Act;

(v) upon the occurrence of any event that causes the last remaining member of such SPC Party or the sole member of such SPC Party (in each case, the "**Final Member**") to cease to be a member of such SPC Party (other than (A) upon an assignment by Final Member of all of its limited liability company interest in such SPC Party and the admission of the transferee, if permitted pursuant to the organizational documents of such SPC Party and the Loan Documents, or (B) the resignation of Final Member and the admission of an additional member of such SPC Party, if permitted pursuant to the organizational documents of such SPC Party and the Loan Documents), to the fullest extent permitted by law, the personal representative of such last remaining member shall be authorized to, and shall, within ninety (90) days after the occurrence of the event that terminated the continued membership of such member in such SPC Party, agree in writing (1) to continue the existence of such SPC Party and (2) to the admission of the personal representative or its nominee or designee, as the case may be, as a substitute member of such SPC Party, effective as of the occurrence of the event that terminated the continued membership of such member in such SPC Party;

(vi) the bankruptcy of Final Member or a special member of such SPC Party shall not cause Final Member or special member, respectively, to cease to be a member of such SPC Party and upon the occurrence of such an event, the business of such SPC Party shall continue without dissolution;

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(vii) in the event of the dissolution of such SPC Party, such SPC Party shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of such SPC Party in an orderly manner), and the assets of such SPC Party shall be applied in the manner, and in the order of priority, set forth in Section 18-804 of the Act; and

(viii) to the fullest extent permitted by law, each of Final Member and the special members of such SPC Party shall irrevocably waive any right or power that they might have to cause such SPC Party or any of its assets to be partitioned, to cause the appointment of a receiver for all or any portion of the assets of such SPC Party, to compel any sale of all or any portion of the assets of such SPC Party pursuant to any applicable law or to file a complaint or to institute any proceeding at law or in equity to cause the dissolution, liquidation, winding up or termination of such SPC Party.

As used in this Security Instrument, the following terms shall have the following meanings:

**“Affiliate”** shall mean, with respect to any Person, (i) in the case of any such Person which is a partnership or limited liability company, any general partner or managing member in such partnership or limited liability company, respectively, (ii) any other Person which is directly or indirectly Controlled by, Controls or is under common Control (as each is hereinafter defined) with such Person or one or more of the Persons referred to in the preceding clause (i), and (iii) any other Person who is a senior executive officer, director or trustee of such Person or any Person referred to in the preceding clauses (i) and (ii); provided, however, in no event shall the Lender or any of its Affiliates be an Affiliate of Borrower.

**“Control”** and the correlative terms **“controlled by”** and **“controlling”** shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of the business and affairs of the entity in question by reason of the ownership of beneficial interests, by contract or otherwise.

(g) **Franchise Agreement.** The Franchise Agreement is in full force and effect, all franchise fees, reservation fees, royalties and other sums due thereunder have been paid in full to date, and neither Borrower nor Franchisor is in default thereunder.

(h) **No Misrepresentations.**

(1) All materials, reports, financial statements, and other information pertaining to the Borrower Parties and the Property which were prepared by the Borrower Parties (and/or their Affiliates) and heretofore or hereafter delivered by the Borrower Parties to Lender, or delivered by any of the Borrower Parties (and/or their Affiliates) to any Person (e.g., an appraiser, an engineer, an environmental engineer, etc.) preparing materials, reports, financial statements and/or other information heretofore or hereafter delivered to Lender, are true, correct and complete in all material respects (x) with respect to such items heretofore delivered, as of date hereof and (y) with respect to such items hereafter delivered, as of the date made or deemed made;

(2) All materials, reports, financial statements and other information pertaining to the Borrower Parties and the Property which were prepared by third parties

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unaffiliated with the Borrower Parties (as required by Lender or as to such matters Lender determines appropriate for the Borrower Parties to engage third parties to provide the same) and heretofore or hereafter delivered to Lender and any of the Borrower Parties or their Affiliates are, to Borrower's knowledge (after having reviewed such materials, reports, financial statements and other information), true, correct and complete in all material respects; and

(3) All representations and warranties made in the Note, this Security Instrument and the other Loan Documents, are true and correct in all material respects and do not omit to state any material fact or circumstances necessary to make the statements contained therein not materially misleading, except as otherwise disclosed in writing by Borrower to Lender.

2.2 Additional Covenants, Representations and Warranties Concerning the Property. Borrower covenants, represents and warrants to Lender as follows:

(a) Repair and Maintenance.

(1) Borrower shall cause the Property to be maintained in a good and safe condition and repair. The Improvements and the Personal Property shall not be removed, demolished or materially altered (except for normal replacement of the Personal Property and/or tenant improvements made in connection with a Lease which has been entered into by Borrower in accordance with the terms hereof) without the prior consent of Lender.

(2) Borrower shall promptly repair, replace or rebuild any part of the Property which may be destroyed by any casualty, or become damaged, worn or dilapidated or which may be affected by any proceeding of the character referred to in Section 2.5 hereof and shall complete and pay for any structure at any time in the process of construction or repair on the Land.

(3) Borrower shall not initiate, join in, acquiesce in, or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Property or any part thereof. If under applicable zoning provisions the use of all or any portion of the Property is or shall become a nonconforming use, Borrower will not cause or permit the nonconforming use to be discontinued or abandoned without the express written consent of Lender.

(4) Borrower will not permit any drilling or exploration for or extraction, removal or production of any minerals from the surface or the sub-surface of the Real Estate regardless of the depth thereof or the method of mining or extraction thereof.

(b) Operation of the Property.

(1) Borrower has and will maintain all necessary certificates, licenses, authorizations, registrations, permits and/or approvals necessary for the operation of all or any part of the Property, and the conduct of Borrower's business at the Property, including a permanent certificate of occupancy and all required zoning ordinance, building code, land use, environmental and other similar permits or approvals, all of which as of the date hereof are in full force and effect and not subject to any revocation, amendment, release, suspension or

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forfeiture and Borrower shall, promptly upon request by Lender, deliver to Lender copies of all of the same;

(2) Borrower represents and covenants that to Borrower's knowledge, (i) Borrower is using, or will use, the Property as a full-service hotel and any legal ancillary use and for no other use, unless consented to in writing by Lender; (ii) Borrower will keep the Real Estate and the Improvements fully equipped for the operation of a full service hotel; (iii) the Property and the present and contemplated use and/or occupancy of the Property comply with and do not conflict with or violate any of the applicable zoning ordinances, building codes, certificates of occupancy, handicapped accessibility laws, including, without limitation, the Americans with Disabilities Act of 1990, environmental laws and other similar applicable Governmental Regulations; and (iv) Borrower has and will maintain at the Property a sufficient number of on-site parking spaces to comply with all Governmental Regulations and all Permitted Encumbrances with respect to the Property. As used herein the term "**Governmental Regulations**" means, collectively, the provisions of all permits and licenses and all statutes, laws (including any health or safety law governing Borrower, its business, operations, property, assets or equipment, or the Property), ordinances, rules, requirements, resolutions, policy statements, orders and regulations of any Governmental Authority (as such term is defined in the Note) having jurisdiction over Borrower or the Property or any part thereof and interpretations thereof now or hereafter applicable to, or bearing on, the construction, development, maintenance, use, operation, sale, financing or leasing of the Property or any part thereof, or any adjoining vaults, sidewalks, streets, ways, parking areas or driveways, or the formation, existence, business or good standing of Borrower, including, without limitation, those relating to land use, subdivision, zoning, occupational health and safety, earthquake hazard reduction, if any, building and fire codes, Access Laws (as hereinafter defined), pollution or protection of the environment, including, without limitation, laws relating to the ADA (as hereinafter defined), laws relating to emissions, discharges, releases or threatened releases of Hazardous Substances into the environment (including, ambient air, surface water, groundwater, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

(c) **Compliance with Governmental Regulations.** Borrower will perform and comply promptly with, and cause the Property to be maintained, used and operated in accordance with, any and all (i) present and future Governmental Regulations, (ii) similarly applicable orders, rules and regulations of any regulatory, licensing, accrediting, or rating organization or other body exercising similar functions, (iii) similarly applicable duties or obligations of any kind imposed under any Permitted Encumbrance or otherwise by law, covenant, condition, agreement or easement, public or private, and (iv) policies of insurance or the rules and regulations of any insurance underwriting or rating organization, at any time in force with respect to the Property and (v) obtain and maintain, in full force and effect, any permits or licenses required for the legal use, occupancy and operation of the Property as a hotel, including, without limitation, any applicable liquor license(s). If Borrower receives any notice that Borrower or the Property is in default under or is not in compliance with any of the foregoing (regardless of whether such notice involves de minimis or minor aspects of non-compliance), or notice of any proceeding initiated under or with respect to any of the foregoing, Borrower will promptly furnish a copy of such notice to Lender.

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(d) Status of the Property.

(1) The Real Estate is not located in an area identified by the Federal Emergency Management Agency or a successor thereto as an area having special flood hazards pursuant to the terms of the National Flood Insurance Act of 1968, or the Flood Disaster Protection Act of 1973, as amended, or any successor law, or if the Real Estate is located in such an area, Borrower has obtained and will maintain the insurance for the Property as specified in Section 2.3(a)(iii) hereof;

(2) The Property is served by all utilities in adequate supply required for the use thereof as herein contemplated;

(3) The Property is free from damage caused by fire or other casualty as of the date hereof;

(4) All streets necessary to serve the Property have been completed and are serviceable, and Borrower has unrestricted access from public roads to the Real Estate and the Improvements; and

(5) There is no condemnation or similar proceeding pending or threatened affecting any part of the Property.

(e) Zoning; Title Matters. Borrower will not, without the prior written consent of Lender:

(1) initiate, join in, support or acquiesce in any zoning reclassification of the Property or seek any variance under existing zoning ordinances applicable to the Property or use or permit the use of the Property in a manner which would result in such use becoming a non-conforming use of all or any portion of the Property under applicable zoning ordinances;

(2) modify, amend or supplement any of the Permitted Encumbrances;

(3) impose any restrictive covenants or encumbrances upon the Property, or execute or file any subdivision plat affecting the Property, or consent to the annexation of the Property to any municipality; or

(4) permit or suffer the Property to be used by the public or any Person in such manner as might make possible a colorable claim of adverse usage or possession or of any implied dedication or easement. Borrower will perform and comply with, and cause the Property to be maintained, used and operated in accordance with, the Permitted Encumbrances.

(f) Hazardous Substances; Asbestos.

(1) To the best of Borrower's knowledge after due and diligent inquiry of Borrower's employees and review of Borrower's files (collectively, "Due Inquiry"), except as otherwise disclosed to Lender in writing on Schedule 2.2(f) attached hereto, or in the Environmental Reports (as hereinafter defined), the Property is not now nor has it ever been listed as a Super Fund Site on the National Priorities List or similar state registry. Borrower has

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not dumped, stored, released, discharged, disposed of, manufactured, or used any Hazardous Substances (as hereinafter defined) at or about the Property except as disclosed to Lender in the environmental reports delivered to Lender in connection with the closing of the Loan (the "Environmental Reports") or otherwise in compliance with applicable Governmental Regulations (as hereinafter defined). Borrower represents that, to the best of its knowledge after Due Inquiry, except as disclosed to Lender in the Environmental Reports, (i) there has been no dumping, discharge, storage (except for storage in compliance with applicable Governmental Regulations), or disposal of any Hazardous Substances upon the Property; (ii) the Property is in compliance with all Governmental Regulations with respect to Hazardous Substances; and (iii) there are no violations of any Governmental Regulations relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling or to any emissions, discharges, releases or threatened releases of Hazardous Substances at or about the Property. Borrower further represents that, except as disclosed to Lender in the Environmental Reports, to the best of Borrower's knowledge after Due Inquiry, there are no claims or actions pending or threatened in writing against Borrower or the Property by any governmental entity or agency or by any other Person relating to Hazardous Substances or pursuant to Governmental Regulations relating thereto ("Hazardous Substances Claims"). Borrower covenants that the Property shall be kept free of Hazardous Substances, and is not and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, discharge, transfer, produce, or process Hazardous Substances except as may be permitted in compliance with applicable Governmental Regulations, and Borrower shall not cause, and shall not permit any other party to cause, as a result of any intentional or unintentional act or omission on the part of Borrower, any other Borrower Party or any tenant, subtenant or occupant, the installation of Hazardous Substances in the Property or a release of Hazardous Substances onto the Property or onto any other property or suffer the presence of Hazardous Substances on the Property, except as may be permitted in compliance with applicable Governmental Regulations. Borrower covenants that, except as disclosed to Lender in the Environmental Reports, to the best of Borrower's knowledge after Due Inquiry, there are not now and shall not be any underground storage tanks containing petroleum based products or other Hazardous Substances located on the Real Estate. Borrower shall comply, and ensure compliance by all tenants, subtenants and occupants with all Governmental Regulations with respect to Hazardous Substances, and shall keep the Property free and clear of any Liens imposed pursuant to Governmental Regulations with respect to Hazardous Substances. In the event that Borrower receives any written notice from any Governmental Authority or any tenant, subtenant or occupant with regard to such Hazardous Substances, on, from or affecting the Property, or written notice of any Hazardous Substances Claims, or if Borrower discovers any Hazardous Substances on, under or about the Property in violation of any applicable Governmental Regulations with respect to Hazardous Substances, Borrower shall promptly notify Lender in writing. Borrower shall promptly conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up, remove or otherwise respond to all Hazardous Substances on, from or affecting the Property as required by all applicable Governmental Regulations with respect to Hazardous Substances. Upon reasonable prior notice to Borrower, Lender, its employees and agents, at Borrower's cost and expense, may, from time to time (whether before or after the commencement of a foreclosure proceeding), during normal business hours (except if Lender, in its reasonable judgment, determines that there is an emergency, then at any time), enter and inspect the Property for the purpose of determining the existence, location, nature and magnitude



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of any past or present release or threatened release of any Hazardous Substances into, onto, beneath or from the Property; provided, however, it being understood that if an Event of Default has occurred and is continuing hereunder or under any other Loan Document with regard to any material environmental matter or if Lender determines that there may exist a condition which will result in a material breach of any representation, warranty or covenant made by Borrower hereunder or under any of the other Loan Documents with respect to any material environmental matters, then, in any such event, Lender, its employees and agents may so inspect the Property at Borrower's sole cost and expense.

(2) Borrower hereby agrees to defend, indemnify and hold Lender, JPMorgan Chase Bank National Association and J.P. Morgan Investment Management Inc. and each of their respective successors, assigns, partners, officers, directors, agents, attorneys, administrators, trustees, parents, subsidiaries, advisors, affiliates, beneficiaries, shareholders, representatives, servants and employees (including, without limitation, any participants in the Loan) (hereinafter collectively referred to as the "Indemnitees") harmless from and against any and all Losses and Liabilities (as hereinafter defined) (including, without limitation, investigation, cleanup, removal and disposal costs, reasonable attorneys' fees, reasonable consultants' fees, disbursements and other out-of-pocket costs of defense reasonably incurred by the Indemnitees, and costs of determining whether the Property is in compliance, and causing the Property to be in compliance, with Governmental Regulations) to the extent arising directly or indirectly from, out of or by reason of (A) the actual, alleged or threatened use, generation, manufacture, storage, treatment, release, threatened release, discharge, disposal, transportation or the presence (either in the past, currently or in the future) of any Hazardous Substance at, from or affecting the Property or to or from the any other property, (B) Borrower's failure to comply with any Governmental Regulations relating to Hazardous Substances, (C) Lender's exercise of its rights under this Security Instrument with respect to Hazardous Substances, or (D) the material breach of any covenants (or representation and warranty) of Borrower under this Section 2.2(f), except to the extent that any of the foregoing shall result from the gross negligence or willful misconduct of the Indemnitees or shall arise as a result of a condition or circumstance first arising after the taking of title to the Real Estate by Lender as a result of an entry of judgment of foreclosure, acceptance by Lender of a deed in lieu of foreclosure, exercise of any power of sale, or any other exercise of similar remedies by Lender that result in the taking of title to the Real Estate by Lender. Notwithstanding anything herein to the contrary, if Borrower is not providing defense and indemnification satisfactory to any Indemnitee, such Indemnitee, in its reasonable discretion, may engage its own attorneys to resist or defend, or assist therein with respect to any Losses and Liabilities, and Borrower shall pay, or, within ten (10) days of demand, shall reimburse each Indemnitee for the payment of the reasonable fees and disbursements of said attorneys. Each Indemnitee shall have the right to settle such claim, action or proceeding with respect to Losses and Liabilities, without Borrower's consent, but with prior notice to Borrower.

(3) As used herein the term "Hazardous Substances" means all materials and substances now or hereafter subject to any Governmental Regulations that pertain to hazardous substances or hazardous materials, including, without limitation, (i) all substances which are designated pursuant to Section 311(b)(2)(A) of the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. § 1251 et seq., (ii) any element, compound, mixture, solution, or substance which is designated pursuant to Section 102 of the Comprehensive Environmental

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Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601 et seq., (iii) any hazardous waste having the characteristics which are identified under or listed pursuant to Section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., (iv) any toxic pollutant listed under Section 307(a) of FWPCA, (v) any hazardous air pollutant which is listed under Section 112 of the Clean Air Act, 42 U.S.C. § 7401 et seq., (vi) any imminently hazardous chemical substance or mixture with respect to which action has been taken pursuant to Section 7 of the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., (vii) “hazardous materials” within the meaning of the Hazardous Materials Transportation Act, 49 U.S.C. § 1802 et seq., (viii) petroleum or petroleum by-products, (ix) asbestos and any asbestos containing materials, (x) any radioactive material or substance, (xi) all toxic wastes, hazardous wastes and hazardous substances as defined by, used in, controlled by, or subject to all implementing regulations adopted and publications promulgated pursuant to the foregoing statutes, (xii) bacteria, mold or fungus, and (xiii) any other hazardous or toxic substance or pollutant identified in or regulated under any other applicable federal, state or local Governmental Regulations (including, without limitation, all applicable state, regional, county, municipal and local environmental, sanitation and health, conservation and pollution, waste disposal and control, clean air and water laws, codes, rules and regulations, to the extent applicable to the Property). Notwithstanding the foregoing, Hazardous Substances shall not include cleaning and similar supplies used in the ordinary maintenance and repair of the Property and used, stored or disposed of in compliance with all Governmental Regulations.

(4) As used herein the term “Governmental Regulations” means, collectively, the provisions of all permits, licenses and authorizations, and all statutes, laws (including any health or safety law), ordinances, judgments, decrees, injunctions, rules, requirements, resolutions, policy statements, orders and regulations of, any board, agency, commission, office, authority, department, bureau or instrumentality of any nature whatsoever or any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or hereafter in existence (hereinafter, collectively referred to as a “Governmental Authority”) having jurisdiction over Borrower or the Property or any part thereof and interpretations thereof now or hereafter applicable to, or bearing on, the construction, development, maintenance, use, alteration, operation, sale, financing or leasing of the Property or any part thereof, or any adjoining vaults, sidewalks, streets, ways, parking areas or driveways, or the formation, existence, business or good standing of Borrower, including, without limitation, those relating to land use, subdivision, zoning, occupational health and safety, earthquake hazard reduction, if any, building and fire codes, Access Laws (as hereinafter defined), pollution or protection of the environment, including, without limitation, laws relating to the ADA (as hereinafter defined), the Interstate Land Sales Full Disclosure Act 15 U.S.C. Section 1701, et seq. and all permits, licenses, authorizations and regulations relating thereto, and all laws, rules, regulations, orders, guidelines and requirements relating to emissions, discharges, releases or threatened releases of Hazardous Substances into the environment (including, ambient air, surface water, groundwater, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances.

(5) Borrower shall notify Lender promptly upon becoming aware of any Environmental Condition (as hereinafter defined) and shall, upon the prior written request of Lender, provide periodic written reports to Lender concerning the nature and extent of such Environmental Condition, the actions proposed to be taken by Borrower to remediate such

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Environmental Condition, the progress of Borrower in remediating such Environmental Condition and the completion of such remediation, together with copies of any written notices and other written communications concerning such Remediation between Borrower and any Governmental Authority. For purposes hereof, the term “Environmental Condition” shall mean (A) any presence of Hazardous Substances in violation of any applicable Governmental Regulations relating to Hazardous Substances on the Property not expressly disclosed in the Environmental Reports or (B) any disposal, escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Substance at, from or affecting the Property in violation of any Governmental Regulations.

(6) The obligations of Borrower and the rights of the Indemnitees under this Section 2.2(f) are in addition to and not in substitution of the obligations of Indemnitor under the Environmental Indemnity. Subject to last sentence of this Section 2.2(f), the obligations and indebtedness of Borrower and the rights of the Indemnitees under this Section 2.2(f) shall survive the repayment of the Obligations and the termination, release, satisfaction, cancellation or assignment of the Note, this Security Instrument and the other Loan Documents. Borrower’s obligations under Section 2.2(f) shall expire as of the Release Date (as hereinafter defined). For purposes hereof, the “Release Date” shall mean the first anniversary of the date on which the Obligations are repaid in full, provided that:

(i) as of the first anniversary of the date on which the Obligations are repaid in full, Lender shall have received new environmental reports prepared by a duly licensed environmental engineer reasonably acceptable to Lender of the same scope as the Environmental Reports, performed, at Borrower’s sole cost and expense, within thirty (30) days of the proposed Release Date, and not reflecting any Environmental Conditions; and

(ii) there has been no change, between the date hereof and the date the Obligations are paid in full, in any Governmental Regulations, the effect of which change may be to make a lender or mortgagee liable with respect to any matter for which any Indemnitee is entitled to indemnification pursuant to this Section 2.2(f), notwithstanding that the Obligations are paid in full; and

(iii) the liability of Borrower shall not terminate with respect to (A) any litigation, action, dispute, claim, notice of violation, citation, order or directive which is outstanding at the proposed Release Date relating to any matters covered by this Section 2.2(f), and (B) any out-of-pocket costs or expenses (including reasonable attorneys’ fees) reasonably incurred by the Indemnitees in connection with the enforcement of Borrower’s obligations hereunder.

