

Illinois Anti-Predatory  
Lending Database  
Program

Certificate of Exemption



Doc#: 1535645062 Fee: \$108.00  
RHSP Fee: \$9.00 RPRF Fee: \$1.00  
Karen A. Yarbrough  
Cook County Recorder of Deeds  
Date: 12/22/2015 02:09 PM Pg: 1 of 36

Report Mortgage Fraud  
800-532-8785

897916718F2

The property identified as: **PIN:** 17-10-203-015-0000

**Address:**

**Street:** 224-228 East Ontario Street

**Street line 2:**

**City:** Chicago

**State:** IL

**ZIP Code:** 60654

**Lender:** ASSOCIATED BANK, NATIONAL

**Borrower:** SMASHOTELS CHICAGO, LLC

**Loan / Mortgage Amount:** \$36,000,000.00

This property is located within the program area and is exempt from the requirements of 765 ILCS 17/70 et seq. because it is commercial property.

**Certificate number:** D702E293-C2CF-4C36-A0F3-1B510CC633A6

**Execution date:** 12/22/2015

CCRD REVIEWER

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**This document prepared by and after  
recording return to:**

Dykema Gossett PLLC  
10 South Wacker Drive  
Suite 2300  
Chicago, Illinois 60606  
Attn: Michael S. Kurtzon, Esq.

**CONSTRUCTION MORTGAGE, SECURITY AGREEMENT,  
FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS**

**THIS CONSTRUCTION MORTGAGE, SECURITY AGREEMENT, FIXTURE FILING AND ASSIGNMENT OF LEASES AND RENTS** (this "Mortgage") is made as of December 22, 2015, by SMASHOTELS CHICAGO, LLC, an Illinois limited liability company (the "Borrower"), for the benefit of ASSOCIATED BANK, NATIONAL ASSOCIATION, a national banking association, its successors and assigns (in its individual capacity, "Associated") and as administrative agent ("Agent") for itself and those certain financial institutions that are, or may become, from time to time, parties to the Loan Agreement (as defined below) (the "Lenders").

**WITNESSETH:**

Lenders are making a loan to Borrower (the "Loan") in an amount not to exceed Thirty-Six Million and 00/100 Dollars (\$36,000,000.00) pursuant to that certain Syndicated Construction Loan Agreement of even date herewith by and between Borrower, Agent, Associated and the other Lenders, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein (said Loan Agreement and any and all extensions and renewals thereof, amendments thereto and substitutions or replacements thereof is referred to herein as the "Loan Agreement"; any terms not defined herein shall have the meanings ascribed to such terms in the Loan Agreement). The Loan is evidenced by one or more certain Promissory Notes dated as of even date herewith in the aggregate principal amount of \$36,000,000.00 from Borrower to Lenders (individually, the "Note" and collectively, the "Notes"). The Loan is due and payable in full on December 22, 2018 (the "Maturity Date"), except as such date may be extended to December 22, 2019 and December 22, 2020 pursuant to the terms of the Loan Agreement or accelerated pursuant to the terms hereof or of any other Loan Document (as hereinafter defined). This Mortgage encumbers certain real estate located in Cook County, Illinois, legally described on **Exhibit A** attached hereto, and payment of the Notes is secured by this Mortgage, financing statements and other security documents