(g) Franchise Agreement. Borrower has delivered to Lender a copy of the Franchise Agreement and shall not enter into any new franchise agreement or permit the amendment or modification of the Franchise Agreement, in each case, without the prior written consent of Lender. (1) Borrower shall cause the Property to be operated in accordance with the Franchise Agreement. Borrower shall (i) diligently perform and observe all of the terms, covenants and conditions of the Franchise Agreement on the part of Borrower to be performed and observed, (ii) promptly notify Lender of any default under the Franchise Agreement of which it is aware, (iii) promptly deliver to Lender a copy of each financial statement, business

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plan, capital expenditures plan, report and estimate received by it under the Franchise Agreement, and (iv) promptly enforce the performance and observance of all of the terms, covenants and conditions required to be performed and/or observed by Franchisor under the Franchise Agreement, in a commercially reasonable manner. If Borrower shall default in the performance or observance of any term, covenant or condition of the Franchise Agreement on the part of Borrower to be performed or observed, then, without limiting Lender's other rights or remedies under this Agreement or the other Loan Documents, and without waiving or releasing Borrower from any of its obligations hereunder, under the other Loan Documents or under the Franchise Agreement, Lender shall have the right, but shall be under no obligation, to pay any sums and to perform any act as may be appropriate to cause the terms, covenants and conditions of the Franchise Agreement on the part of Borrower to be performed or observed in all material respects. Borrower shall not, without prior consent of Lender, (1) surrender, terminate, cancel, modify, renew, amend, or extend the Franchise Agreement, (2) reduce or consent to the reduction of the term of the Franchise Agreement, (3) increase or consent to the increase of the amount of any fees or other charges under the Franchise Agreement, or (4) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under the Franchise Agreement in any material respect. In the event that the Franchise Agreement expires or is terminated (without limiting any obligation of Borrower to obtain Lender's consent to any termination or modification of the Franchise Agreement in accordance with the terms and provisions of this Agreement), Borrower shall promptly enter into a new franchise agreement in form and substance acceptable to Lender with a franchisor acceptable to Lender, each in Lender's sole discretion. Upon the occurrence and during the continuation of an Event of Default, Borrower shall not exercise any rights, make any decisions, grant any approvals or otherwise take any action under the Franchise Agreement without the prior consent of Lender.

(h) Operating Agreements. As of the date hereof, Borrower has delivered to Lender true, correct and complete executed copies of any and all operating agreements, reciprocal easement agreements, parking agreements, declarations, service and maintenance contracts, and development agreements (together with any and all amendments and supplements thereto and all agreements collateral therewith) (collectively, "Operating Agreements"). Borrower shall (i) perform or cause to be performed its obligations under all Operating Agreements, (ii) enforce with reasonable diligence, but in any event short of termination, the reasonable performance by each party to any Operating Agreement of all of such party's obligations thereunder, and (iii) give Lender prompt written notice, and a copy, of any notice of default, event of default, termination or cancellation sent or received by Borrower with respect to an Operating Agreement. Borrower shall not enter into any new Operating Agreements or permit the amendment, modification, termination or surrender of any Operating Agreement without the prior written consent of Lender, provided, however, no such consent shall be required with regard to any Operating Agreements which (x) are terminable on thirty (30) days' notice, without penalty or other cost to Borrower or any successor or assignee, and (y) provide for normal and customary building services such as cleaning contracts, elevator maintenance, fire safety and similar building services. Borrower shall provide copies of any new or amended Operating Agreements to Lender on a monthly basis.

(i) Management Agreements. Borrower has delivered to Lender a copy of the Hotel Management Agreement and any other existing property management agreements and/or brokerage agreements, if any, affecting the Property (collectively, the "Management"),

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Agreements”). Borrower shall not enter into any new Management Agreements or permit the amendment or modification of the Management Agreements, in each case, without the prior written consent of Lender.

## 2.3 Insurance.

(a) Coverages. Borrower shall obtain and maintain, or cause to be maintained, insurance for Borrower and the Property providing at least the coverages set forth herein:

(i) comprehensive all risk insurance on the Improvements and the Personal Property, including windstorm coverage, in each case (A) in an amount equal to 100% of the “Full Replacement Cost,” which for purposes of this Security Instrument shall mean actual replacement value (exclusive of costs of excavations, foundations, underground utilities and footings) with a waiver of depreciation; (B) containing either an agreed amount endorsement or a waiver of all co-insurance provisions; (C) providing for a deductible of not greater than \$25,000, except with respect to earthquake and windstorm/named storm which may provide for no deductible in excess of 5% of the total insurable value of the Property; (D) if any of the Improvements or the use of the Property shall at any time constitute a legal non conforming structure or use, Borrower shall obtain an “Ordinance or Law Coverage” or “Enforcement” endorsement, which shall include sufficient coverage for (1) costs to comply with building and zoning codes and ordinances, (2) demolition costs, and (3) increased costs of construction; and (E) with respect to the construction of any new improvements, written on a so-called builder’s risk completed value form on a non-reporting basis;

(ii) business income insurance (A) with loss payable to Lender; (B) covering all risks required to be covered by the insurance provided for in Section 2.3(a)(i); (C) on an agreed value actual loss sustained basis in an amount equal to 100% of the projected gross income from the Property for a period of twelve (12) months; (D) containing an extended period of indemnity endorsement which provides that after the physical loss to the Improvements and Personal Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss, or the expiration of six (6) months from the date that the Property is repaired or replaced and operations are resumed, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period; and (E) if the Borrower is required to obtain an “Ordinance or Law Coverage” or “Enforcement” endorsement pursuant to Section 2.3(a)(i)(D), coverage for the increased period of restoration. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on Borrower’s reasonable estimate of the gross income from the Property for the succeeding twelve (12) month period. All insurance proceeds payable to Lender pursuant to this Section 2.3(a)(ii) shall be held by Lender and shall be applied to the Obligations from time to time due and payable hereunder and under the Note; provided, however, that nothing herein contained shall be deemed to relieve Borrower of its obligations to pay the Obligations on the respective dates of payment provided for in the Note, this Security Instrument and the other Loan Documents, except to the extent such amounts are actually paid out of the proceeds of such business income insurance;

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(iii) if any portion of the Improvements is currently or at any time in the future located in a federally designated "special flood hazard area", Borrower shall obtain flood hazard insurance in an amount equal to the lesser of (x) Full Replacement Cost and (y) the outstanding principal balance of the Loan, plus twelve (12) months of business income insurance consistent with the requirements of Section 2.3(a)(ii);

(iv) the insurance required under this Section 2.3(a)(i), (ii) and (vii) above shall cover perils of terrorism insurance for Certified Acts of Terrorism (as such terms are defined in means the Terrorism Risk Insurance Program Reauthorization Act of 2007) in an amount equal to the Full Replacement Cost plus twelve (12) months of business income insurance consistent with the requirements of Section 2.3(a)(i), (ii) and (vii);

(v) steam boiler and machinery breakdown direct damage insurance, in an amount acceptable to Lender, for all boilers and machinery which form a part of the Property, if applicable;

(vi) commercial general liability insurance against claims for personal injury, bodily injury, death or property damage occurring upon, in or about the Property, which shall include liquor liability and dram shop liability if alcoholic beverages are sold or served at the Property, such insurance (A) to be on the "occurrence" form with a combined single limit (including "umbrella" coverage in place) of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate with excess "umbrella coverage" in an amount not less than \$25,000,000; (B) to continue at not less than the aforesaid limit until required to be changed by Lender in writing by reason of changed economic conditions making such protection inadequate; and (C) to cover at least the following hazards: (1) premises and operations; (2) products and completed operations on an "if any" basis; (3) independent contractors; and (4) contractual liability for all insured contracts, to the extent the same is available;

(vii) at all times during which structural construction, material repairs or alterations are being made with respect to the Improvements, owner's contingent or protective liability insurance covering claims not covered by or under the terms or provisions of the above mentioned commercial general liability insurance policy;

(viii) if Borrower owns or operates motor vehicles, motor vehicle liability coverage for all owned and non-owned vehicles, including rented and leased vehicles containing minimum limits reasonably acceptable to Lender;

(ix) if Borrower has employees, workers' compensation, subject to the statutory limits of the state in which the Property is located, and employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 aggregate coverage for disease in respect of any work or operations on or about the Property, or in connection with the Property or its operation;

(x) a blanket fidelity bond or "Employee Dishonesty" coverage insuring against losses resulting from dishonest or fraudulent acts committed by personnel retained in connection with the operation of the Property, if applicable; and

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(xi) such other insurance and in such amounts as Lender from time to time may reasonably request against such other insurable hazards which at the time are commonly insured against for property similar to the Property located in or around the region in which the Property is located.

(b) Blanket Insurance; Separate Insurance. Any blanket insurance Policy shall specifically allocate to the Property the amount of coverage from time to time required hereunder or shall otherwise provide the same protection as would a separate Policy insuring only the Property in compliance with the provisions of Section 2.3(a).

(c) Insurers. All policies of insurance required under this Section 2.3 (collectively, the "Policies" and each, individually, a "Policy") shall be issued by companies having a general policy rating of "A"-VIII or better by Best Key Rating Guide or otherwise approved by Lender and which are licensed to do business in the State of Illinois (any of such companies being referred to individually herein as a "Qualified Insurer") or with such other companies satisfactory to Lender, and shall be subject to the approval of Lender as to amount, content, form and expiration date; it being agreed that the approval by Lender of any insurer shall not be construed to be a representation, certification or warranty of its solvency, and no approval by Lender as to the amount, type and/or form of any insurance shall be construed to be a representation, certification or warranty of its sufficiency.

(d) Insured Parties. All Policies provided for or contemplated by Section 2.3(a) hereof, shall name Borrower as an insured. The insurance required under subsections (i) through (v), inclusive, of Section 2.3(a) shall name Lender, its successors and/or assigns, as mortgagee/loss payee under a Standard Mortgage Clause and a Lender's Loss Payable Endorsement or an equivalent standard form attached to, or otherwise made a part of such policy in favor of Lender, and provide that the insurers waive any and all subrogation rights against Lender. The insurance maintained under subsections (vi) through (x), inclusive, of Section 2.3(a) shall name Lender, its successors and/or assigns, as an additional insured. It is agreed that, and each property policy shall expressly state that, losses shall be payable jointly to Lender and Borrower notwithstanding (1) any act or negligence of Borrower or its agents or employees which might, absent such agreement, result in a forfeiture of all or part of such insurance payment, (2) the occupation or use of the Property or any part thereof for purposes more hazardous than permitted by the terms of such policy, (3) any foreclosure or other action or proceeding taken pursuant to this Security Instrument, or (4) any change in title to or ownership of the Property or any part thereof. All policies shall include effective waivers by the insurer of all claims for insurance premiums against any loss payees, additional insureds and named insureds (other than Borrower). The Policy shall not be canceled without at least thirty (30) days written notice to Lender, except ten (10) days' notice for non-payment of premium. The issuers thereof shall give written notice to Lender if the issuers elect not to renew prior to its expiration. Lender shall not be liable for any Insurance Premiums thereon or subject to any assessments thereunder.

(e) Delivery of Policies. If not previously delivered to Lender, Borrower shall deliver to Lender no later than thirty (30) days after the date hereof certified copies of the existing Policies providing the insurance coverage required under Section 2.3(a) marked "premium paid" or accompanied by evidence satisfactory to Lender of payment of the premiums

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due thereunder (the “Insurance Premiums”) annually in advance. In addition, no later than thirty (30) days prior to the expiration dates of the Policies which Borrower is now or hereafter required to maintain hereunder, Borrower shall deliver to Lender certified copies of new or renewal Policies (also marked “premium paid” or accompanied by evidence satisfactory to Lender of payment of the Insurance Premiums due thereunder annually in advance), together with certificates of insurance therefor, setting forth, among other things, the amounts of insurance maintained, the risks covered by such insurance and the insurance company or companies which carry such insurance. If requested by Lender, Borrower shall furnish verification of the adequacy of such insurance by an independent insurance broker or appraiser acceptable to Lender. Under no circumstances shall Borrower be permitted to finance the payment of any portion of the Insurance Premiums.

(f) Failure to Deliver Policies. If at any time Lender is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Lender shall have the right, without notice to Borrower to take such action as Lender deems necessary to protect its interest in the Property, including, without limitation, the obtaining of such insurance coverage as Lender in its sole discretion deems appropriate, and all expenses incurred by Lender in connection with such action or in obtaining such insurance and keeping it in effect, together with interest at the Default Rate (as defined in the Note) from the date incurred by Lender, shall be secured by this Security Instrument and payable by Borrower to Lender immediately upon Lender’s demand.

(g) Transfer of Title. In the event of foreclosure of this Security Instrument or other transfer of title or assignment of the Property, by reason of a default hereunder, in extinguishment, in whole or in part, of the Obligations, all right, title and interest of Borrower in and to all policies of insurance required under this Section 2.3 or otherwise then in force with respect to the Property and all proceeds payable thereunder, and unearned premiums thereon shall immediately vest in the purchaser or other transferee of the Property.

## 2.4 Damage and Destruction.

(a) Borrower’s Obligations. In the event of any damage to or loss or destruction of the Property that shall require \$1,000,000 or more, in the aggregate, to repair or restore, Borrower shall (i) promptly notify Lender of such event and take such steps as shall be necessary to preserve any undamaged portion of the Property, and (ii) unless otherwise instructed by Lender, promptly, regardless whether the insurance proceeds, if any, shall be sufficient for the purpose, commence and diligently pursue to completion the restoration, replacement and rebuilding of the Property, as nearly as possible to their value, condition and character immediately prior to such damage, loss or destruction in a good and workmanlike manner and in accordance with all applicable Governmental Regulations and insurance requirements and recommendations and otherwise pursuant to plans and specifications approved by Lender and developed in connection with such restoration.

(b) Lender’s Rights; Application of Proceeds. In the event that any portion of the Property is damaged, lost or destroyed, and such damage, loss or destruction is covered, in whole or in part, by insurance described in Section 2.3, then, (i) Lender may, but shall not be obligated to, make proof of loss if not made promptly by Borrower, and is hereby authorized and



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empowered by Borrower to settle, adjust or compromise any claims for damage, loss or destruction thereunder, (ii) each insurance company concerned is hereby authorized and directed to make payment therefor directly to Lender, and (iii) Lender shall apply the insurance proceeds, first, to reimburse Lender for all costs and expenses, including, without limitation, adjustors' and reasonable attorneys' fees and disbursements, incurred in connection with the collection of such proceeds, and, second, the remainder of such proceeds shall be applied, at Lender's option, (x) in payment of all or any part of the Obligations, in the order and manner determined by Lender (provided that to the extent that any Obligations shall remain outstanding after such application, such unpaid Obligations shall continue in full force and effect and Borrower shall not be excused in the payment thereof), (y) to the cure of any then current default hereunder, or (z) to the restoration, replacement or rebuilding, in whole or in part, of the portion of the Property so damaged, lost or destroyed, provided that any insurance proceeds held by Lender to be applied to the restoration, replacement or rebuilding of the Property shall be so held without payment or allowance of interest thereon and shall be paid out from time to time upon compliance by Borrower with such provisions and requirements as reasonably may be imposed by Lender. Borrower acknowledges and agrees that Lender shall have sole and exclusive dominion and control over such proceeds. Notwithstanding the foregoing, and provided no Event of Default shall have occurred and be continuing under this Security Instrument, the Note or any of the other Loan Documents, Borrower may adjust losses aggregating not in excess of \$1,000,000 per occurrence with respect to any casualty which is a Minor Casualty (as hereinafter defined), provided such adjustment is carried out in a competent and timely manner with respect to restoration of the Property; provided further, however, that, in the event no Event of Default shall have occurred, (A) insurance proceeds adjusted by Borrower as permitted pursuant to this sentence shall be used for the restoration of the Property (it being understood and agreed that (x) Borrower shall cause such restoration to be performed in a good and workmanlike manner and in accordance with all applicable Governmental Regulations and insurance company requirements and recommendations and otherwise pursuant to plans and specifications developed for such restoration, (y) Borrower shall obtain and deliver to Lender a copy of all waivers of liens for all restoration work, and (z) upon Lender's request, all construction and trade contracts and contracts for material, equipment, supplies and labor shall be collaterally assigned to Lender, and Borrower shall cause the general contractor to cause all other parties thereto to agree to perform for the benefit of Lender, at the request of Lender, provided Lender shall pay them for their respective services), and (B) Lender agrees to make the proceeds (less all reimbursable costs and expenses set forth in clause (iii) above) received in connection with a Minor Casualty available for the restoration of the Property on the terms and conditions hereinafter set forth.

For the purpose of this Security Instrument, a "**Minor Casualty**" shall mean any fire, earthquake, flood, water damage, other catastrophe or insured event occurring not later than six (6) months prior to the Scheduled Maturity Date (as defined in the Note) which (I) does not result in an Environmental Condition, and (II) does not damage or render untenable (including, without limitation, as a result of the inability to access leased premises) more than 20% of the total floor area of the Improvements. In addition, Lender shall not be required to advance any proceeds for the restoration of the Property, even if a Minor Casualty, unless (x) the Franchise Agreement shall remain in full force and effect during and after the completion of such restoration, and (y) Borrower shall deliver to Lender, and Lender shall approve in writing, the plans, specifications and construction budget for the repair and/or restoration of the Property and Lender shall determine that the Improvements located on the Real Estate can be restored so as to

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constitute a commercially viable building of the same quality and use and having the same usable square footage and the same number of hotel rooms as existed immediately before the fire, other catastrophe or insured event for the amounts set forth in the construction budget. Upon receipt by Lender of proceeds from a Minor Casualty and/or if Lender, in its sole discretion, shall otherwise agree to make insurance proceeds from a non-Minor Casualty available for repair and restoration of the Property, the following shall apply:

(i) The actual out-of-pocket costs to Lender (including, without limitation, reasonable legal fees, appraisal fees, engineering surveys, consultants' and architects' charges and adjustors' fees) incurred in settling or adjusting any claim and in reviewing and approving all plans (collectively, "Lender's Costs") shall first be paid to Lender out of the proceeds of the insurance. Lender shall have the right, but not the obligation, to retain an architectural or engineering consultant at any time and from time to time, at Borrower's sole cost and expense, to examine plans, specifications, change orders and budgets with respect to such repair or restoration, the progress of same and to render reports and conduct site inspections with respect to the foregoing;

(ii) The contractor and major subcontractors engaged to perform the restoration work shall be subject to the prior written approval of Lender, such approval not to be unreasonably withheld, conditioned or delayed;

(iii) The general contractor shall deliver a performance bond in respect of the work to be performed at the Property or a guarantee of such work in form, scope and substance acceptable to Lender from an entity acceptable to Lender or other substitute for such performance bond or guarantee acceptable to Lender in its sole discretion and the construction contract shall contain a time of the essence completion date satisfactory to Lender. All construction and trade contracts and contracts for material, equipment, supplies and labor shall be collaterally assigned to Lender and Borrower shall cause the general contractor to cause all other parties thereto to agree to perform for the benefit of Lender, at the request of Lender, provided Lender shall pay them for their respective services;

(iv) Borrower shall procure and deliver to Lender, from a licensed architect selected by Borrower and approved by Lender, a certified statement setting forth the estimated cost of restoration and that the proceeds of such insurance are, in such architect's reasonable estimation (after deducting all of the Lender's Costs and such architect's fees and all other estimated costs for architects, plans, permits and approvals and other so-called "soft costs"), sufficient to perform the repair and/or restoration of the Property using similar quality materials as those presently installed therein. If such proceeds are insufficient, and if Lender nevertheless agrees to make such proceeds available for repair and/or restoration, Lender may require Borrower to deposit with Lender (with interest) the amount of any such deficiency, which funds shall be disbursed first in payment of such work. In addition, if thereafter it appears, at any time and from time to time, that the remaining proceeds shall be insufficient to pay for the remaining costs of construction, then Borrower shall deposit the amount of such deficiency (from time to time determined) with Lender for use as aforesaid;

(v) All proceeds allocated for repair and/or restoration shall be disbursed by Lender (not more frequently than monthly) based on the percentage of the work

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completed against a certification therefor by the aforesaid architect, invoices for the work to be paid for, waivers of lien for all prior work for which a payment was made and a title endorsement for the Property showing no additional exceptions to title of the Property other than the Permitted Encumbrances. In addition, prior to any disbursement of proceeds, Borrower must certify to Lender that (A) Borrower incurred the costs in the amount of the requested advance (as evidenced by a draw request signed by the general contractor and/or paid receipts), (B) such costs have not been the basis for any previous requisition, (C) there has been no change in Borrower's financial condition which would have an adverse effect, as determined by Lender, on the ability of Borrower to complete the repairs and/or restorations in question in accordance with the terms of this Security Instrument, and (D) Borrower has no defenses, counterclaims or offsets to its obligations under the Loan Documents and that there exists no Event of Default under the Loan Documents or event which with the giving of notice or passage of time, or both, would constitute an Event of Default under the Loan Documents and (E) the Hotel Management Agreement and the Franchise Agreement shall remain in full force and effect during and after completion of the restoration, notwithstanding the occurrence of such casualty. Lender shall be entitled to retain up to ten (10%) percent of the amount of each such requisition unless the amount of the requisition already reflects ten (10%) percent retainage by Borrower. Such retainage shall be paid on a trade by trade basis upon final completion of the work by the applicable trade free of liens. If Lender shall have engaged an architectural or engineering consultant, then, as an additional precondition to any disbursement of proceeds hereunder, such consultant shall have approved, in writing, the progress of the work, conformity of the work with the approved plans and specifications and the quality and percentage of the work completed. For purposes of this provision, all work shall be deemed completed and all retainage shall be released upon delivery to Lender of the following, all in form and substance satisfactory to Lender: (x) evidence that all applicable licenses, permits and approvals (including, without limitation, certificates of occupancy) related to the work for which payment of the retainage therefor is sought have been obtained, (y) the certifications of Borrower's architect, the general contractor and Lender's consulting architect or engineering consultant, if any, that such work has been completed in accordance with the approved plans and specifications (and approved change orders) therefor, and (z) all of the certificates, statements, waivers, title endorsements and other proofs required hereunder as a condition to any disbursement;

(vi) No Event of Default or event which with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder or under any other Loan Document shall exist; and

(vii) All work shall be performed in a good and workmanlike manner and in accordance with all applicable Governmental Regulations and insurance company requirements and recommendations and otherwise pursuant to plans and specifications approved by the aforesaid architect.

(c) Not Trust Funds. Subject to Borrower's right to adjust losses aggregating not in excess of \$1,000,000 per occurrence as described in Section 2.4(b) above, in the event that Borrower shall have received all or any portion of such insurance proceeds or any other proceeds in respect of such damage or destruction, Borrower, upon demand from Lender, shall pay to Lender an amount equal to the amount so received by Borrower, to be applied as Lender shall have the right pursuant to clause (iii) of Section 2.4(b). Notwithstanding anything herein or at

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law or in equity to the contrary, none of the insurance proceeds or payments in lieu thereof paid to Lender as herein provided shall be deemed trust funds and Lender shall be entitled to dispose of such proceeds as provided in this **Section 2.4**. Borrower expressly assumes all risk of loss, including a decrease in the use, enjoyment or value, of the Property from any casualty whatsoever, whether or not insurable or insured against.

(d) Effect on the Obligations. Notwithstanding any fire or other casualty referred to in this **Section 2.4** causing injury to or decrease in value of the Property, or any interest therein, Borrower shall continue to pay and perform the Obligations as provided herein. Any reduction in the Obligations resulting from an application of insurance proceeds shall be deemed to take effect only on the date of receipt by Lender of such insurance proceeds and application against the Obligations, provided that if prior to the receipt by Lender of such insurance proceeds the Property shall have been sold on foreclosure of this Security Instrument, or shall have been transferred by deed in lieu of foreclosure of this Security Instrument, Lender shall have the right to receive the aforesaid insurance proceeds to the extent of any deficiency found to be due upon such sale, with legal interest thereon together with reasonable attorneys' fees and disbursements incurred by Lender in connection with the collection thereof. The provisions of this **Section 2.4** shall survive the repayment, release, satisfaction and termination of this Security Instrument.

## 2.5 Condemnation.

(a) Borrower's Obligations, Proceedings. Borrower, promptly upon obtaining knowledge of any pending or threatened institution of any proceedings for the condemnation of the Property, or any part or interest therein or of any right of eminent domain, or of any other proceedings arising out of injury or damage to or decrease in the value of the Property (including a change in grade of any street), or any part thereof or interest therein (a "**Taking**"), will notify Lender of the threat or pendency thereof. Lender may participate in any such proceedings, at Borrower's sole cost and expense, and Borrower from time to time will execute and deliver to Lender all instruments requested by Lender or as may be required to permit such participation. Borrower shall, at its expense, diligently prosecute any proceedings involving a Taking, shall deliver to Lender copies of all papers served in connection therewith and shall consult and cooperate with Lender, its attorneys and agents, in the carrying on and defense of any such proceedings; provided that no settlement of any such proceeding shall be made by Borrower without Lender's prior written consent.

(b) Lender's Rights to Awards. All proceeds of condemnation awards or proceeds of sale in lieu of condemnation, and all judgments, decrees and awards for injury or damage to the Property (an "**Award**" or "**Awards**") are hereby assigned and shall be paid to Lender. Borrower agrees to execute and deliver such further assignments thereof as Lender may request and authorizes Lender to collect and receive the same, to give receipts and acquittances therefor, and to appeal from any such judgment, decree or award. Lender shall in no event be liable or responsible for failure to collect, or exercise diligence in the collection of, any of the same.

(c) Application of Awards. Lender shall have the right to apply any Awards first, to reimburse Lender for all costs and expenses, including, without limitation, reasonable

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attorneys' fees and disbursements incurred in connection with the proceeding in question or the collection of such amounts, and, second, the remainder thereof as provided in **Section 2.4(b)** for insurance proceeds held by Lender. Notwithstanding the foregoing, and provided no Event of Default shall have occurred under this Security Instrument, the Note or any of the other Loan Documents, Borrower may adjust Awards that shall not exceed \$1,000,000, in the aggregate, per occurrence, with respect to a Minor Taking (as hereinafter defined), provided such adjustment is carried out in a competent and timely manner with respect to restorations of the Property; provided further, however, that, in the event no Event of Default shall have occurred and be continuing, Awards adjusted by Borrower as permitted pursuant to this sentence shall be used for the restoration of the Property (it being understood and agreed that (i) Borrower shall cause such restoration to be performed in a good and workmanlike manner and in accordance with all applicable Governmental Regulations and insurance company requirements and recommendations and otherwise pursuant to plans and specifications developed for such restoration, (ii) Borrower shall obtain and deliver to Lender a copy of all waivers of liens for all restoration work, and (iii) upon Lender's request, all construction and trade contracts and contracts for material, equipment, supplies and labor shall be collaterally assigned to Lender and Borrower shall cause the general contractor to cause all other parties thereto to agree to perform for the benefit of Lender, at the request of Lender, provided Lender shall pay them for their respective services). For the purpose of this Security Instrument, a "**Minor Taking**" shall mean any Taking occurring not later than six (6) months prior to the Scheduled Maturity Date which (x) does not unduly restrict or limit access to the Property, and (y) affects less than 20% of the total floor area of the Improvements. In addition, Lender shall not be required to advance any Awards for the restoration of the Property unless the Franchise Agreement shall remain in full force and effect during and after the completion of the restoration and Borrower shall deliver to Lender, and Lender shall approve in writing, the plans, specifications and construction budget for the restoration of the Property and Lender shall determine that the Improvements located on the Real Estate can be restored so as to constitute a commercially viable building of the same quality and having the same number of hotel rooms as existed immediately before the Taking for the amounts set forth in the construction budget. Upon receipt by Lender of an Award from a Minor Taking and/or if Lender, in its sole discretion, shall otherwise elect to make such Awards available for the restoration of the Property, the following shall apply:

(i) The actual out-of-pocket costs to Lender (including, without limitation, legal fees, appraisal fees, engineering surveys, consultants' and architects' charges and adjustors' fees) reasonably incurred in connection with the recovery of the Award and in reviewing and approving all plans (collectively, "**Lender's Award Costs**") shall first be paid to Lender out of the Award. Lender shall have the right, but not the obligation, to retain an architectural or engineering consultant at any time and from time to time, at Borrower's sole cost and expense, to examine plans, specifications, change orders and budgets with respect to such restoration, the progress of same and to render reports and conduct site inspections with respect to the foregoing;

(ii) The contractor and major subcontractors engaged to perform the restoration work shall be subject to the prior written approval of Lender, such approval not to be unreasonably withheld, conditioned or delayed;

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(iii) The general contractor shall deliver a performance bond in respect of the work to be performed at the Property or a guarantee of such work in form, scope and substance reasonably acceptable to Lender from an entity reasonably acceptable to Lender or other substitute for such performance bond or guarantee acceptable to Lender in its sole discretion and the construction contract shall contain a time of the essence completion date satisfactory to Lender. All construction and trade contracts and contracts for material, equipment, supplies and labor shall be collaterally assigned to Lender and Borrower shall cause the general contractor to cause all other parties thereto to agree to perform for the benefit of Lender, at the request of Lender, provided Lender shall pay them for their respective services;

(iv) Borrower shall procure and deliver to Lender, from a licensed architect selected by Borrower and approved by Lender, a certified statement setting forth the estimated cost of restoration and that the Award, in such architect's reasonable estimation, is (after deducting all of the Lender's Award Costs and such architect's fees and all other estimated costs for architects, plans, permits and approvals and other so-called "soft costs") sufficient to perform the restoration of the Property using similar quality materials as those presently installed therein. If such Award is insufficient, and if Lender nevertheless agrees to make such Award available for the restoration, Lender may require Borrower to deposit with Lender (with interest) the amount of any such deficiency, which funds shall be disbursed first in payment of such work. In addition, if thereafter it appears, at any time and from time to time, that the remaining portion of the Award shall be insufficient to pay for the remaining costs of construction, then Borrower shall deposit the amount of such deficiency (from time to time determined) with Lender for use as aforesaid;

(v) All Awards allocated for restoration shall be disbursed by Lender (not more frequently than monthly) based on the percentage of the work completed against a certification therefor by the aforesaid architect, invoices for the work to be paid for, waivers of lien for all prior work for which a payment was made and a title endorsement for the Property showing no additional exceptions to title of the Property other than the Permitted Encumbrances. In addition, prior to any disbursement from the Award, Borrower must certify to Lender that (A) Borrower incurred the costs in the amount of the requested advance (as evidenced by a draw request signed by the general contractor and/or paid receipts), (B) such costs have not been the basis for any previous requisition, (C) there has been no adverse change in Borrower's financial condition which would have an adverse affect, as determined by Lender, on the ability of Borrower to complete the repairs and/or restorations in question in accordance with the terms of this Security Instrument, and (D) Borrower has no defenses, counterclaims or offsets to its obligations under the Loan Documents and that there exists no Event of Default under the Loan Documents or event which with the giving of notice or passage of time, or both, would constitute an Event of Default under the Loan Documents and (E) the Hotel Management Agreement and the Franchise Agreement shall remain in full force and effect during and after completion of the restoration, notwithstanding the occurrence of such casualty. Lender shall be entitled to retain up to ten (10%) percent of the amount of each such requisition unless the amount of the requisition already reflects ten (10%) percent retainage by Borrower. Such retainage shall be paid on a trade by trade basis upon final completion of the work by the applicable trade free of liens. If Lender shall have engaged an architectural or engineering consultant, then, as an additional precondition to any disbursement from the Award hereunder, such consultant shall have approved, in writing, the progress of the work, conformity of the work with the approved plans and specifications and

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the quality and percentage of the work completed. For purposes of this provision, all work shall be deemed completed and all retainage shall be released upon delivery to Lender of the following, all in form and substance satisfactory to Lender: (x) evidence that all applicable licenses, permits and approvals (including, without limitation, certificates of occupancy) related to the work for which payment of the retainage therefor is sought have been obtained, (y) the certifications of Borrower's architect, the general contractor and Lender's consulting architect or engineering consultant, if any, that such work has been completed in accordance with the approved plans and specifications (and approved change orders) therefor, and (z) all of the certificates, statements, waivers, title endorsements and other proofs required hereunder as a condition to any disbursement;

(vi) No Event of Default or event which with the giving of notice or lapse of time or both, would constitute an Event of Default hereunder or under any Loan Document shall exist; and

(vii) All work shall be performed in a good and workmanlike manner and in accordance with all Governmental Regulations and insurance company requirements and recommendations and otherwise pursuant to plans and specifications approved by the aforesaid architect.

(d) Not Trust Funds. In the event that Borrower shall have received all or any portion of such Award, Borrower, upon demand from Lender, shall pay to Lender an amount equal to the amount so received by Borrower. Notwithstanding anything herein or at law or in equity to the contrary, none of the Awards paid to, or received by, Lender as herein provided shall be deemed trust funds and Lender shall be entitled to dispose of such proceeds as provided in this Section 2.5.

(e) Effect on the Obligations. Notwithstanding any Taking, Borrower shall continue to pay and perform the Obligations as provided herein. Any reduction in the Obligations resulting from an application of Awards shall be deemed to take effect only on the date of receipt by Lender of such Awards and application against the Obligations, provided that if prior to the receipt by Lender of such Awards the Property shall have been sold on foreclosure of this Security Instrument, or shall have been transferred by deed in lieu of foreclosure of this Security Instrument, Lender shall have the right to receive the same to the extent of any deficiency found to be due upon such sale, with legal interest thereon together with reasonable attorneys' fees and disbursements incurred by Lender in connection with the collection thereof. The provisions of this Section 2.5 shall survive the repayment, release, satisfaction and termination of this Security Instrument.

## 2.6 Liens and Liabilities.

(a) Discharge of Liens. Borrower will pay, bond or otherwise discharge, from time to time when the same shall become due, all lawful claims and demands of mechanics, materialmen, laborers and others which, if unpaid, might result in, or permit the creation of, a Lien on the Property or on the revenues, rents, issues, income or profits arising therefrom and, in general, Borrower shall do, or cause to be done, at Borrower's sole cost and expense, everything necessary to fully preserve the lien and priority of this Security Instrument. For the purposes

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hereof, the term "Lien" (or "Liens" as the case may be) shall mean any lien, mortgage, pledge, security interest, financing statement, or encumbrance of any kind (including any conditional sale or other title retention agreement or any lease in the nature thereof, but excluding Permitted Encumbrances) and any agreement to give or refrain from giving any lien, mortgage, pledge, security interest, or other encumbrance of any kind.

(b) Other Debt/Creation of Liens. Borrower will not, without Lender's consent, incur any other debt, whether unsecured or secured by all or any portion of the Property. In addition, Borrower will not create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any Lien against or covering the Property, which is prior to, on a parity with or subordinate to the lien of this Security Instrument. If any of the foregoing becomes attached to the Property without such consent, Borrower will immediately cause the same to be discharged and released. Notwithstanding the above to the contrary, Borrower may incur unsecured trade payables, not represented by a note, customarily paid by Borrower prior to their due date, but in any event within ninety (90) days of incurrence and in fact not more than ninety (90) days outstanding, which are incurred in the ordinary course of Borrower's ownership and operation of the Property, in amounts reasonable and customary for similar properties and in all events not exceeding, in the aggregate, at any one time, 2% of the original Principal Amount (as defined in the Note) of the Loan ("Permitted Trade Payables").

(c) No Consent. Nothing in the Loan Documents shall be deemed or construed in any way 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.

## 2.7 Taxes and Other Charges.

(a) Taxes on the Property. Borrower will pay prior to delinquency and before any penalty, interest or cost for non-payment thereof may be added thereto, (i) all taxes, assessments, vault, water and sewer rents, rates, charges and assessments, levies, inspection and license fees and other governmental and quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, heretofore or hereafter assessed, levied or otherwise imposed against or upon, or which may become a Lien upon, the Property, or any portion thereof, including, without limitation, any taxes with respect to the Rents and Profits or arising in respect of the occupancy, use or possession of the Real Estate and Improvements, (ii) income taxes, franchise taxes, and other taxes owing by Borrower the non-payment of which would result in a Lien against the Property or otherwise diminish or impair the security of this Security Instrument and (iii) all taxes, charges, filing, registration, and recording fees, excises and levies imposed upon Lender by reason of or in connection with the execution, delivery and/or recording of the Loan Documents or the ownership of this Security Instrument or any Security Instrument supplemental hereto, any security instrument with respect to any equipment or any instrument of further assurance, and all corporate, stamp and other taxes required to be paid in connection with the Obligations (excluding, however, income taxes of Lender) (collectively, "Impositions"). Borrower will also pay any penalty, interest or cost for non-



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payment of Impositions which may become due and payable, and such penalties, interest or cost shall be included within the term Impositions.

(b) Receipts. Unless Borrower is making monthly deposits pursuant to **Section 2.8** or unless Lender otherwise directs, Borrower will furnish to Lender upon Lender's request, written proof of payment of the Impositions at the time such payment is made, and thereafter, upon Borrower's receipt, furnish to Lender validated receipts showing payment in full of all Impositions.

(c) Additional Taxes. In the event of the enactment of or change in (including a change in interpretation of) any applicable Governmental Regulation (i) deducting or allowing Borrower to deduct from the value of the Property for the purpose of taxation any Lien or security interest thereon, or (ii) imposing, modifying or deeming applicable any reserve or special requirement against deposits of Lender, or (iii) subjecting Lender to any tax or changing in any way any Governmental Regulation for the taxation of mortgages, deeds of trust, deeds to secure debt or security agreements or other liens or debts secured thereby, the interest of the grantee, mortgagee, Lender trustee or secured party in the property covered thereby, or the manner of collection of such taxes, in each such case, so as to affect this Security Instrument, the Obligations of Lender, and the result is to increase the taxes imposed upon or the cost to Lender or to reduce the amount of any payments receivable hereunder, then, and in any such event, Borrower shall, on demand, pay to Lender additional amounts to compensate for such increased costs or reduced amounts, provided that if any such payment or reimbursement shall be unlawful or would constitute usury or render the Obligations wholly or partially usurious under applicable law, then Lender may, at its option, declare the Obligations immediately due and payable or require Borrower to pay or reimburse Lender for payment of the lawful and non-usurious portion thereof.

(d) Contest of Certain Claims. Notwithstanding anything to the contrary contained in **Section 2.6** or **Section 2.7** hereof, Borrower may, to the extent and in the manner permitted by Governmental Regulations, at Borrower's sole cost and expense, contest Governmental Regulations, Impositions or any other claim that can lead to a Lien against the Property, and the failure of Borrower to pay the contested Imposition or other claim that may result in a Lien against the Property, pending such contest, shall not be or become a default, provided that (A) Borrower shall notify Lender of Borrower's intent to contest such payment at least thirty (30) days prior to commencing the contest; (B) Borrower shall deposit such payments or post such security as may be required by Governmental Regulation in connection with such contest; (C) Borrower shall furnish to Lender a cash deposit satisfactory to Lender, or an indemnity bond satisfactory to Lender, with a surety reasonably satisfactory to Lender, to assure payment (including, without limitation, interest, fines and penalties) of, and/or compliance with, the matters under contest and/or to prevent any sale, loss or forfeiture of all or any part of the Property; (D) Borrower diligently and in good faith pursues such contest by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and/or the sale, loss or forfeiture of all or any part of the Property to satisfy the same; (E) Borrower, promptly upon final determination thereof, shall pay the amount of any such claim so determined, together with all costs, fines, interest and penalties payable in connection therewith; (F) the failure to comply with the applicable Governmental Regulations or to make payment of any Imposition or other claim shall not subject Lender to any civil or criminal liability or to any

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Losses and Liabilities; and (G) such contest shall not otherwise interfere with the payment of any amounts required to be paid under this Security Instrument or any of the other Loan Documents or the satisfaction of any other Obligations.

## 2.8 Tax and Insurance Deposits.

(a) Amount of Deposits. At Lender's election, Lender may require, at any time during the term of the Loan, at Borrower's expense, that Borrower deposit with Lender, or any servicer or financial institution that Lender may from time to time designate (collectively, the "**Depository**"), into an account in the name of Lender, monthly, one-twelfth (1/12th) of the annual premiums for insurance and one-twelfth (1/12th) of the amount of all Impositions estimated by Lender to be due for the immediately succeeding calendar year. In addition, if required by Lender, Borrower shall also deposit with the Depository a sum of money which, together with the aforesaid monthly installments, will be sufficient to make each of said payments of Impositions and premiums at least thirty (30) days before such payments are due. All such funds shall be held in an interest-bearing account. All interest earned on the funds held by the Depository, less Depository's administrative charges, shall be credited to, and remain in an account with the Depository, but the amount thereof shall be credited against future deposit obligations under this **Section 2.8**. Lender shall bear no liability for the failure to achieve any particular rate of return or yield on funds held by the Depository. If the amount of any such payments is not ascertainable at the time any such deposit is required to be made, the deposit shall be made on the basis of Lender's estimate thereof, and, when such amount is fixed for the then-current year, Borrower shall promptly deposit any deficiency with the Depository. Lender shall have the right to require Borrower to obtain, at Borrower's expense, a tax service reporting contract for the term of the Loan issued by a tax reporting agency acceptable to Lender. By its acceptance of this Security Instrument, Lender shall be deemed to acknowledge and agree that Borrower is not currently required to make the deposits pursuant to this **Section 2.8**, provided, however, that (i) in connection with deposits for Impositions, Lender retains the right to require Borrower to make the deposits specified herein in the future, and (ii) in connection with deposits for premiums for insurance, Lender shall not require Borrower to make such deposits provided that (A) no Event of Default or event which with the giving of notice or lapse of time, or both, would constitute an Event of Default hereunder or under any Loan Document shall exist, (B) Borrower is maintaining the required insurance hereunder pursuant to a blanket insurance Policy approved by Lender in Lender's sole and absolute discretion, and (C) Borrower has provided Lender with evidence satisfactory to Lender of payment in advance of the annual Insurance Premiums.

(b) Use of Deposits. All funds so deposited shall, until so applied by the Depository for the payment of Impositions or premiums for insurance, constitute additional security for the Obligations (and Borrower hereby grants to Lender a first priority security interest in such funds), and may be commingled with other funds of the Depository. If an Event of Default shall have occurred hereunder, or if the Obligations shall be accelerated as herein provided, all funds so deposited may, at Lender's option, be applied to the Obligations in the order determined by Lender or to cure said Event of Default or as provided in this **Section 2.8**. In addition, if an Event of Default shall have occurred hereunder, Borrower shall have no further right to require that the Depository hold funds hereunder in an interest-bearing account.

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(c) Transfer of Security Instrument. Upon an assignment or other transfer of this Security Instrument, the Depository shall have the right to pay over the balance of such deposits in its possession to the assignee or other successor, and the Depository shall thereupon be completely released from all liability with respect to such deposits and Borrower or the owner of the Property shall look solely to the assignee or transferee with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee or transferee.

(d) Transfer of the Property. Subject to Article V hereof, transfer of record title to the Property shall automatically transfer to the new owner all of Borrower's beneficial interest in any deposits under this **Section 2.8**, subject to the rights of Lender as provided herein. Upon full payment and satisfaction of this Security Instrument or, at Lender's option, at any prior time, the balance of amounts deposited in the Depository's possession shall be paid over to the record owner of the Property, and no other party shall have any right or claim thereto in any event.

2.9 Inspection. Borrower will allow Lender and its authorized representatives to enter upon and inspect the Property, and/or the books, records and accounts of Borrower at the office of Borrower or other Person maintaining such books, records and accounts (and in connection therewith, to make copies or extracts thereof as Lender shall desire), upon prior notice at all times during regular business hours and will assist Lender and such representatives in effecting said inspection.

## 2.10 Records; Reports and Audits; Maintenance of Records.

(a) Borrower shall keep and maintain or will cause to be kept and maintained on a calendar year basis, in accordance with generally accepted accounting principles consistently applied, proper and accurate books, records and accounts reflecting all of the financial affairs of Borrower and all items of income and expense in connection with the operation of the Property or in connection with any services, equipment or furnishings provided in connection with the operation of the Property, whether such income or expense be realized by Borrower or by any other Person whatsoever excepting tenants unrelated to and unaffiliated with Borrower who have leased from Borrower portions of the Property for the purpose of occupying the same.

(b) Within one hundred twenty (120) days following the end of each calendar year, Borrower shall furnish Lender: (i) income statements, balance sheets and cash flow statements of Borrower and the Property reviewed (or after the occurrence of an Event of Default, audited) by a certified public accountant satisfactory to Lender and stating that the same have been prepared in accordance with generally accepted accounting principles consistently applied, (ii) a detailed rent roll for the Property which shall list all expiring Leases and the applicable lease expiration dates, and (iii) a building stacking plan setting forth the name, the square footage and floor of each tenant (or vacant space) at the Property. Prior to the end of each calendar year, Borrower shall furnish to Lender detailed operating and capital budgets with respect to the Property for the following year (the "**Annual Budget**").

(c) Within thirty (30) days following the date that Borrower is required to file any state or federal income tax returns, Borrower shall deliver to Lender copies of such returns

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as filed with the applicable taxing authorities together with evidence of the payment of all federal and state income taxes required to be paid by Borrower.

(d) Within thirty (30) days following the end of each calendar quarter, Borrower shall deliver to Lender a "**Leasing Status Report**", which shall include (i) a list of each vacant space located in the Property, which shall include the rent for each space and any concessions, (ii) a summary of prospective tenants for each vacant space, including a discussion of lease terms and a copy of any letters of intent, if available, (iii) the status of any leased spaces that will roll over within the twelve (12) month period following the date of the applicable Leasing Status Report, including details with respect to whether the current tenant has given notice of whether it intends to renew its Lease or permit the termination of the same and, if applicable, the proposed renewal terms; (iv) copies of any and all new Leases or subleases, or amendment, modification, termination or surrender of any Leases or subleases, together with any and all side letters, licenses, letters of credit, guarantees and any other documentation executed in connection with any such Leases entered into since the delivery of the last Leasing Status Report from Borrower to Lender, certified by Borrower as being true, correct and complete, and, if requested by Lender, "ink-signed" original counterparts thereof, (v) a summary of the terms, including concessions, under any Leases or subleases entered into, amended, modified or renewed since the delivery of the previous Leasing Status Report from Borrower to Lender;

(e) Within thirty (30) days following the end of each calendar quarter, Borrower shall deliver to Lender (i) operating statements of the Property in form and substance satisfactory to Lender, and (ii) a detailed rent roll for the Property (which shall list all expiring Leases and the applicable Lease expiration dates), together with a delinquency report each in substantially the same form as delivered to Lender in connection with its underwriting of the Loan or such other form as may be approved by Lender, and (iii) separate statements prepared in accordance with the Uniform System of Accounts for hotel and motel properties as approved by the American Hotel and Motel Association.

(f) Within ten (10) Business Days after Lender's request, Borrower shall deliver to Lender such additional financial information concerning Borrower, any Indemnitee and/or the Property as may be reasonably requested by Lender, including, without limitation, (i) a current budget for the Property (ii) an occupancy report dated as of the last day of the most recently ended month, including an average daily rate, (iii) any franchise inspection reports received by Borrower during the prior month, and (v) the most current Smith Travel Research Reports then available to Borrower reflecting market penetration and relevant hotel properties competing with the Property.

2.11 **Borrower's Certificates.** Borrower, within ten (10) Business Days after Lender's request, shall furnish to Lender a written statement (a "**Borrower's Certificate**"), duly acknowledged, certifying to Lender and/or any proposed assignee of this Security Instrument or other prospective holder of the Loan or any portion thereof or interest therein, as to (a) the amount of the Obligations then owing under this Security Instrument, (b) the terms of payment and maturity date of the Obligations, (c) the date to which interest has been paid under the Note, (d) whether any offsets or defenses exist against the Obligations and, if any are alleged to exist, a detailed description thereof, (e) that all Leases for the Property are in full force and effect and have not been modified (or if modified, setting forth all modifications), (f) the date to which the

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rent, additional rent and other charges under such Leases have been paid, (g) whether or not, to the best knowledge of Borrower, any of the tenants under such Leases are in default under such Leases, and, if any of the tenants are in default, setting forth the specific nature of all such defaults, and (h) as to any other matters reasonably requested by Lender.

## 2.12 Security Interest.

(a) This Security Instrument is also intended to, among other things, encumber and create a security interest in, and Borrower hereby unconditionally and irrevocably grants, bargains, assigns, conveys, pledges, mortgages, transfers, sets over and confirms unto Lender and hereby grants to Lender a security interest in, all fixtures, chattels, accounts, deposit accounts, equipment, inventory, contract rights, general intangibles and other personal property included within the Property, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Real Estate or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Real Estate and the Improvements. The foregoing security interest shall also cover Borrower's leasehold interest in any of the foregoing property which is leased by Borrower. Notwithstanding the foregoing, all of the foregoing property shall be owned by Borrower and no leasing or installment sales or other financing or title retention agreement in connection therewith, shall be permitted without the prior written approval of Lender. Borrower shall, from time to time upon the request of Lender, supply Lender with a current inventory of all of the property in which Lender is granted a security interest hereunder, in such detail as Lender may reasonably require. Borrower shall promptly replace all of the Collateral subject to the lien or security interest of this Security Instrument when worn out or obsolete with Collateral comparable to the worn out or obsolete Collateral when new, and will not, without the prior written consent of Lender, remove from the Real Estate or the Improvements any of the Collateral subject to the lien or security interest of this Security Instrument, except in the ordinary course of operating the Property and except such as is replaced by an article of equal suitability and value as above provided, owned by Borrower free and clear of any lien or security interest except that created by this Security Instrument and the other Loan Documents and except as otherwise expressly permitted by the terms of this Security Instrument. Other than proceeds of the Collateral, all of the Collateral shall be kept at the location of the Real Estate, except as otherwise required by the terms of the Loan Documents. Borrower shall not use any of the Collateral in violation of any Governmental Regulations.

(b) As additional security for the payment and performance by Borrower of all duties, responsibilities and obligations under the Note and the other Loan Documents, Borrower hereby unconditionally and irrevocably assigns, conveys, pledges, mortgages, transfers, delivers, deposits, sets over and confirms unto Lender, and hereby grants to Lender a security interest in, (i) the amounts deposited with the Depository pursuant to the terms of Section 2.8, Section 2.14, Section 2.15, Section 2.16 and Article XI hereof (collectively, the "Reserves"), (ii) the accounts into which the Reserves have been deposited, (iii) all insurance of said accounts, (iv) all accounts, contract rights and general intangibles or other rights and interests pertaining thereto, (v) all sums now or hereafter therein or represented thereby, (vi) all replacements, substitutions or proceeds thereof, (vii) all instruments and documents now or

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hereafter evidencing the Reserves or such accounts, (viii) all powers, options, rights, privileges and immunities pertaining to the Reserves (including the right to make withdrawals therefrom), and (ix) all proceeds of the foregoing. Borrower hereby authorizes and consents to the account or accounts into which the Reserves have been deposited being held by Depository and hereby acknowledges and agrees that Lender shall have sole and exclusive dominion and control over said account or accounts. Notice of the assignment and security interest granted to Lender herein may be delivered by Lender at any time to the Depository wherein the Reserves have been established, and Lender shall have possession of all passbooks or other evidences of such accounts. Borrower hereby assumes all risk of loss with respect to amounts on deposit in the Reserves, except to the extent such loss is caused by the gross negligence or willful misconduct of Lender. Borrower hereby knowingly, voluntarily and intentionally stipulates, acknowledges and agrees that the advancement of the funds from the Reserves as set forth herein is at Borrower's direction and is not the exercise by Lender of any right of setoff or other remedy upon an Event of Default. Borrower hereby waives all right to withdraw funds from the Reserves. If an Event of Default shall occur hereunder or under any other of the Loan Documents, then Lender may, without notice or demand on Borrower, at its option: (A) withdraw any or all of the funds (including, without limitation, interest) then remaining in the Reserves and apply the same, after deducting all costs and expenses of safekeeping, collection and delivery (including, but not limited to, reasonable attorneys' fees, costs and expenses) to the indebtedness evidenced by the Note or any other Obligations of Borrower under the other Loan Documents in such manner or as Lender shall deem appropriate in its sole discretion, and the excess, if any, shall be paid to Borrower, (B) exercise any and all rights and remedies of a secured party under any applicable UCC, or (C) exercise any other remedies available at law or in equity. No such use or application of the funds contained in the Reserves shall be deemed to cure any default hereunder or under the other Loan Documents. Notwithstanding anything to the contrary set forth herein, Lender shall have no liability arising from or in connection with any act or omission of the Depository or the economic failure of the Depository.

2.13 Security Agreement. This Security Instrument constitutes a security agreement between Borrower and Lender with respect to the Collateral (including, without limitation, the Reserves) in which Lender is granted a security interest hereunder, and, cumulative of all other rights and remedies of Lender hereunder, Lender shall have all of the rights and remedies of a secured party under any applicable UCC. Borrower hereby agrees to execute and deliver on demand and hereby irrevocably constitutes and appoints Lender the attorney-in-fact of Borrower to execute and deliver and, if appropriate, to file with the appropriate filing officer or office such security agreements, financing statements or other instruments as Lender may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Without limiting the foregoing, to the extent permitted by applicable law, Borrower hereby authorizes Lender to file any financing statements or continuation statements thereof on Borrower's behalf. Except with respect to Rents and Profits to the extent specifically provided herein to the contrary, Lender shall have the right of possession of all cash, securities, instruments, negotiable instruments, documents, certificates and any other evidences of cash or other property or evidences of rights to cash rather than property, which are now or hereafter a part of the Property, and, upon the occurrence of any default hereunder or under any other Loan Document, Borrower shall promptly deliver the same to Lender, endorsed to Lender, without further notice from Lender. Borrower agrees to furnish Lender with notice of any change in the

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name, identity, state of organization, residence, or principal place of business or mailing address of Borrower within ten (10) days of the effective date of any such change. Upon the occurrence of any Event of Default hereunder, Lender shall have the rights and remedies as prescribed in this Security Instrument, or as prescribed by general law, or as prescribed by any applicable UCC, all at Lender's election. Without implying any limitation upon the foregoing, Lender may, at its option, proceed against the Collateral in accordance with the provisions of the UCC as enacted in the State of Illinois, or Lender may proceed as to both the real and personal property comprising the Property in accordance with this Security Instrument, or as otherwise provided at law or in equity. Any disposition of the Collateral may be conducted by an employee or agent of Lender. Any Person, including both Borrower and Lender, shall be eligible to purchase any part or all of the Collateral at any such disposition. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Lender's attorneys' fees and legal expenses), together with interest thereon at the Default Rate from the date incurred by Lender until actually paid by Borrower, shall be paid by Borrower on demand and shall be secured by this Security Instrument and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Lender shall have the right to enter upon the Real Estate and the Improvements or any real property where any of the property which is the subject of the security interests granted herein is located to take possession of, assemble and collect the same or to render it unusable, or Borrower, upon demand of Lender, shall assemble such property and make it available to Lender at the Real Estate, a place which is hereby deemed to be reasonably convenient to Lender and Borrower. If notice is required by law, Lender shall give Borrower not less than ten (10) days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Borrower, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Borrower. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Lender pursuant to any applicable UCC

(a) In the event of a foreclosure sale, the Collateral may, at the option of Lender, be sold as a whole;

(b) It shall not be necessary that Lender take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this **Section 2.13** is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and

(c) Lender may appoint or delegate any one or more Persons as agent to perform any act or acts necessary or incident to any sale held by Lender, including the sending of notices and the conduct of the sale, but in the name and on behalf of Lender.

The name and address of Borrower (as Debtor under any applicable UCC) are:

Integrated Clark Monroe LLC  
181 West Madison Street, Suite 4700  
Chicago, Illinois 60602

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Attn: John T. Murphy

The name and address of Lender (as Secured Party under any applicable UCC) are:

100 West Monroe Funding LLC  
 c/o JPMorgan Chase Bank, N.A.  
 270 Park Avenue, 9th Floor  
 New York, New York 10017  
 Attn: Richard Meth

## 2.14 Mortgage Interest Reserve.

(a) Interest Reserve. On the Effective Date, Lender shall advance (or be deemed to have advanced as a book entry with respect to the Loan) a portion of the Loan in a principal amount of Two Million Dollars (\$2,000,000), which shall be held in the name of and controlled by Lender on a non-interest bearing basis. Lender shall make such funds available as an interest reserve ("**Interest Reserve**"), which shall be periodically disbursed directly by Lender to Lender for the payment of interest which accrues and becomes due under the Note. The funds in such Interest Reserve shall, for purposes of interest calculation, be deemed disbursed to Borrower as of the Effective Date. Lender is hereby authorized to pay the Loan from the Interest Reserve directly for such interest payments when due. Lender shall provide Borrower with a monthly interest statement. Depletion of the Interest Reserve shall not release Borrower from any of Borrower's obligations under the Loan Documents, including payment of all accrued and due interest. Amounts in the Interest Reserve shall be made available on the terms and conditions contained herein. Lender shall have no obligation to release any portion of the Interest Reserve for any purpose other than payment of interest under the Note, or during any period that an Event of Default exists.

(b) Release of Mortgage Interest Reserve. Provided no Event of Default shall exist and remain uncured, Borrower may direct Lender to release the balance of the Interest Reserve upon the Property achieving, at the time of said request, a Minimum Debt Service Coverage Ratio (as hereinafter defined), as determined by the Lender in its reasonable discretion, of 1.35 or greater for the trailing six (6) month period.

### (c) Definitions.

(1) The term "Minimum Debt Service Coverage Ratio" shall mean a ratio, as determined by Lender, in which as of any date of determination by Lender: (A) the numerator is the Net Operating Income (as reasonably determined by Lender) of the Property for the trailing six (6) month period, and (B) the denominator is the Debt Service (as hereinafter defined) determined by Lender to be due and payable during the trailing six (6) month period.

(2) The term "Debt Service" shall mean, with respect to any particular period of time, the aggregate amount of all scheduled payments due and payable under the Note and this Security Instrument.



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(d) Prohibition Against Further Encumbrance. Borrower shall not, without the prior written consent of Lender, further pledge, assign or grant any security interest in the Interest Reserve or permit any lien or encumbrance to attach thereto, or any levy to be made thereon or a UCC-1 financing statement, except those naming Lender as the Secured Party, to be filed with respect thereto.

(e) Use of Deposits. All funds so deposited under this Section 2.14 shall, until so disbursed by Lender as set forth in the applicable provisions, constitute additional security for the Obligations (and Borrower hereby grants to Lender a first priority security interest in such funds), and may be commingled with other funds of Lender. If an Event of Default shall have occurred hereunder, or if the Obligations shall be accelerated as herein provided, all funds so deposited may, at Lender's option, be applied to the Obligations in the order determined by Lender or to cure said Event of Default or as provided in this Section 2.14.

(f) Transfer of Security Instrument. Upon an assignment or other transfer of this Security Instrument, Lender shall have the right to pay over the balance of such deposits made pursuant to this Section 2.14 in its possession to the assignee or other successor, and Lender shall thereupon be completely released from all liability with respect to such deposits and Borrower or the owner of the Property shall look solely to the assignee or transferee with respect thereto. This provision shall apply to every transfer of such deposits to a new assignee or transferee.

(g) Transfer of the Property. Subject to Article V hereof, transfer of record title to the Property shall automatically transfer to the new owner all of Borrower's beneficial interest in any deposits under this Section 2.14, subject to the rights of Lender as provided herein. Upon full payment and satisfaction of this Security Instrument or, at Lender's option, at any prior time, the balance of amounts deposited in the Depository's possession shall be paid over to the record owner of the Property, and no other party shall have any right or claim thereto in any event.

2.15 [Intentionally omitted]

2.16 [Intentionally omitted]

2.17 Access Laws. Borrower covenants to cause the Property to at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990 (as amended, the "ADA"), the Fair Housing Amendments Act of 1988, all state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the ADA Accessibility Guidelines for Buildings and Facilities (collectively, "Access Laws"). Notwithstanding any provisions set forth herein or in any other document regarding Lender's approval of alterations of the Property, Borrower shall not alter, or permit others to alter, the Property in any manner which would increase Borrower's responsibilities for compliance with the applicable Access Laws without the prior written approval of Lender. Lender may condition any such approval upon receipt of a certificate of Access Law compliance, in form and substance satisfactory to Lender, from an architect, engineer, or other Person acceptable to Lender. Borrower agrees to give prompt notice to Lender of the receipt by Borrower of any complaints related to violations of any Access Laws

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and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

2.18 Future Advances; Secured Indebtedness. It is understood and agreed that this Security Instrument shall secure payment of not only the indebtedness evidenced by the Note, but also any and all substitutions, replacements, renewals and extensions of the Note, any and all indebtedness and obligations arising pursuant to the terms hereof and any and all indebtedness and obligations arising pursuant to the terms of any of the other Loan Documents (other than the Environmental Indemnity), all of which indebtedness is equally secured with and has the same priority as any amounts advanced as of the date hereof. It is agreed that any future advances made by Lender to or for the benefit of Borrower from time to time under this Security Instrument or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Lender, or otherwise, and all interest accruing thereon, shall be equally secured by this Security Instrument and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Security Instrument.

2.19 OFAC. At all times throughout the term of the Loan, Borrower and all of its respective Affiliates shall (i) not be a Prohibited Person (defined below), and (ii) be in full compliance with all applicable orders, rules, regulations and recommendations of The Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury.

The term "Prohibited Person" shall mean any person or entity:

- (a) listed in the Annex to, or otherwise subject to the provisions of, the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, and relating to Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (the "Executive Order");
- (b) that is owned or controlled by, or acting for or on behalf of, any Person or entity that is listed to the Annex to, or is otherwise subject to the provisions of, the Executive Order;
- (c) with whom Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or money laundering law, including the Executive Order;
- (d) who commits, threatens or conspires to commit or supports "Terrorism" as defined in the Executive Order; or
- (e) that is named as a "Specially Designated National and Blocked Person" on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, [www.ustreas.gov/offices/enforcement/ofac](http://www.ustreas.gov/offices/enforcement/ofac) or at any replacement website or other replacement official publication of such list; or who is an Affiliate of or affiliated with a Person or entity listed above.

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## 2.20 ERISA.

(a) As of the date hereof and throughout the term of the Loan, (i) Borrower does not and shall not sponsor, is not obligated to contribute to and shall not contribute to and is not and shall not be an “employee benefit plan,” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), subject to Title I of ERISA or Section 4975 of the Internal Revenue Code of 1986, as amended (the “Code”), (ii) none of the assets of Borrower constitutes or shall constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101, (iii) Borrower is not and shall not be a “governmental plan” within the meaning of Section 3(32) of ERISA, and (iv) transactions by or with Borrower are not and shall not be subject to any statute, rule or regulation regulating investments of, or fiduciary obligations with respect to, “governmental plans” within the meaning of Section 3(32) of ERISA.

(b) Borrower shall not engage in any transaction which would cause any obligation, or any action taken or to be taken, hereunder or under the other Loan Documents (or the exercise by Lender of any of its rights under this Agreement or the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA.

(c) Borrower shall deliver to Lender such certifications or other evidence from time to time throughout the term of the Loan, as requested by Lender in its sole discretion, that Borrower is in compliance with the representations, warranties and covenants contained in this **Section 2.20**.

2.21 Property Management/Hotel Covenants Borrower represents, covenants and agrees with Lender as follows:

(a) The Franchise Agreement is in full force and effect, has not been amended or modified, and there is no material default, breach or violation existing thereunder by Borrower or, to Borrower’s knowledge, Franchisor, and, to Borrower’s knowledge, no event has occurred 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.

(b) The Hotel Management Agreement is in full force and effect, has not been amended or modified, and there is no material default, breach or violation existing thereunder by Borrower or, to Borrower’s knowledge, Hotel Manager, and, to Borrower’s knowledge, no event has occurred 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.

(c) Neither the execution and delivery of the Loan Documents, the Borrower’s performance thereunder, nor the recordation of this Security Instrument, will adversely affect Borrower’s rights under the Franchise Agreement (subject to the delivery and terms of the Franchise Comfort Letter) or the Hotel Management Agreement.

(d) Borrower shall at all times that the indebtedness secured hereby is outstanding cause the Property to be operated as a “Hyatt Centric” hotel (or in the name of any successor entity) pursuant to the Franchise Agreement.

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(e) Borrower shall:

(1) perform and/or observe in all material respects all of the covenants and agreements required to be performed and observed by it under the Franchise Agreement or the Hotel Management Agreement prior to the expiration of any applicable notice and/or cure period and do all things necessary to preserve and to keep unimpaired its rights thereunder;

(2) promptly deliver to Lender any written notice of default or other written notice under the Franchise Agreement or the Hotel Management Agreement received by Borrower;

(3) promptly deliver to Lender a copy of each final financial statement, business plan, capital expenditures plan, report and estimate received by it under the Franchise Agreement or the Hotel Management Agreement;

(4) promptly enforce in a commercially reasonable manner the performance and observance in all material respects of all of the covenants and agreements required to be performed and/or observed by the Franchisor under the Franchise Agreement and the Hotel Manager, under the Hotel Management Agreement; and

(5) indemnify and hold Lender harmless from and against all Losses and Liabilities in any way arising in connection with any termination payments under the Franchise Agreement or the Hotel Management Agreement and liquidated damages payable under the Franchise Agreement or the Hotel Management Agreement.

(f) Borrower shall not, without Lender's prior consent (which consent shall not be unreasonably withheld, conditioned or delayed):

(1) surrender, terminate or cancel the Franchise Agreement or the Hotel Management Agreement and, if at any time Lender consents to the appointment of a new manager, such new manager and Borrower shall, as a condition of Lender's consent, execute an assignment of manager's management agreement in a form used by Lender in connection with making the Loan;

(2) reduce or consent to the reduction of the term of the Franchise Agreement or the Hotel Management Agreement;

(3) increase or consent to the increase of the amount of any fees or other amounts payable under the Franchise Agreement or the Hotel Management Agreement; or

(4) otherwise modify, change, supplement, alter or amend, or waive or release any of its rights and remedies under, the Franchise Agreement or the Hotel Management Agreement in any material respect.

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## ARTICLE III ASSIGNMENT OF LEASES AND RENTS AND OTHER SUMS

### 3.1 Assignment.

(a) Borrower has, by the Assignment of Leases and Rents executed, delivered and recorded simultaneously herewith, assigned to Lender, all of its right, title and interest in and to the Leases and the Rents and Profits described therein. The Assignment of Leases and Rents is intended to be and is an absolute present assignment from Borrower to Lender and not merely the passing of a security interest. Borrower represents and warrants to Lender that Borrower has delivered to Lender (i) a true, correct and complete copy of the Lender-Approved Lease Form, and (ii) true, correct and complete executed copies of all Leases, certified by Borrower as being true, correct and complete, as of the date hereof.

(b) So long as there shall exist no Event of Default hereunder and except as otherwise expressly provided herein, Borrower shall have the right and license to exercise all rights, options and privileges extended to the landlord under the Leases, including the right to collect all Rents and Profits and the right to receive the proceeds of any claims arising pursuant to the Leases. Borrower agrees to hold such Rents and Profits and the proceeds of any such claim, or a portion thereof in an amount sufficient to discharge and pay all then current Obligations which are or become due, in trust and to use the same in the payment of such Obligations (including, without limitation, all Impositions and insurance premiums then payable) and all other costs, charges, accruals or expenses then incurred on, against or in connection with the operation of the Property.

(c) Upon the occurrence of any Event of Default, the right and license set forth in subsection (b) of this **Section 3.1** shall be deemed automatically revoked by Lender as of the date of such Event of Default, whereupon Lender shall have the right and authority to exercise any of the rights or remedies referred to or set forth in Article VII. In addition, upon the occurrence of any such Event of Default, Borrower shall promptly pay to Lender or cause to be delivered to Lender (i) all rent prepayments and security or other deposits paid to Borrower pursuant to any Lease assigned hereunder, (ii) all original security deposits in the form of letters of credit, and (iii) all deposits for the payment of operating expenses and charges for services or facilities or for escalations which were paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default.

(d) Borrower will, as and when requested from time to time by Lender, execute, acknowledge and deliver to Lender, in the same form as the Assignment of Leases and Rents, one or more general or specific assignments of the landlord's interest under any Lease now or hereafter affecting the whole or any part of the Property. Borrower will, on demand, pay to Lender, or reimburse Lender for the payment of any costs or expenses incurred in connection with the preparation and recording of any such assignment.

### 3.2 Leases and Rents.

(a) Borrower will (i) perform or cause to be performed the landlord's obligations under all Leases now or hereafter affecting the whole or any part of the Property, (ii)

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enforce, short of termination, the performance by each tenant under its respective Lease of all of said tenant's obligations thereunder, and (iii) give Lender prompt written notice and a copy of any notice of default, event of default, termination or cancellation sent or received by Borrower with respect to any Lease.

(b) Borrower will not enter into any new Lease or consent to the amendment, modification, termination or surrender of any of the Leases or consent to any assignment of any Lease or any sublease under any Lease (herein "**Leasing Activity**"), without Lender's prior written consent.

(c) Notwithstanding anything to the contrary contained herein, Borrower shall not, without Lender's prior written consent:

- (i) reduce the rents payable under any of the Leases;
- (ii) amend, modify or otherwise alter any letter of credit or other security or any guaranty given in connection with any Lease, or waive, excuse, condone, discount, set off, compromise or in any manner release or discharge any such security or any guarantor under any guaranty given in connection with any Lease of and from any obligation, condition and/or agreement to be kept, observed and/or performed by such guarantor;
- (iii) consent to an assignment or subletting by a tenant of its interest in any Lease if (1) such tenant (or any guarantor) is released from liability in any respect under such Lease, or (2) Borrower shall not be reasonably satisfied with the creditworthiness of the proposed assignee or subtenant, as the case may be; or
- (iv) cancel, terminate or accept the surrender of any Lease.

## ARTICLE IV ADDITIONAL ADVANCES; EXPENSES; INDEMNITY

4.1 Additional Advances and Disbursements. Borrower agrees that upon the occurrence of an Event of Default, or upon Borrower's failure to in any way perform its obligations under this Security Instrument or any other Loan Document, Lender shall have the right, but not the obligation, in Borrower's name or in Lender's own name, and without notice to Borrower, to advance all or any part of amounts owing or to perform any or all required actions, and, Borrower expressly grants to Lender, in addition and without prejudice to any other rights and remedies hereunder, the right to enter upon and take possession of the Property to such extent and as often as it may deem necessary or desirable to prevent or remedy any such default. No such advance or performance shall be deemed to have cured such default by Borrower or any Event of Default with respect thereto. All sums advanced and all expenses incurred by Lender in connection with such advances or actions, and all other sums advanced or expenses incurred by Lender hereunder or under applicable law (whether required or optional and whether indemnified hereunder or not) shall be part of the Obligations, shall bear interest at the Default Rate until paid in full and shall be secured by this Security Instrument. Lender, upon making any such advance, shall be subrogated to all of the rights of the Person receiving such advance.

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## 4.2 Other Expenses.

(a) Borrower will pay or, on demand, reimburse Lender for the payment of, all reasonable fees, including appraisal fees, recording and filing fees, taxes, brokerage fees and commissions, abstract fees, title insurance premiums and fees, UCC search fees, escrow fees, consultants' fees and disbursements, environmental engineers' fees and disbursements, attorneys' fees and disbursements, servicing fees, and all other costs and expenses of every character incurred by Lender in connection with the closing of the transactions contemplated hereunder or under the other Loan Documents (including the granting and preparation of the Loan Documents), the administration and enforcement of the Loan Documents, and/or otherwise attributable or chargeable to Borrower as owner of the Property.

(b) Borrower will pay or, on demand, reimburse Lender for the payment of any reasonable costs or expenses (including attorneys' fees and disbursements and collection costs) incurred or expended in connection with or incidental to (i) the occurrence of any default or Event of Default by Borrower hereunder or under any of the other Loan Documents, (ii) the exercise or enforcement by or on behalf of Lender of any of its rights or remedies or Borrower's obligations under this Security Instrument or under the other Loan Documents, including, without limitation, the enforcement, compromise or settlement of this Security Instrument or the Obligations or the defense or assertion of the rights and claims of Lender hereunder in respect thereof, by litigation or otherwise, or (iii) any legal advice as to Lender's rights, remedies and obligations under this Security Instrument and the other Loan Documents arising from or in connection with any actual or threatened default hereunder or under any of the other Loan Documents or if Lender believes in good faith that a condition exists which will result in a breach of any covenant or material representation or warranty made by Borrower hereunder or under any of the other Loan Documents.

## 4.3 Indemnity.

(a) Borrower agrees to indemnify, defend and hold harmless any Indemnitees from and against any and all Losses and Liabilities (as defined herein) which may be imposed on, incurred or paid by or asserted against any Indemnitee by reason of or on account of, or in connection with or arising from:

(i) any default or Event of Default by Borrower or any other Borrower Party hereunder or under the other Loan Documents;

(ii) Lender's exercise of any of its rights and remedies, or the performance of any of its duties, hereunder (including, without limitation, under any Lease or in connection with the enforcement of any Lease) or under the other Loan Documents to which Borrower or any other Borrower Party is a party;

(iii) the demolition, construction, reconstruction or alteration of the Property;

(iv) an actual, alleged or threatened Environmental Condition;

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(v) any negligence or willful misconduct of Borrower, any other Borrower Party, any tenant of the Property, or any of their respective agents, contractors, subcontractors, servants, employees, licensees or invitees or any affiliates of any of the foregoing;

(vi) any accident, injury, death or damage to any Person or property occurring in, on or about the Property or any street, drive, sidewalk, curb or passageway adjacent thereto;

(vii) any of the foregoing which may be instituted against, or alleged with respect to, any Indemnitee by reason of any alleged obligation or undertaking on Lender's part to perform or discharge any of the terms, covenants or agreements contained in any Lease, agreement or contract relating to the Property to which Lender is not a direct and express party;

(viii) any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Property, the Loan or the Obligations hereunder;

(ix) the failure of any Person to file timely with the Internal Revenue Service an accurate Form 1099-B, Statement for Recipients of Proceeds from Real Estate, Broker and Barter Exchange Transactions, which may be required in connection with this Security Instrument, or to supply a copy thereof in a timely fashion to the recipient of the proceeds of the transaction in connection with which this Security Instrument is made; or

(x) any other transaction arising out of the ownership, management, leasing or operation of the Property or Borrower's obligations under the Loan Documents except to the extent caused by the willful misconduct or gross negligence of Lender.

Any amount payable to Lender under this **Section 4.3** shall be deemed a demand obligation, shall be part of the Obligations, shall bear interest at the Default Rate and shall be secured by this Security Instrument.

(b) Borrower's obligations under this **Section 4.3** (and any other obligation of Borrower to indemnify or defend Lender or any other Indemnitee under this Security Instrument or any other Loan Document) shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal by any insurance carrier to perform any obligation on its part under any such policy of covering insurance. If any claim, action or proceeding is made or brought against any Indemnitee which is subject to the indemnity set forth in this **Section 4.3** (or any such other indemnity, as aforesaid), Borrower shall resist or defend against the same, if necessary in the name of Lender, by attorneys for Borrower's insurance carrier (if the same is covered by insurance) or otherwise by attorneys approved by Lender. A waiver of subrogation shall be obtained by Borrower from its insurance carrier and consequently, Borrower waives any and all right to claim or recover against Lender or Lender's officers, employees, agents and representatives, for loss of or damage to Borrower, any other Borrower Party, the Property, Borrower's property or the property of others under Borrower's or any other Borrower Parties' control from any cause insured against or required to be insured against by the provisions of this Security Instrument. Notwithstanding the foregoing, any Indemnitee, in its discretion, may engage its own attorneys to resist or defend, or assist therein, and Borrower shall



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pay, or, on demand, shall reimburse such Indemnitee for the payment of, the fees and disbursements of said attorneys. Any Indemnitee shall have the right to settle any such claim, action or proceeding without Borrower's consent. **THE INDEMNITIES HEREIN PROVIDED BY BORROWER SHALL APPLY REGARDLESS OF WHETHER THE MATTER FROM WHICH THE INDEMNIFICATION OBLIGATION ARISES WAS CAUSED IN WHOLE OR IN PART BY SIMPLE NEGLIGENCE (BUT NOT WILLFUL MISCONDUCT OR GROSS NEGLIGENCE) OF ANY APPLICABLE INDEMNITEE.**

(c) As used herein the term "**Losses and Liabilities**" shall mean, collectively, all claims, losses, liabilities (including, without limitation, strict liabilities and/or any environmental liability), suits, causes of actions, actions, proceedings, obligations, fines, debts, damages, injuries, diminutions in value, judgments, awards, demands, administrative orders, consent agreements and orders, amounts paid in settlement, punitive damages, foreseeable and unforeseeable consequential damages, penalties, interest, demands, claims, charges, fees, costs and expenses (including, without limitation, environmental inspection and clean-up costs, reasonable attorneys' and paralegals' fees and disbursements and other costs of defense) of whatever kind or nature, except to the extent caused by the gross negligence or willful misconduct of Lender.

4.4 Interest After Default. Subject to the terms of the Note, if any payment due hereunder or under the other Loan Documents is not paid in full when due, whether on any stated due date, any accelerated due date or on demand or at any other time specified under any of the provisions hereof or thereof, then the same shall bear interest hereunder at the Default Rate from the due date until fully paid, whether or not an action against Borrower shall have been commenced, and if commenced whether or not a judgment against Borrower shall have been obtained, and such interest shall be added to and become a part of the Obligations and shall be secured hereby.

## ARTICLE V

### SALE, TRANSFER OR MORTGAGING OF THE PROPERTY; CHANGE OF CONTROL

#### 5.1 Continuous Ownership; Change of Control.

(a) Borrower acknowledges that Lender has examined and relied on the experience of Borrower and its general partners, managing members, principals and (if Borrower is a trust) beneficial owners in owning and operating properties such as the Property in agreeing to make the Loan, and will continue to rely on Borrower's ownership of the Property as a means of maintaining the value of the Property as security for payment and performance of the Obligations. Borrower acknowledges that Lender has a valid interest in maintaining the value of the Property so as to ensure that, should Borrower default in the payment or the performance of the Obligations, Lender can recover the Debt by a sale of the Property. Borrower shall not, whether voluntarily or involuntarily, (i) sell, grant, convey, assign or otherwise transfer, by operation of law or otherwise (collectively, "**Transfer**"), (ii) permit to be the subject of a Transfer, (iii) enter into an agreement to Transfer while the Loan is outstanding, or (iv) grant an option, or take any action, which, pursuant to the terms of any agreement to which Borrower is a party, may result in a Transfer of the Property, or any legal, beneficial or equitable interest therein, or the management thereof while the Loan is outstanding, without Lender's prior written

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consent (which consent shall be granted or withheld in Lender's sole and absolute discretion). For purposes of this Security Instrument, but without limiting the foregoing, except as expressly set forth in this sentence, (1) the issuance of, or any Transfer of, any equity interest in Borrower (whether stock, partnership interest or otherwise) to any Person or group of related Persons, whether in a single transaction or a series of related or unrelated transactions, in such quantities that after such issuance such Person or group shall have control of Borrower, shall be deemed a Transfer of the Property, (2) notwithstanding the third sentence of this Paragraph to the contrary, a Transfer of more than 49% in interest of Borrower (whether stock, partnership interest or otherwise) by any party or parties in interest whether in a single transaction or a series of related or unrelated transactions shall be deemed a Transfer, (3) a take-over agreement shall be deemed a Transfer (4) a Transfer of all or substantially all of the assets of any of Borrower, or any Indemnitee under the Environmental Indemnity, shall be deemed a Transfer of the Property, and (5) any Person or legal representative of Borrower to whom Borrower's interest in the Property passes by operation of law, or otherwise, shall be bound by the provisions of this clause (a).

For purposes hereof, a "**Transfer**" shall not include (A) transfer by devise or descent or by operation of law upon the death of a partner, member or stockholder of Borrower or any general partner thereof, and (B) a sale, transfer or hypothecation of a partnership, shareholder or membership interest in Borrower, whichever the case may be, by the current partner(s), shareholder(s), or member(s), as applicable, to an immediate family member (i.e., parents, spouses, siblings, children or grandchildren) of such partner, shareholder or member (or a trust for the benefit of any such Persons), or (C) any room or facility rental in the ordinary course.

(b) In the event that (i) Borrower shall Transfer the Property or any legal, beneficial or equitable interest therein, (ii) Borrower shall Transfer responsibility for the management of the Property in violation of the terms hereof, or (iii) any other Transfer shall otherwise occur in violation of the terms of this Security Instrument or any other Loan Document, the same shall constitute an "**Event of Default**" and Lender may elect to declare the Obligations, together with any other sums secured hereby, immediately due and payable. Lender may withhold its consent to any proposed Transfer for no reason or any reason, including the failure of the prospective transferee of the Property to reach an agreement in writing with Lender increasing the interest payable on the Obligations to such rate as Lender shall request.

(c) The provisions of this **Section 5.1** shall apply to each and every such Transfer of all or any portion of the Property or any legal or equitable interest therein or the management thereof, regardless of whether or not Lender has consented to, or waived by its action or inaction its rights hereunder with respect to any previous Transfer of all or any portion of the Property or any legal or equitable interest therein, or the management thereof.

**5.2 No Subordinate Financing.** Borrower covenants and agrees that it will not further encumber, mortgage, pledge, or grant a security interest in the Property or any part thereof or any direct or indirect interest therein. Borrower further covenants and agrees that it will not obtain any Property-Assessed Clean Energy financing (a "**PACE Loan**") with respect to the Property.

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## ARTICLE VI DEFAULTS

6.1 Events of Default. The term "**Event of Default**," as used in this Security Instrument, shall mean the occurrence of any of the following events:

(a) If Borrower fails to (i) make any Monthly Payment (as defined in the Note), or (ii) any other amounts required to be paid or expended by Borrower under this Security Instrument, the Note, the Environmental Indemnity or under any other Loan Document, whether of principal, interest, prepayment premium, Impositions or otherwise, and whether on any stated due date, upon demand, at maturity or upon acceleration;

(b) any representation or warranty made herein or in the other Loan Documents (including any certificates, schedules, and financial statements delivered in connection with any of the foregoing), or otherwise made by or on behalf of Borrower or any other Borrower Party in connection with the transactions contemplated hereunder, shall be false or misleading in any material respect when made;

(c) any Transfer shall be made in violation of the terms of this Security Instrument or the other Loan Documents;

(d) if (i) Borrower or any other Borrower Party shall commence any case, proceeding or other action (A) under any existing or future Governmental Regulations of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or (ii) Borrower or any other Borrower Party shall make a general assignment for the benefit of its creditors; or (iii) there shall be commenced against Borrower or any other Borrower Party, any case, a proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment, or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iv) there shall be commenced against Borrower or any other Borrower Party, any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (v) Borrower or any other Borrower Party or any of their affiliates shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clauses (i), (ii), (iii) or (iv) above; or (v) Borrower or any other Borrower Party shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(e) Borrower abandons the Property or ceases to do business or subjects the Property to actual physical waste;

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(f) there shall occur any event of default or non-performance (beyond any applicable notice and/or cure periods, if any) under the terms of any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property, whether it be superior or junior in lien to this Security Instrument, provided that nothing contained herein shall be deemed to represent Lender's consent to any such mortgage, deed of trust, deed to secure debt or other security agreement;

(g) Borrower shall fail at any time to obtain, provide, maintain, keep in force or deliver to Lender the insurance policies required by **Section 2.3** hereof;

(h) Borrower shall consent to any claim that this Security Instrument or any other document or instrument securing the Obligations is junior to any other Lien or any such claim shall be upheld by any court of competent jurisdiction;

(i) the existence of any Environmental Condition which is not fully remediated in accordance with the requirements of all applicable Governmental Regulations within sixty (60) days following the date that Borrower first acquires knowledge of such Environmental Condition; provided, however, if such remediation cannot be accomplished within such sixty (60) day period the time for Borrower's completion of such remediation shall be extended for such additional period as may be reasonably required by Borrower for such completion, provided further that Borrower (1) shall commence such remediation within sixty (60) days following the date Borrower first acquires knowledge of such Environmental Condition and thereafter exercises its best efforts to prosecute the completion of such remediation and (ii) such remediation is completed no later than the date one hundred twenty (120) days following the date that Borrower first acquires knowledge of such Environmental Condition;

(j) subject to the Borrower's rights of contest set forth in **Section 2.7(d)** hereof, if the Property becomes subject to any mechanic's, materialmen's or other Lien (including without limitation, any federal tax lien but excluding any Lien for local real estate taxes and assessments not then due and payable) and such Lien shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days after notice thereof to Borrower;

(k) if Borrower shall fail to reimburse Lender within ten (10) days after demand, with interest calculated at the Default Rate, for all insurance premiums or impositions, together with interest and penalties imposed thereon, paid by Lender pursuant to this Security Instrument;

(l) if any default occurs in the performance of any guarantor's or indemnitor's obligations under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods set forth in such guaranty or indemnity, or if any representation or warranty of any guarantor or indemnitor thereunder shall be false or misleading in any material respect when made;

(m) there shall have occurred any default, event of default or non-performance by Borrower under the terms of any of the Leases which default, event of default or non-

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performance shall not have been cured within any applicable grace period therefor under the applicable Lease and may result in the termination of the applicable Lease;

(n) any other event occurs and continues beyond any express grace period applicable thereto which, under the terms of the Loan Documents, would permit Lender to accelerate the Obligations;

(o) if Borrower shall fail to observe any covenants herein with respect to additional financing, including obtaining any PACE loan;

(p) if a default beyond applicable notice or cure period (if any) shall occur under the Hotel Management Agreement;

(q) if the Franchise Agreement or the Hotel Management Agreement is modified or amended without the prior written consent of Lender or the Borrower waives or releases any of its rights or remedies under the Franchise Agreement or the Hotel Management Agreement in any material respect;

(r) if the Franchise Agreement or the Hotel Management Agreement terminates or expires pursuant to its terms or a successor franchise or management agreement is executed by Borrower and such successor agreement is not approved by Lender;

(s) if the Property ceases to be operated as a full service "Hyatt Centric" brand hotel;

(t) if a material default has occurred and continues beyond any applicable cure period under the Franchise Agreement and such default permits Franchisor to terminate or cancel the Franchise Agreement;

(u) Indemnitee shall, at any time, fail to maintain (x) a net worth equal to or greater than the Minimum Net Worth and/or (v) the Minimum Liquidity Standard (each as defined in the Guaranty), as determined by Lender in Lender's sole and absolute discretion;

(v) if (i) for more than ten (10) days, in the aggregate, after notice from Lender, Borrower shall continue to be in default under any term, covenant or condition of the Note, this Security Instrument or any of the other Loan Documents not otherwise described in this **Section 6.1** in the case of any default which can be cured by the payment of a sum of money (other than payments of money covered by **Section 6.1(a)** above), or (ii) for more than thirty (30) days, in the aggregate, after notice from Lender in the case of any other default, provided that if such default cannot reasonably be cured within such thirty (30) day period and Borrower shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, said thirty (30) day period shall be extended for so long as it shall require Borrower in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days, in the aggregate.

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## ARTICLE VII REMEDIES

7.1 Remedies Available. Upon the occurrence of any Event of Default and during the continuation thereof, Borrower agrees that Lender may take such action, without notice or demand, as Lender deems advisable to protect and enforce Lender's rights against Borrower and in and to the Property, including, but not limited to, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Lender may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Lender:

(a) Acceleration. Accelerate the maturity date of the Note and declare any or all of the indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest, notice of nonpayment or nonperformance, notice of protest, notice of intent to accelerate, notice of acceleration or any other notice or action of any kind whatever (each of which is hereby expressly waived by Borrower), whereupon the same shall become immediately due and payable. Upon any such acceleration of the Note, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee and/or any amount payable upon such prepayment provided for in the Note shall then be immediately due and payable.

(b) Entry on the Property. Either in Person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, without force or with such force as is permitted by law, without notice or process or with such notice or process as is required by law unless such notice and process is waivable, in which case Borrower hereby waives such notice and process, and without liability for trespass, damages or otherwise, and do any and all acts, perform any and all work and take possession of any and all books, records and accounts which may be desirable or necessary in Lender's judgment to complete any unfinished construction on the Real Estate, to preserve the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and all sums expended by Lender therefor, together with interest thereon at the Default Rate, shall be immediately due and payable to Lender by Borrower on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(c) Collect Rents and Profits. With or without taking possession of the Property, sue for or otherwise collect the Rents and Profits, including those past due and unpaid.

(d) Appointment of Receiver. Upon, or at any time prior or after, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Borrower and without regard to the adequacy of the Property for the repayment of the Obligations or the solvency of Borrower or any Person or Persons liable for the payment of the indebtedness secured hereby, and Borrower does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such

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appointment and agrees not to oppose any application therefor by Lender, but nothing herein is to be construed to deprive Lender of any other right, remedy or privilege Lender may now have under the law to have a receiver appointed; provided, however, that, the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Lender to receive payment of the Rents and Profits pursuant to other terms and provisions hereof. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in **Section 7.3** hereinbelow. Such receivership shall, at the option of Lender, continue until full payment of all of the indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Security Instrument or deed in lieu of foreclosure.

(e) **Foreclosure.** Institute a proceeding or proceedings, judicial or otherwise (including, without limitation, by power of sale to the extent available to Lender under applicable law, it being understood and agreed that Borrower hereby expressly grants Lender such power of sale), for the complete foreclosure of this Security Instrument under any applicable law. Institute a proceeding or proceedings, judicial or otherwise (including, without limitation, by power of sale to the extent available to Lender under applicable law, it being understood and agreed that Borrower hereby expressly grants Lender such power of sale), for the partial foreclosure of this Security Instrument under any applicable law for the portion of the Obligations then due and payable, subject to the lien of this Security Instrument continuing unimpaired and without loss of priority so as to secure the balance of the Obligations not then due and payable.

(1) If Lender is the purchaser of the Property, or any part thereof, at any sale thereof, whether such sale be under the powers of sale hereinabove, or upon any other foreclosure of the liens and security interests hereof, or otherwise, Lender shall, upon any such purchase, unless otherwise indicated in any writing evidencing such purchase, acquire good title to the Property so purchased, free of the liens and security interests created by the Loan Documents.

(2) In the event a foreclosure hereunder should be commenced, Lender may at any time before the sale abandon the sale, and may then institute suit for the collection of the Loan, or for the foreclosure of the liens and security interests hereof. If Lender should institute a suit for the collection of the Loan, or for a foreclosure of the liens and security interests hereof, it may at any time before the entry of a final judgment in said suit dismiss the same, and dispose of the Property, or any part thereof, in accordance with the provisions of this Security Instrument.

(3) It is agreed that in any deed or deeds given, any and all statements of fact or other recitals therein made as to the identity of the Lender or as to the occurrence or existence of any Event of Default or other default, or as to the acceleration of the maturity of the Loan, or as to the request to sell, notice of sale, time, place, terms, and manner of sale, and receipt, distribution and application of the money realized therefrom, and, without being limited by the foregoing, as to any other act or thing having been duly done by Lender shall be accepted

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by all courts of law and equity as prima facie evidence that the said statements or recitals are correct and are without further questions to be so accepted.

(f) Other Remedies. If an Event of Default shall have occurred, this Security Instrument may, to the maximum extent permitted by law, be enforced, and Lender may exercise any right, power or remedy permitted to it hereunder, under the Loan Documents or by law or in equity, and, without limiting the generality of the foregoing, Lender may, personally or by its agents, to the maximum extent permitted by law:

(1) enter into and take possession of the Property or any part thereof, exclude Borrower and all parties claiming under Borrower whose claims are junior to this Security Instrument, wholly or partly therefrom, and use, operate, manage and control the Property or any part thereof either in the name of Borrower or otherwise as Lender shall deem best, and upon such entry, from time to time at the expense of Borrower and the Property, make all such repairs, replacements, alterations, additions or improvements to the Property or any part thereof as Lender may deem proper and, whether or not Lender has so entered and taken possession of the Property or any part thereof, collect and receive all Rents and Profits and apply the same to the payment of all expenses that Lender may be authorized to make under this Security Instrument, the remainder to be applied to the payment of obligations under the Loan Documents until the same shall have been repaid in full; if Lender demands or attempts to take possession of the Property or any part thereof in the exercise of any rights hereunder, Borrower shall promptly turn over and deliver complete possession thereof to Lender;

(2) cause any or all of the Property to be sold under the power of sale in any manner permitted by applicable law. For any sale under the power of sale granted by this Security Instrument, Lender shall record and give all notices required by law and then, upon the expiration of such time as is required by law, may sell the Property, and all estate, right, title, interest, claim and demand of Borrower therein, and all rights of redemption thereof, at one or more sales, as an entity or in parcels, with such elements of real and/or personal property (and, to the extent permitted by applicable law, may elect to deem all of the Property to be real property for purposes thereof), and at such time or place and upon such terms as Lender may deem expedient, or as may be required by applicable law. Upon any sale, Lender shall execute and deliver to the purchaser or purchasers a deed or deeds conveying the property sold, but without any covenant or warranty, express or implied, and the recitals in the deed or deeds of any facts affecting the regularity or validity of the sale will be conclusive against all Persons. In the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien and security interest on the remaining portion of the Security Instrument Property;

(3) proceed to protect and enforce their rights under this Security Instrument, by suit for specific performance of any covenant contained herein or in the Loan Documents or in aid of the execution of any power granted herein or in the Loan Documents, or for the enforcement of any other right as Lender shall elect, provided, that in the event of a sale, by foreclosure or otherwise, of less than all of the Property, this Security Instrument shall continue as a lien on, and security interest in, the remaining portion of the Property; or



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(4) exercise any or all of the remedies available to a secured party under the applicable UCC, including, without limitation:

(i) either personally or by means of a court-appointed receiver, take possession of all or any of the Property and exclude therefrom Borrower and all parties claiming under Borrower, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of Borrower in respect of the Property or any part thereof; if Lender demands or attempts to take possession of the Property in the exercise of any rights hereunder, Borrower shall promptly turn over and deliver complete possession thereof to Lender;

(ii) without further notice to or demand upon Borrower, make such payments and do such acts as Lender may deem necessary to protect its security interest in the Property, including, without limitation, paying, purchasing, contesting or compromising any encumbrance that is prior to or superior to the security interest granted hereunder, and in exercising any such powers or authority paying all expenses incurred in connection therewith which expenses shall thereafter become part of the obligations secured by this Security Instrument;

(iii) require Borrower to assemble the Property or any portion thereof, at a place designated by Lender and reasonably convenient to both parties, and promptly to deliver the Property to Lender, or an agent or representative designated by it; Lender, and each of its agents and representatives, shall have the right to enter upon the premises and property of Borrower to exercise the rights of Lender hereunder;

(iv) sell, lease or otherwise dispose of the Property, with or without having the Property at the place of sale, and upon such terms and in such manner as Lender may determine (and Lender may be a purchaser at any such sale); provided, however, that Lender, may dispose of the Property in accordance with Lender's rights and remedies in respect of the Property pursuant to the provisions of this Security Instrument in lieu of proceeding under the applicable UCC; and

(v) unless the Property is perishable or threatens to decline speedily in value, is of a type customarily sold on a recognized market or is sold pursuant to the provisions of this Security Instrument in lieu of proceeding under the applicable UCC as provided in this subsection, Lender shall give Borrower at least ten (10) days' prior notice of the time and place of any sale of the Property or other intended disposition thereof, which notice Borrower agrees is commercially reasonable.

(g) Lender may resort for the payment of the Loan to any other security for the debt held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take action to recover the Loan, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to foreclose this Security Instrument. The rights of Lender under this Security Instrument shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

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Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

(h) Lost Documents. All rights of action under the Note, this Security Instrument or any of the other Loan Documents and this Security Instrument may be enforced by Lender without the possession of the original Loan Documents and without the production thereof at any trial or other proceeding relative thereto.

7.2 Application of Proceeds. (a) To the fullest extent permitted by law, the proceeds of any foreclosure sale under this Security Instrument shall be applied to the extent funds are so available to the following items in such order as Lender in its discretion may determine:

(i) to payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Lender's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, reasonable attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

(ii) to payment of all sums expended by Lender under the terms of any of the Loan Documents and not yet repaid, together with interest on such sums at the Default Rate.

(iii) to payment of the secured indebtedness and all other obligations secured by this Security Instrument, including, without limitation, interest at the Default Rate and, to the extent permitted by applicable law, any payment due upon a deemed prepayment of the principal balance of the Note, and any applicable prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Lender chooses in its sole discretion.

(iv) to the extent permitted by Governmental Regulations, to be set aside by Lender as adequate security in its judgment for the payment of sums which would have been paid by application under clauses (i) through (iii) above to Lender, arising out of an obligation or liability with respect to which Borrower has agreed to indemnify Lender, but which sums are not yet due and payable or liquidated.

The remainder, if any, of such funds shall be disbursed to Borrower or to the Person or Persons legally entitled thereto, except as otherwise provided by law.

(b) No sale or other disposition of all or any part of the Property pursuant to Section 7.1 shall be deemed to relieve Borrower of its obligations under the Loan Documents, except to the extent the proceeds thereof are applied to the payment of such obligations. If the proceeds of sale, collection or other realization of or upon the Property are insufficient to cover the costs and expenses of such realization and the payment in full of any amounts due under the Loan Documents, Borrower shall remain liable for any deficiency pursuant to the terms of Section 7.7 hereof, subject to the terms of Section 9.21 hereof.

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7.3 Right and Authority of Receiver or Lender in the Event of Default; Power of Attorney. Upon the occurrence of an Event of Default and during the continuation thereof and entry upon the Property pursuant to Section 7.1(b) hereof or appointment of a receiver pursuant to Section 7.1(d) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Lender's or the receiver's sole discretion, all at Borrower's expense, Lender or said receiver, or such other Persons or entities as they shall hire, direct or engage, as the case may be, may (but shall have no obligation to) do or permit one or more of the following, successively or concurrently:

- (a) enter upon and take possession and control of any and all of the Property;
- (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property;
- (c) exclude Borrower and its agents, servants and employees wholly from the Property;
- (d) manage and operate the Property;
- (e) preserve and maintain the Property;
- (f) make repairs and alterations to the Property;
- (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Lender may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Lender's sole discretion, make it or any part thereof readily marketable or rentable;
- (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable;
- (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted;
- (j) execute and deliver, in the name of Borrower as attorney-in-fact and agent of Borrower or in its own name as Lender, such documents and instruments as are necessary or appropriate to consummate authorized transactions;
- (k) enter into such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Lender may in its sole discretion deem appropriate or desirable;
- (l) collect and receive the Rents and Profits from the Property;

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(m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements;

(n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Borrower or Lender or such receiver;

(o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent;

(p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due;

(q) delegate or assign any and all rights and powers given to Lender by this Security Instrument; and/or

(r) do any other acts which Lender in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Lender may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Security Instrument. This Security Instrument shall constitute a direction to and full authority to any tenant, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Borrower or Lender, at the request of Lender upon the occurrence of an Event of Default, to pay all amounts owing under any lease, contract, concession, license or other agreement to Lender without proof of the default relied upon. Any such tenant or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Borrower in so doing) any request, notice or demand by Lender for the payment to Lender of any Rents and Profits or other sums which may be or thereafter become due under its lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any default under this Security Instrument or under any of the other Loan Documents has actually occurred or is then existing. Borrower hereby constitutes and appoints Lender, its assignees, successors, transferees and nominees, as Borrower's true and lawful attorney-in-fact and agent, with full power of substitution in the Property in Borrower's name, place and stead, upon an Event of Default to do or permit any one or more of the foregoing described rights, remedies, powers and authorities, successively or concurrently, and said power of attorney shall be deemed a power coupled with an interest and irrevocable so long as any indebtedness secured hereby is outstanding. Any money advanced by Lender in connection with any action taken under this **Section 7.3**, together with interest thereon at the Default Rate from the date of making such advancement by Lender until actually paid by Borrower, shall be a demand obligation owing by Borrower to Lender and shall be secured by this Security Instrument and by every other instrument securing the secured indebtedness.

**7.4 Occupancy After Foreclosure.** In case the liens or security interests of this Security Instrument shall be foreclosed, and Borrower or Borrower's representatives, successors or assigns, or any other Persons claiming any interest in the Property by, through or under Borrower are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Lender or the purchaser at such sale, as the case may be, immediately become the tenant of the purchaser at such sale, which

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tenancy shall be a tenancy at sufferance, terminable at the will of landlord, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to forthwith surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Real Estate is located, and anyone occupying the Property after demand made for possession thereof shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.5 Notice to Account Debtors. Lender may, at any time after an Event of Default, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Borrower included in the Property to pay Lender directly. Borrower shall at any time or from time to time upon the request of Lender provide to Lender a current list of all such account debtors and obligors and their addresses.

7.6 Cumulative Remedies. All remedies contained in this Security Instrument are cumulative and Lender shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Lender and may be exercised in any order and as often as occasion therefor shall arise. No act of Lender shall be construed as an election to proceed under any particular provisions of this Security Instrument to the exclusion of any other provision of this Security Instrument or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Lender. No delay or failure by Lender to exercise any right or remedy under this Security Instrument shall be construed to be a waiver of that right or remedy or of any default hereunder. Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

7.7 Deficiency. Subject to the terms of Section 9.21 hereof, Borrower acknowledges and agrees as follows:

(a) In the event an interest in any of the Property is foreclosed, Borrower agrees as follows: Lender shall be entitled to seek a deficiency judgment from Borrower and any other party obligated on the Note equal to the difference between the amount upon which Borrower is personally liable under the Note and the amount for which the Property was sold pursuant to judicial or nonjudicial foreclosure sale. Borrower expressly recognizes that this Section 7.7 constitutes a waiver of any and all State of Illinois Governmental Regulations which would otherwise permit Borrower and other Persons (if any) against whom recovery of deficiencies is sought (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Property as of the date of the foreclosure sale and to offset against any deficiency the amount by which the foreclosure sale price is determined to be less than such fair market value. Borrower further recognizes and agrees that this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Property for purposes of calculating deficiencies owed by Borrower and others (if any) against whom recovery of a deficiency is sought.

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(b) In connection with any valuation of the Property as part of a foreclosure and sale, the following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure sale in proceedings: (a) the Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure; (b) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (c) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax prorations, reasonable attorneys' fees and marketing costs; (d) the gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (c) above), and other maintenance, operational and ownership expenses; and (e) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by Persons having at least five (5) years' experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

**7.8 Borrower's Waivers. BORROWER HEREBY WAIVES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE UNDER APPLICABLE LAWS TO NOTICE, EXCEPT AS OTHERWISE HEREIN SPECIFICALLY PROVIDED, OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY PROVIDED BY THIS SECURITY INSTRUMENT TO LENDER, AND WAIVES ITS RIGHTS, IF ANY, TO SET ASIDE OR INVALIDATE ANY SALE DULY CONSUMMATED IN ACCORDANCE WITH THE PROVISIONS HEREOF ON THE GROUND (IF SUCH BE THE CASE) THAT THE SALE WAS CONSUMMATED WITHOUT A PRIOR JUDICIAL HEARING. BORROWER'S WAIVERS UNDER THIS SECTION 7.8 HAVE BEEN MADE VOLUNTARILY, INTELLIGENTLY, AND KNOWINGLY AND AFTER BORROWER HAS BEEN APPRISED AND COUNSELED BY ITS ATTORNEY AS TO THE NATURE THEREOF AND ITS POSSIBLE ALTERNATIVE RIGHTS.**

## ARTICLE VIII REPORTING AND WITHHOLDING REQUIREMENTS

**8.1 Withholding.** In the event of a foreclosure or delivery of a deed-in-lieu of foreclosure, Borrower agrees that Lender shall have the right to withhold any and all amounts necessary to comply with the requirements of Section 1445 of the Code, any successor statutes thereto and applicable U.S. Department of Treasury regulations issued pursuant thereto in temporary or final form.

**8.2 Form 1099-S.** Borrower shall have supplied or caused to be supplied to Lender either (a) a copy of a completed Form 1099-S, Statement for Recipients of Proceeds from Real Estate Transactions prepared by Borrower's attorney together with a certification from Borrower's attorney to the effect that such form has, to the best of such Person's knowledge,

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been accurately prepared and that such Person will timely file such form, or (b) a certification from Borrower that the mortgage loan is a refinancing of the Property or is otherwise not required to be reported to the Internal Revenue Service pursuant to Section 6045(e) of the Code.

## 8.3 Transfer Tax.

(a) Covenants. Borrower covenants and agrees that, in the event of a sale or other Transfer, it will duly complete, execute and deliver to Lender contemporaneously with their submission to the applicable taxing authority or recording officer, all forms and supporting documentation required by such taxing authority or recording officer to estimate and fix the real estate transfer tax ("Transfer Tax"), if any, payable by reason of such sale or other Transfer or recording of the deed evidencing such sale or other Transfer. This Section 8.3 shall apply only if this Security Instrument is outstanding after any such sale or transfer.

(b) Payment. Borrower agrees to pay all Transfer Taxes that may hereafter become due and payable with respect to any Transfer, and in default thereof Lender shall have the right, but not the obligation, to pay the same and the amount of such payment shall be added to the Obligations and be secured by this Security Instrument. The provisions of this Article shall survive any Transfer, foreclosure or deed in lieu of foreclosure and the delivery of the deed in connection with any Transfer, foreclosure or deed in lieu of foreclosure. Nothing in this Article shall be deemed to limit Lender's rights hereunder in the event any Transfer shall be made in violation of the provisions of this Security Instrument.

(c) Foreclosure. The provisions of this Section 8.3 shall be applicable also in the event of a foreclosure or delivery of a deed in lieu of foreclosure to the extent that Lender shall, in its sole judgment and discretion, determine that any tax (including a Transfer Tax) shall be payable by it.

## ARTICLE IX MISCELLANEOUS TERMS AND CONDITIONS

9.1 Time of Essence. Time is of the essence for the performance of each and every covenant of Borrower hereunder. No excuse, delay, act of G-d, or other reason, whether or not within the control of Borrower, shall operate to defer, reduce or waive Borrower's performance of any such payment covenants or obligations.

9.2 Release of This Security Instrument. If all of the Obligations secured hereby shall have been paid and/or performed, then and in that event only, all rights under this Security Instrument shall terminate, except for any indemnities granted by Borrower hereunder to Lender and any other provisions hereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be released by Lender, to the extent required by law to effect a full and proper termination, release and reconveyance in due form at Borrower's cost. No release of this Security Instrument or the lien hereof shall be valid unless executed by Lender, which Lender agrees to provide on a timely basis.

9.3 Certain Rights of Lender. Without affecting Borrower's liability for the payment of any of the indebtedness secured hereby, Lender may from time to time and without notice to

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Borrower: (a) release any Person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of the indebtedness secured hereby; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the indebtedness secured hereby; (d) release any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Security Instrument or any agreement subordinating any lien or security interest granted hereby.

9.4 Additional Borrower's Waivers. To the full extent permitted by law, Borrower agrees that Borrower shall not at any time insist upon, plead, claim or take the benefit or advantage of any law now or hereafter in force providing for any appraisal, valuation, stay, moratorium or extension, or any law now or hereafter in force providing for the reinstatement of the Obligations prior to any sale of the Property to be made pursuant to any provisions contained herein or prior to the entering of any decree, judgment or order of any court of competent jurisdiction, or any right under any statute to redeem all or any part of the Property so sold. Borrower, for Borrower and Borrower's successors and assigns, and for any and all Persons ever claiming any interest in the Property including, without limitation, any Borrower Party, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily with and upon the advice of competent counsel: (a) waives, releases, relinquishes and forever forgoes all rights of valuation, appraisal, stay of execution, reinstatement and notice of election or intention to mature or declare due the Obligations (except such notices as are specifically provided for herein); (b) waives, releases, relinquishes and forever forgoes all right to a marshaling of the assets of Borrower or any other Borrower Party, including the Property, to a sale in the inverse order of alienation, or to direct the order in which any of the Property shall be sold in the event of foreclosure of the liens and security interests hereby created and agrees that any court having jurisdiction to foreclose such liens and security interests may order the Property sold as an entirety; (c) waives, releases, relinquishes and forever forgoes all rights and periods of redemption provided under Governmental Regulations; and (d) waives notice of intention to accelerate the indebtedness, notice of acceleration of the indebtedness, demand, protest and notice of demand, protest and nonpayment and all other notices. To the full extent permitted by law, Borrower shall not have or assert any right under any Governmental Regulations pertaining to the exemption of homestead or other exemption under any Governmental Regulations now or hereafter in effect, the administration of estates of decedents or other matters which would defeat, reduce or affect the right of Lender under the terms of this Security Instrument to a sale of the Property, for the collection of the Obligations without any prior or different resort for collection, or the right of Lender under the terms of this Security Instrument to the payment of the Obligations out of the proceeds of sale of the Property in preference to every other claimant whatever. Further, Borrower hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, waives, releases, relinquishes and forever forgoes all present and future statutes of limitations as a defense to any action to enforce the provisions of this Security Instrument or to collect any of the Obligations to the fullest extent permitted by law. Borrower covenants and agrees that upon the commencement of a voluntary or involuntary bankruptcy proceeding by or against Borrower, Borrower shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. § 105 or any other provision of the United States Bankruptcy Code, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against



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any guarantor or indemnitor of the Obligations or any other party liable with respect thereto by virtue of any indemnity, guaranty or otherwise.

9.5 Notices. Any notice, demand, consent, approval, direction, waiver, agreement or other communication (any "**Notice**") required or permitted hereunder or under any other documents in connection herewith shall be in writing and shall be directed as follows:

If to Borrower:

Integrated Clark Monroe LLC  
181 West Madison Street, Suite 4700  
Chicago, Illinois 60602  
Attn: John T. Murphy  
Facsimile: 312 807-3853  
Email: JMurphy@mbres.com

with a copy to:

Nixon Peabody LLP  
Three First National Plaza  
70 West Madison, Suite 3500  
Chicago, IL 60602  
Attention: John R. Joyce, Esq.  
Facsimile: 844 562-6842  
Email: jrjoyce@nixonpeabody.com

If to Lender:

100 West Monroe Funding LLC  
c/o JPMorgan Chase Bank, N.A.  
270 Park Avenue, 9th Floor  
New York, New York 10017  
Attn: Richard Meth  
Facsimile: 212 648-1965  
Email: richard.meth@jpmorgan.com

with a copy to:

Stroock & Stroock & Lavan LLP  
200 South Biscayne Boulevard, Suite 3100  
Miami, Florida 33131  
Attention: Ronald A. Kriss, Esq.  
Facsimile: 305 416-2893  
Email: rkriss@stroock.com

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or to such changed address as a party hereto shall designate to the other party hereto from time to time in writing. Any counsel designated above or replacement counsel which may be designated respectively by each party by written notice to the other party hereto is hereby authorized to give notices hereunder on behalf of its respective client.

Notices shall be (a) personally delivered to the offices set forth above, in which case they shall be deemed delivered on the date of delivery or first (1st) Business Day thereafter if delivered other than on a Business Day (or after 5:00 p.m. New York City time) to said offices; (b) sent by registered or certified mail, postage prepaid, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or delayed by the addressee in which event they shall be deemed delivered on the earliest to occur of the first (1st) Business Day on or after the date of delivery or the third (3rd) Business Day after such notice has been deposited in the U.S. Mail in accordance with the terms hereof; or (c) sent by a nationally recognized overnight courier, in which case they shall be deemed delivered on the first (1st) Business Day on or after the date following the date such notice was delivered to or picked up by the courier.

9.6 Successors and Assigns. The provisions hereof shall be binding upon Borrower and the heirs, devisees, representatives, permitted successors and permitted assigns of Borrower, including successors in interest of Borrower in and to all or any part of the Property, and shall inure to the benefit of Lender and its heirs, successors and assigns. All references in this Security Instrument to Borrower or Lender shall be construed as including all of such other Persons with respect to the Person referred to. Where two or more Persons have executed this Security Instrument, the obligations of such Persons shall be joint and several except to the extent the context clearly indicates otherwise.

9.7 Severability. In the event that any provision of this Security Instrument or the application thereof to Borrower shall, to any extent, be invalid or unenforceable under any applicable statute, regulation, or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Security Instrument and the application of any such invalid or unenforceable provision to parties, jurisdictions, or circumstances other than to whom or to which it shall be held invalid or unenforceable, shall not be affected thereby nor shall same affect the validity or enforceability of any other provision of this Security Instrument.

9.8 Waiver; Discontinuance of Proceedings. Lender may waive any single default by Borrower hereunder without waiving any other prior or subsequent default. Lender may remedy any default by Borrower hereunder without waiving the default remedied. Neither the failure by Lender to exercise, nor the delay by Lender in exercising, any right, power or remedy upon any default by Borrower hereunder shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Lender of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Borrower therefrom shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on

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Borrower in any case shall of itself entitle Borrower to any other or further notice or demand in similar or other circumstances. Acceptance by Lender of any payment in an amount less than the amount then due on any of the secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder. In case Lender shall have proceeded to invoke any right, remedy or recourse permitted hereunder or under the other Loan Documents and shall thereafter elect to discontinue or abandon the same for any reason, Lender shall have the unqualified right to do so and, in such an event, Borrower and Lender shall be restored to their former positions with respect to the indebtedness secured hereby, the Loan Documents, the Property and otherwise, and the rights, remedies, recourses and powers of Lender shall continue as if the same had never been invoked.

9.9 Construction of Provisions. The following rules of construction shall be applicable for all purposes of this Security Instrument and of the other Loan Documents or instruments supplemental hereto, unless the context otherwise requires:

(a) All references herein to numbered Articles or Sections or to lettered Exhibits are references to the Articles and Sections hereof and the Exhibits annexed to this Security Instrument, unless expressly otherwise designated in context.

(b) The terms "include", "including" and similar terms shall be construed as if followed by the phrase "without being limited to."

(c) The term "Property" shall be construed as if followed by the phrase "or any part thereof."

(d) The term "Obligations" shall be construed as if followed by the phrase "or any other sums secured hereby, or any part thereof."

(e) 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.

(f) The term "Person" shall include natural persons, firms, partnerships, corporations and any other public and private legal entities.

(g) 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, conditions and/or".

(h) All Article, Section and Exhibit captions herein are used for convenience and reference only and in no way define, limit or describe the scope or intent of, or in any way affect, this Security Instrument.

(i) No inference in favor of any party shall be drawn from the fact that such party has drafted any portion hereof.

(j) The cover page of and all recitals set forth in, and all Exhibits to, this Security Instrument are hereby incorporated in this Security Instrument.

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(k) All obligations of Borrower hereunder shall be performed and satisfied by or on behalf of Borrower at Borrower's sole cost and expense.

(l) The term "**landlord**" shall mean "**landlord, sublandlord, lessor and sublessor**", as the case may be, and the term "**tenant**" shall mean "**tenant, subtenant, lessee and sublessee**", as the case may be.

(m) The term "**Business Day**" shall mean any day of the year other than (a) Saturday, Sunday, (b) a day on which banks in the City of New York are authorized or required by law to remain closed, or (c) a day on which the New York Stock Exchange is closed.

(n) The term "**Affiliate**" shall mean, with respect to any Person, (i) in the case of any such Person which is a partnership or limited liability company, any general partner or managing member in such partnership or limited liability company, respectively, (ii) any other Person which is directly or indirectly controlled by, controls or is under common control with such Person or one or more of the Persons referred to in the preceding clause (i), and (iii) any other Person who is a senior executive officer, director or trustee of such Person or any Person referred to in the preceding clauses (i) and (ii); provided, however, in no event shall the Lender or any of its Affiliates be an Affiliate of Borrower.

9.10 Counting of Days. The term "**days**" when used herein shall mean calendar days. If any time period ends on a day which is not a Business Day, the period shall be deemed to end on the next succeeding Business Day.

9.11 Application of the Proceeds of the Note. To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding Lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Lender at Borrower's request and Lender shall be subrogated to any and all rights, security interests and Liens owned by any owner or holder of such outstanding Liens, security interests, charges or encumbrances, irrespective of whether said Liens, security interests, charges or encumbrances are released.

9.12 Unsecured Portion of Indebtedness. If any part of the secured indebtedness cannot be lawfully secured by this Security Instrument or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Security Instrument.

9.13 Cross-Default. An Event of Default hereunder which has not been cured within any applicable notice, grace or cure period shall constitute a default under each of the other Loan Documents.

9.14 Publicity. Neither Borrower nor any Borrower Party (or their affiliates) shall use the name of Lender, J.P. Morgan Investment Management Inc., JPMorgan Chase Bank, N.A., or any subsidiary or affiliate thereof, and neither Lender, nor J.P. Morgan Investment Management Inc., JPMorgan Chase Bank, N.A., or any subsidiary or affiliate thereof, shall use the name of Borrower in any advertising, press release, "tombstone," or on any sign erected on the Property without the prior written approval of Lender or Borrower, as the case may be, in each instance.

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9.15 Construction of this Document. This document may be construed as a mortgage, security deed, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

9.16 No Merger. It is the desire and intention of the parties hereto that this Security Instrument and the lien hereof do not merge in fee simple title to the Property. It is hereby understood and agreed that should Lender acquire any additional or other interests in or to the Property or the ownership thereof, then, unless a contrary intent is manifested by Lender as evidenced by an appropriate document duly recorded, this Security Instrument and the lien hereof shall not merge in such other or additional interests in or to the Property, toward the end that this Security Instrument may be foreclosed as if owned by a stranger to said other or additional interests.

9.17 Lender May File Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Borrower or the principals or general partners in Borrower, or their respective creditors or property, Lender, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Lender allowed in such proceedings for the entire secured indebtedness at the date of the institution of such proceedings and for any additional amount which may become due and payable by Borrower hereunder after such date.

9.18 Fixture Filing. This Security Instrument shall be effective from the date of its recording as a financing statement filed as a fixture filing under the applicable UCC with respect to all goods constituting part of the Property which are or are to become fixtures.

9.19 Assignment by Lender. Borrower agrees that Lender may assign, sell or transfer the Loan, its rights under this Security Instrument and the other Loan Documents and any servicing rights with respect to the Loan, whether in whole or in part, and/or grant participations in the Loan. In the event of any assignment of the Loan by Lender, Lender (and its partners, officers, directors, agents, attorneys, administrators, trustees, parents, subsidiaries, advisors, affiliates, beneficiaries, shareholders, representatives, servants and employees and their respective affiliates) will be deemed released of and from any obligation or liability (including, without limitation, any Losses and Liabilities of any Person) with respect to the Loan, this Security Instrument and the other Loan Documents (without any further action or agreement required) with respect to the Loan. Lender may forward to any potential assignee or transferee of any interest in the Loan or any servicing rights with respect to the Loan any and all documents and information which Lender now has or may hereafter acquire relating to the Loan and to the Borrower Parties and the Property, whether furnished by the Borrower Parties or otherwise, as Lender determines necessary or desirable. Borrower, on behalf of itself and the Borrower Parties, agrees to cooperate with Lender in connection with any transaction contemplated in this Section 9.19.

9.20 No Representation. By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Lender pursuant to the Loan Documents, including, but

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not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Lender shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Lender.

## 9.21 Limited Recourse.

(a) Except as otherwise provided in this Section 9.21, Lender shall not enforce the liability and obligation of Borrower to perform and observe the obligations contained in the Note or this Security Instrument or the other Loan Documents by any action or proceeding wherein a money judgment shall be sought against Borrower, except that Lender may sell the Property under any power of sale or right of non-judicial foreclosure or bring a foreclosure action, confirmation action, action for specific performance or other appropriate action or proceeding to enable Lender to enforce and realize upon the Note, this Security Instrument, the other Loan Documents, and the Property, the Rents and Profits and any other collateral given to Lender created by the Note, this Security Instrument and the other Loan Documents; provided, however, that any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Property, the Rents and Profits and any other collateral given to Lender. Lender, by accepting the Note and this Security Instrument, agrees that it shall not, except as otherwise provided in the Note or this Security Instrument, sue for, seek or demand any deficiency judgment against Borrower in any such action or proceeding, under or by reason of or under or in connection with the Note, this Security Instrument or the other Loan Documents. The provisions of this Section 9.21 shall not, however, (i) constitute a waiver, release or impairment of any obligation evidenced or secured by the Note, this Security Instrument or the other Loan Documents; (ii) impair the right of Lender to obtain a deficiency judgment in any action or proceeding with respect to the Loan Documents in order to preserve its rights and remedies including, without limitation, foreclosure, non-judicial foreclosure, or the exercise of a power of sale, under this Security Instrument and the other Loan Documents; however, Lender agrees that, it shall not enforce such deficiency judgment against any assets of Borrower other than Borrower's interest in the Property; (iii) impair the right of Lender to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under this Security Instrument; (iv) affect the validity or enforceability of any indemnity, pledge, master lease or similar instrument made in connection with the Note, this Security Instrument, or the other Loan Documents; (v) impair the right of Lender to obtain the appointment of a receiver; (vi) impair the enforcement of the Assignment of Leases and Rents executed in connection herewith; (vii) impair the right of Lender to obtain a deficiency judgment or judgment on the Note against Borrower if necessary to obtain any insurance proceeds or condemnation awards to which Lender would otherwise be entitled under this Security Instrument; or (viii) impair, release or limit the liability of Borrower (or any other Person) under the Environmental Indemnity or any of the other Loan Documents or affect in any way the validity, enforceability or recourse of such Environmental Indemnity or any of the other Loan Documents.

(b) Notwithstanding anything to the contrary contained herein, Borrower shall be personally liable to Lender for the Recourse Obligations of Borrower (as hereinafter defined). Unless a Full Recourse Event (as hereinafter defined) shall have occurred, the term "Recourse

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**Obligations of Borrower**” shall mean any and all Losses and Liabilities sustained by Lender to the extent arising out of or with respect to:

- (i) fraud or any willful and material misrepresentation by Borrower or any other Borrower Party set forth in or otherwise made in connection with this Security Instrument or any of the other Loan Documents;
- (ii) Borrower’s misapplication (i.e., application in violation of the terms of the Loan Documents) or misappropriation of Rents and Profits or condemnation or insurance proceeds;
- (iii) Material physical waste of the Property;
- (iv) Borrower’s failure to pay to Lender all Rents and Profits and other sums attributable to the Property or other collateral for the Obligations from and after the occurrence of any Event of Default;
- (v) Borrower’s failure to pay any Impositions or insurance premiums to the extent there is sufficient net cash flow generated by the Property to pay the same;
- (vi) any violation of **Section 2.1(f)** hereof;
- (vii) any violation of **Section 2.6** hereof with regard to mechanics’ liens (“**Mechanics’ Lien Violation**”);
- (viii) any violation of **Section 3.2** or **Section 8.3** hereof;
- (ix) any Environmental Condition;
- (x) after an Event of Default has occurred, Borrower (or any other member of the Borrower Group) in any way, directly or indirectly, takes any action to stay, hinder, interfere, delay or impede Lender from foreclosing the Security Instrument or exercising its other remedies under the Loan Documents; provided that neither Borrower nor any other member of the Borrower Group shall be liable to the extent of any applicable Losses and Liabilities arising solely from a defense of Borrower or any member of the Borrower Group raised in good faith;
- (xi) the removal or disposal of any portion of the Property after an Event of Default, unless any personal property that is removed or disposed of is replaced with personal property of the same utility and the same or greater value; or
- (xii) if the Franchise Agreement is amended, modified or terminated without Lender’s prior written consent other than as expressly permitted by this Agreement.

(c) Notwithstanding anything to the contrary contained herein, in the event of the occurrence of any Full Recourse Event, the term “**Recourse Obligations of Borrower**” shall be deemed to include all the Obligations. For purposes hereof, the term “**Full Recourse Event**” shall mean:

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(i) Borrower, or any member of the Borrower Group (as hereinafter defined) challenging or disputing the validity or enforceability of any of the provisions of this Security Instrument or any of the other Loan Documents or the validity, enforceability or priority of the liens and security interests securing payment of amounts owing or payable under the terms of the Note, this Security Instrument or any of the other Loan Documents. As used in this Security Instrument, the term "**Borrower Group**" shall mean Borrower and Borrower's Affiliates or any other party having Control of Borrower (which shall include, but not be limited to, any creditor or claimant acting in concert with Borrower). "**Control**" and the correlative terms "**controlled by**" and "**controlling**" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management and policies of the business and affairs of the entity in question by reason of the ownership of beneficial interests, by contract or otherwise;

(ii) (A) Borrower files any petition or commences any proceeding pursuant to any reorganization, bankruptcy, insolvency or similar law or any such petition or proceeding is filed or commenced against Borrower by any other member of the Borrower Group and Borrower or any other member of the Borrower Group objects to a motion by Lender for relief from any stay or injunction from pursuing a foreclosure or any other remedial action permitted under the Loan Documents; or (B) if the Property or any part thereof shall become an asset in (1) a voluntary bankruptcy or insolvency proceeding, or (2) an involuntary bankruptcy or insolvency proceeding which is commenced by any member of the Borrower Group or (C) if a court of competent jurisdiction holds that the granting, execution or delivery of this Security Instrument or any other Loan Documents is or constitutes a fraudulent conveyance under any bankruptcy, insolvency or fraudulent conveyance law or is otherwise voidable under any such laws;

(iii) any violation of **Section 2.0(b)** hereof (other than a Mechanics' Lien Violation);

(iv) any Transfer is made in violation of the provisions of **Section 5.1** hereof; or

(v) a court of competent jurisdiction holds that the granting, execution or delivery of this Security Instrument or any other Loan Documents or the acquisition of the Property by Borrower constitutes a fraudulent conveyance under any bankruptcy, insolvency or fraudulent conveyance law or is otherwise voidable under any such laws; or

(vi) any violation of **Section 2.1(f)** hereof, and such violation is a factor in the consolidation of the assets and liabilities of Borrower and any other Person.

(d) Nothing herein shall be deemed to be a waiver of any right which Lender may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the Obligations or to require that all collateral shall continue to secure all of the Obligations owing to Lender in accordance with the Note, this Security Instrument and the other Loan Documents.

9.22 **Entire Agreement and Modifications.** This Security Instrument cannot be altered, amended, modified, terminated or discharged, except in a writing signed by the party against



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whom enforcement of such alteration, amendment, modification, termination or discharge is sought. It is expressly understood and agreed that neither this Security Instrument nor any of the other Loan Documents can be modified orally and no oral modifications or other agreements with respect to this Security Instrument or any other Loan Document shall be valid or enforceable. Borrower agrees that the written agreements evidenced by this Security Instrument and the other Loan Documents represent the final agreement between the parties hereto and thereto and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements among the parties.

9.23 Commissions. Borrower agrees to pay and to indemnify and hold Lender harmless from any and all loss, cost or expense (including reasonable attorneys' fees and expenses) arising from the claims of any brokers or anyone claiming a right to any fees in connection with the financing of the Property by, through or under Borrower or its Affiliates (as defined in the Note). Notwithstanding the foregoing, Borrower acknowledges that Lender or its affiliates may have a contractual relationship with the broker, if any, that arranged the Loan on Borrower's behalf, and that such broker may be entitled to fees from Lender or its affiliates in connection with the origination, closing or servicing of the Loan, which fees shall be in addition to any brokerage fees owed by Borrower to such broker. Borrower shall not be responsible for any such additional fees. Borrower acknowledges and agrees that it has made and will make such inquiries of the broker, if any, that arranged the Loan with respect to the nature or existence of such arrangement. No agreement by Lender to pay any such fees or compensation to such broker (if any) shall be binding upon Lender unless it is set forth in separate written instrument that has been duly executed by Lender and such broker.

9.24 Servicing Agent. Borrower does hereby acknowledge that the Loan Documents may be serviced by an agent designated by Lender from time to time, and that such servicing agent shall have the authority to collect payments on the secured indebtedness and to exercise the rights and remedies of Lender under the Loan Documents for and on behalf of Lender.

9.25 Usury Savings Clause. It is the intention of Borrower and Lender to conform strictly to all applicable usury laws now or hereinafter in force. All agreements in this Security Instrument and in the other Loan Documents are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement or acceleration of maturity of the Obligations, or otherwise, shall the amount paid or agreed to be paid hereunder or thereunder for the use, forbearance or detention of money, to the extent that any sums secured hereby or by the other Loan Documents shall not be exempt from such laws, exceed the highest lawful rate permitted under applicable usury laws as now or hereinafter construed by the court having jurisdiction over such matters. If, from any circumstance whatsoever, fulfillment of any provision of the Loan Documents, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed 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 limit of such validity and if, from any circumstance whatsoever, Lender shall ever receive as interest an amount which would exceed the highest lawful rate, the receipt of such excess shall, at the option of Lender, be deemed a mistake and such excess shall be rebated to Borrower or, held in trust by Lender for the benefit of Borrower and shall be credited against the principal amount of the Obligations to which the same may lawfully be credited, and any portion of such excess not capable of being so credited shall be rebated to Borrower. The aggregate of

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all interest (whether designated as interest, service charges, points or otherwise) contracted for, chargeable, or receivable under the Note, this Security Instrument, or any other Loan Document shall under no circumstances exceed the maximum legal rates upon the unpaid principal balance of the Note remaining from time to time. In the event such interest does exceed the maximum legal rate, it shall be deemed a mistake and such excess shall be canceled automatically and if theretofore paid, rebated to Borrower or credited on the principal amount of the Note, or if the Note has been repaid, then such excess shall be rebated to Borrower.

9.26 Right to Deal. In the event that ownership of the Property becomes vested in a Person other than Borrower, Lender may, without notice to Borrower, deal with such successor or successors in interest with reference to this Security Instrument or the Obligations in the same manner as with Borrower, without in any way vitiating or discharging Borrower's liability hereunder or the payment of the Obligations or being deemed a consent to such vesting. It being agreed that Lender's dealing with any such successor or successors as aforesaid shall not relieve Borrower of its obligations or liabilities hereunder or under the Loan Documents (including, without limitation, the Obligations), all of which shall remain the primary obligations and liabilities of Borrower as a principal hereunder and thereunder, and not as merely a guarantor or by way of stand-by liability.

## 9.27 Sole Discretion of Lender.

(a) Whenever Lender's judgment, consent or approval is required under this Security Instrument or any of the other Loan Documents for any matter, or Lender shall have an option or election under this Security Instrument or any of the other Loan 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 (except as otherwise expressly provided herein or therein) be made in the sole, absolute, unfettered and subjective discretion of Lender, and as to which decision no standard of reasonableness shall apply or be deemed to apply, and, furthermore, shall be final and conclusive. The use of the phrase "in Lender's sole discretion", "in the sole discretion of Lender" and words of similar import, when used in this Security Instrument or any other Loan Document (as well as the absence thereof) with respect to a particular matter shall not be deemed in any way to limit or modify the provisions of the preceding sentence with respect to such matter.

(b) If at any time Borrower believes that Lender has not acted reasonably in granting or withholding any approval or consent under this Security Instrument or any of the other Loan Documents as to which approval or consent Lender has expressly agreed to act reasonably, then Borrower's sole and exclusive remedy shall be to seek injunctive relief or specific performance and no action for monetary damages, punitive damages or any other Losses and Liabilities shall in any event or under any circumstances be sought or maintained by Borrower against Lender.

9.28 Provisions as to Covenants and Agreements. All of Borrower's covenants and agreements hereunder shall run with the land.

9.29 No Joint Venture. The parties intend and agree that the relationship between them shall be solely that of contracting parties. Nothing contained in this Security Instrument or in

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any of the Loan Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between Borrower and Lender. Lender shall not in any way be responsible for the debts, losses or obligations of Borrower with respect to the Property or otherwise. All obligations to pay the Impositions arising from the ownership, operation or occupancy of the Property and to perform all other agreements and contracts relating to the Property shall be the sole responsibility of Borrower. Borrower, subject to the terms and provisions of the Loan Documents (including this Security Instrument), shall be free to determine and follow its own policies and practices in the conduct of its business.

9.30 Indemnification Provisions. THIS SECURITY INSTRUMENT CONTAINS INDEMNIFICATION PROVISIONS WHICH, AMONG OTHER MATTERS AND IN CERTAIN CIRCUMSTANCES, INDEMNIFY LENDER AND OTHER INDEMNITEES AGAINST THE CONSEQUENCES OF THEIR OWN NEGLIGENCE AND AGAINST ANY STRICT LIABILITY WHICH COULD BE IMPOSED ON LENDER AND SUCH OTHER INDEMNITEES.

9.31 Applicable Law; Consent to Jurisdiction; No Jury. **BORROWER AND LENDER HEREBY AGREE THAT THIS SECURITY INSTRUMENT SHALL BE INTERPRETED, CONSTRUED, GOVERNED AND ENFORCED ACCORDING TO THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ITS PRINCIPLES OF CHOICE OF LAW OR CONFLICTS OF LAW THAT WOULD DEFER TO THE SUBSTANTIVE LAW OF ANOTHER JURISDICTION, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR CREATION, PERFECTION AND ENFORCEMENT OF THE LIENS AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, IT BEING UNDERSTOOD THAT BORROWER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS. BORROWER HEREBY IRREVOCABLY: (A) SUBMITS IN ANY LEGAL PROCEEDING RELATING TO THIS SECURITY INSTRUMENT TO THE NON-EXCLUSIVE IN PERSONAM JURISDICTION OF ANY STATE OR THE UNITED STATES COURT OF COMPETENT JURISDICTION SITTING IN THE STATE OF NEW YORK, COUNTY OF NEW YORK, IN CONNECTION WITH ANY MATTER GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF NEW YORK LAW PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND AGREES TO SUIT BEING BROUGHT IN SUCH COURTS, AS LENDER MAY ELECT; (B) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE TO THE VENUE OF SUCH PROCEEDING IN ANY SUCH COURT OR THAT SUCH PROCEEDING WAS BROUGHT IN AN INCONVENIENT COURT; (C) AGREES TO SERVICE OF PROCESS IN ANY LEGAL PROCEEDING BY MAILING OF COPIES THEREOF (BY REGISTERED OR CERTIFIED MAIL, IF PRACTICABLE) POSTAGE PREPAID, OR BY TELECOPY, TO ITS ADDRESS SET FORTH ABOVE OR SUCH OTHER ADDRESS OF WHICH LENDER SHALL HAVE BEEN NOTIFIED IN WRITING; AND (D) AGREES THAT NOTHING HEREIN SHALL AFFECT LENDER'S**

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**RIGHT TO EFFECT SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW, AND THAT LENDER SHALL HAVE THE RIGHT TO BRING ANY LEGAL PROCEEDINGS (INCLUDING A PROCEEDING FOR THE ENFORCEMENT OF A JUDGMENT ENTERED BY ANY OF THE AFOREMENTIONED COURTS) AGAINST BORROWER IN ANY OTHER COURT OR JURISDICTION IN ACCORDANCE WITH APPLICABLE LAW.**

**BORROWER AND LENDER EACH WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, OR RELATED TO, THE LOAN SECURED BY THIS SECURITY INSTRUMENT, OR ANY OF THE LOAN DOCUMENTS. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY BORROWER AND LENDER AND BORROWER ACKNOWLEDGES THAT NEITHER LENDER NOR ANY PERSON ACTING ON BEHALF OF LENDER HAS MADE ANY REPRESENTATIONS OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS SECURITY INSTRUMENT AND THE OTHER LOAN DOCUMENTS IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. BORROWER FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION AND AS EVIDENCE OF THIS FACT HAS EXECUTED THIS SECURITY INSTRUMENT BELOW. BORROWER SHALL NOT SEEK TO CONSOLIDATE, BY COUNTERCLAIM OR OTHERWISE, ANY SUCH ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THESE PROVISIONS SHALL NOT BE DEEMED TO HAVE BEEN MODIFIED IN ANY RESPECT OR RELINQUISHED BY LENDER EXCEPT BY A WRITTEN INSTRUMENT EXECUTED BY LENDER.**

## ARTICLE X

### ADDITIONAL REPRESENTATIONS, WARRANTIES AND WAIVERS OF BORROWER

**10.1 Conditions to Exercise of Rights.** Borrower hereby waives any right it may now or hereafter have to require Lender, as a condition to the exercise of any remedy or other right against Borrower hereunder or under any other document executed by Borrower in connection with the Loan and the Obligations:

- (a) to pursue any other right or remedy in Lender's power; or
- (b) to make or give (except as otherwise expressly provided in the Loan Documents) any presentment, demand, protest, notice of dishonor, notice of protest or other demand or notice of any kind in connection with any Obligation or any collateral (other than the

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Property) for any Obligation secured by this Security Instrument or any of the other Loan Documents.

10.2 Defenses. Borrower hereby waives any defense it may now or hereafter have that relates to:

(a) any disability or other defense of any other Borrower Party or other Person;

(b) the unenforceability or invalidity of any collateral assignment (other than this Security Instrument) or guaranty with respect to any Obligation, or the lack of perfection or continuing perfection or lack of priority of any Lien (other than the lien hereof) which secures any Obligation;

(c) any failure of Lender to marshal assets in favor of Borrower or any other Person;

(d) any modification of any Obligation, including any renewal, extension, acceleration or increase in any applicable interest rate;

(e) any and all rights and defenses arising out of an election of remedies by Lender;

(f) any failure of Lender to file or enforce a claim in any bankruptcy proceeding of any Person, of the application or non-application of Section 111(b)(2) of the United States Bankruptcy Code;

(g) any extension of credit or the grant of any Lien under Section 364 of the United States Bankruptcy Code;

(h) any use of cash collateral under Section 363 of the United States Bankruptcy Code; or

(i) any agreement or stipulation with respect to the provision of adequate protection in any bankruptcy proceeding of any Person.

10.3 Lawfulness and Reasonableness. Borrower warrants that all of the waivers in this Security Instrument are made with full knowledge of their significance, and of the fact that events giving rise to any defense or other benefit waived by Borrower may destroy or impair rights which Borrower would otherwise have against Lender, any other Borrower Party and other Persons, or against Collateral. Borrower agrees that all such waivers are reasonable under the circumstances and further agrees that, if any such waiver is determined (by a court of competent jurisdiction) to be contrary to any law or public policy, the other waivers herein shall nonetheless remain in full force and effect.

10.4 Enforceability.

(a) Borrower hereby acknowledges that:

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(1) the obligations undertaken by Borrower in this Security Instrument are complex in nature;

(2) numerous possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter;

(3) as part of Lender's consideration for entering into this transaction, Lender has specifically bargained for the waiver and relinquishment by Borrower of all such defenses; and

(4) Borrower has had the opportunity to seek and receive legal advice from skilled legal counsel in the area of financial transactions of the type contemplated herein.

(f) Borrower does hereby represent and confirm to Lender that Borrower is fully informed regarding, and that Borrower does thoroughly understand:

(1) the nature of all of the possible defenses to the enforceability of these obligations may presently exist and/or may arise hereafter;

(2) the circumstances under which such defenses may arise;

(3) the benefits which such defenses might confer upon Borrower; and

(4) the legal consequences to Borrower of waiving such defenses.

(c) Borrower acknowledges that Borrower makes this Security Instrument with the intent that this Security Instrument and all of the informed waivers herein shall each and all be fully enforceable by Lender, and that Lender is induced to enter into this transaction in material reliance upon the presumed full enforceability thereof.

10.5 Reinstatement of Lien. Lender's rights hereunder shall be reinstated and revived, and the enforceability of this Security Instrument shall continue, with respect to any amount at any time paid on account of any Obligation which Lender is thereafter required to restore or return in connection with a bankruptcy, insolvency, reorganization or similar proceeding with respect to any Person.

## ARTICLE XI [INTENTIONALLY OMITTED]

## ARTICLE XII STATE SPECIFIC PROVISIONS

12.1 Waiver of Right of Redemption and Other Rights. Without limitation to anything contained herein, to the full extent permitted by law, Borrower agrees that it will not at any time or in any manner whatsoever take any advantage of any appraisal, valuation, stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale thereof to be made pursuant to

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any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or claim or exercise any rights under any statute now or hereafter in force to redeem the Property or any part thereof, or relating to the marshalling thereof, on foreclosure sale or other enforcement hereof. To the full extent permitted by law, Borrower hereby expressly waives any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Borrower hereby expressly waives any and all rights to redemption and reinstatement under 735 Illinois Compiled Statutes 5/15-1101 (the "Act"), on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Borrower and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Borrower and such other persons, are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Borrower agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Lender, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Borrower hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid on an action at law upon the Note. If the Borrower is a trustee, Borrower represents that the provisions of this Section (including the waiver of redemption rights) were made at the express direction of Borrower's beneficiaries and the persons having the power of direction over Borrower and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well as all other persons named above. Borrower acknowledges that the Property does not constitute agricultural real estate as defined in Section 15-1201 of the Act or residential real estate as defined in Section 15-1219 of the Act.

## 12.2 Warrant of Attorney to Confess Judgment.

(a) **Acknowledgement of Warrant of Attorney.** THE FOLLOWING PARAGRAPH SETS FORTH A GRANT OF AUTHORITY FOR ANY ATTORNEY TO CONFESS JUDGMENT AGAINST BORROWER. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST BORROWER, FOLLOWING CONSULTATION WITH (OR DECISION NOT TO CONSULT) COUNSEL FOR BORROWER AND WITH KNOWLEDGE OF THE LEGAL EFFECT HEREOF, BORROWER HEREBY KNOWINGLY, INTENTIONALLY, VOLUNTARILY, INTELLIGENTLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS BORROWER HAS OR MAY HAVE TO PRIOR NOTICE AND OPPORTUNITY FOR HEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES OF AMERICA, STATE OF NEW YORK, STATE OF ILLINOIS, OR ELSEWHERE INCLUDING, WITHOUT LIMITATION, A HEARING PRIOR TO GARNISHMENT AND ATTACHMENT OF BORROWER'S LENDER ACCOUNTS AND OTHER ASSETS. BORROWER ACKNOWLEDGES AND UNDERSTANDS THAT BY ENTERING INTO THIS AGREEMENT CONTAINING A CONFESSION OF JUDGMENT CLAUSE THAT BORROWER VOLUNTARILY, INTELLIGENTLY AND KNOWINGLY GIVES UP ANY AND ALL RIGHTS, INCLUDING CONSTITUTIONAL RIGHTS, THAT BORROWER HAS OR MAY HAVE TO NOTICE AND A HEARING BEFORE JUDGMENT CAN BE ENTERED AGAINST BORROWER AND BEFORE

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BORROWER'S ASSETS, INCLUDING, WITHOUT LIMITATION, THEIR LENDER ACCOUNTS, MAY BE GARNISHED, LEVIED, EXECUTED UPON AND/OR ATTACHED. BORROWER UNDERSTANDS THAT ANY SUCH GARNISHMENT, LEVY, EXECUTION AND/OR ATTACHMENT SHALL RENDER THE PROPERTY GARNISHED, LEVIED, EXECUTED UPON OR ATTACHED IMMEDIATELY UNAVAILABLE TO BORROWER. IT IS SPECIFICALLY ACKNOWLEDGED BY BORROWER THAT LENDER HAS RELIED ON THIS WARRANT OF ATTORNEY AND THE RIGHTS WAIVED BY BORROWER HEREIN IN GRANTING THE LOAN TO BORROWER.

(b) Warrant of Attorney to Confess Judgment – Money. BORROWER HEREBY AUTHORIZES AND EMPOWERS, UPON AN EVENT OF DEFAULT HEREUNDER, ANY ATTORNEY OF ANY COURT OF RECORD OR THE PROTHONOTARY OR CLERK OF ANY COUNTY IN THE STATE OF ILLINOIS, OR IN ANY JURISDICTION WHERE PERMITTED BY LAW, OR THE CLERK OF ANY UNITED STATES DISTRICT COURT, TO APPEAR FOR BORROWER IN ANY AND ALL ACTIONS WHICH MAY BE BROUGHT HEREUNDER AND ENTER AND CONFESS JUDGMENT AGAINST BORROWER IN FAVOR OF LENDER OR ITS ASSIGNEE FOR THE ENTIRE AMOUNT OF THE INDEBTEDNESS THEN DUE AND OUTSTANDING UNDER THE TERMS OF THIS MORTGAGE OR THE NOTE, TOGETHER WITH ATTORNEYS' FEES EQUAL TO TEN PERCENT (10%) OF THE FOREGOING SUMS THEN DUE AND OWING, BUT IN NO EVENT LESS THAN FIVE THOUSAND (\$5,000.00) DOLLARS, ALL WITH OR WITHOUT DECLARATION, WITHOUT PRIOR NOTICE, WITHOUT STAY OF EXECUTION AND WITH RELEASE OF ALL PROCEDURAL ERRORS AND THE RIGHT TO ISSUE EXECUTIONS FORTHWITH. TO THE EXTENT PERMITTED BY LAW, BORROWER WAIVES THE RIGHT OF INQUIRY ON ANY REAL ESTATE LEVIED ON, VOLUNTARILY CONDEMN THE SAME, AUTHORIZES THE PROTHONOTARY OR CLERK TO ENTER UPON THE WRIT OF EXECUTION THIS VOLUNTARY CONDEMNATION AND AGREE THAT SUCH REAL ESTATE MAY BE SOLD ON A WRIT OF EXECUTION; AND ALSO WAIVES ANY RELIEF FROM ANY APPRAISEMENT, STAY OR EXEMPTION LAW OF ANY STATE NOW IN FORCE OR HEREAFTER ENACTED. IF COPIES OF THIS MORTGAGE AND THE NOTE VERIFIED BY AFFIDAVIT OF ANY REPRESENTATIVE OF LENDER SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL THEREOF AS A WARRANT OF ATTORNEY, ANY PRACTICE OR USAGE TO THE CONTRARY NOTWITHSTANDING. THE AUTHORITY HEREIN GRANTED TO CONFESS JUDGMENT SHALL NOT BE EXHAUSTED BY ANY SINGLE EXERCISE THEREOF, BUT SHALL CONTINUE AND MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS LENDER SHALL FIND IT NECESSARY AND DESIRABLE AND AT ALL TIMES UNTIL FULL PAYMENT OF ALL AMOUNTS DUE HEREUNDER, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME INDEBTEDNESS OR OBLIGATIONS. IN THE EVENT THAT ANY JUDGMENT CONFESSED AGAINST BORROWER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON BEHALF OF BORROWER FOR ANY REASON, LENDER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR



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**AND CONFESS JUDGMENT AGAINST BORROWER FOR ANY PART OR ALL OF THE INDEBTEDNESS DUE AND OWING TO LENDER UNDER THIS ENVIRONMENTAL INDEMNITY.**

12.3 Future Advances. Without limitation to anything contained herein, at all times, regardless of whether any loan proceeds have been disbursed, this Mortgage secures as part of the Obligations the payment of all loan commissions, service charges, liquidated damages, attorney's fees, expenses and advances due to or incurred by Lender in connection with the Obligations, all in accordance with the Note, this Mortgage, and the other Loan Documents, provided, however, that in no event shall the total amount of the Obligations, including loan proceeds disbursed plus any additional charges, exceed \$122,000,000, plus interest thereon, and other costs, amounts and disbursements as provided herein and in the other Loan Documents.

12.4 Article 9.

(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 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 Mortgage.

(b) Borrower represents and warrants that:

- (1) Borrower is the record owner of the Property;
- (2) Borrower's state of organization is in the State of Illinois;
- (3) Borrower's exact legal name is Integrated Clark Monroe LLC; and
- (4) Borrower's organizational identification number is: 03905969.

(c) (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

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the Obligations is paid in full, Borrower will not change the state where it is located or change its name without giving the Lender at least 30 days' prior written notice in each instance.

(d) Conflicting Provisions. The provisions of this Section are intended to supplement, and not limit, the other provisions of this Mortgage; provided, however, that in the event the provisions of this Section contradict any other provision of this Mortgage, the provisions of this Section shall govern.

[SIGNATURE PAGE FOLLOWS]

Property of CoA County Clerk's Office



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IN WITNESS WHEREOF, Borrower has executed this Security Instrument as of the day and year first above written.

**BORROWER:**

**INTEGRATED CLARK MONROE LLC,**  
an Illinois limited liability company,

By: Integrated CM Manager, LLC, a Delaware  
limited liability company, its Managing  
Member

By: Integrated 100 West Monroe LLC,  
an Illinois limited liability company, its  
Member

By: John T. Murphy  
Name: John T. Murphy  
Title: Manager

**WITNESS:**

Kim R. Moore  
Print Name: Kim R. Moore

**WITNESS:**

Jan V. Edmonds  
Print Name: JAN V. Edmonds

**ACKNOWLEDGMENT**

STATE OF ILLINOIS     )  
  )  
COUNTY OF COOK     )

I, Victoria McElroy, a notary public for the County of Cook, in the State of Illinois, do certify that John T. Murphy, as Manager of Integrated 100 West Monroe LLC, an Illinois limited liability company, as Member of Integrated CM Manager, LLC, a Delaware limited liability company, as Managing Member of Integrated Clark Monroe LLC, an Illinois limited liability company, whose name is signed to the writing above (or hereto annexed) bearing date of SEPTEMBER 18, 2015, has acknowledged the same before me in my county aforesaid.

Name: Victoria McElroy  
Title: Notary Public

My commission expires on the  
2nd day of August, 2016



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## EXHIBIT A

### LEGAL DESCRIPTION

#### PARCEL 1:

ALL THAT PART OF LOT 5 IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, WHICH LIES SOUTH OF THE NORTH 154 FEET THEREOF; AND

#### PARCEL 2:

THAT PART OF ORIGINAL LOT 5 IN BLOCK 118 IN SCHOOL SECTION ADDITION TO CHICAGO IN SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, BOUNDED BY A LINE DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE EAST LINE OF SAID LOT, 111 FEET SOUTH OF THE NORTH EAST CORNER THEREOF; THENCE WEST TO A POINT IN THE WEST LINE OF SAID LOT 5, 111 FEET SOUTH OF THE NORTH LINE OF SAID LOT THENCE SOUTH 43 FEET ALONG THE WEST LINE OF SAID LOT; THENCE EAST PARALLEL TO THE NORTH LINE OF SAID LOT TO THE WEST LINE OF CLARK STREET, BEING THE EAST LINE OF SAID LOT; THENCE NORTH ALONG THE WEST LINE OF SAID CLARK STREET 43 FEET TO THE POINT OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

#### ALSO KNOWN AS:

LOTS 19 AND 20 IN ASSESSOR'S DIVISION OF BLOCK 118 OF SCHOOL SECTION ADDITION TO CHICAGO OF SECTION 16, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Commonly known as: 100 West Monroe Street, Chicago, Illinois 60603

Permanent Index Nos: 17-16-204-022-0000 and 17-16-204-023-0000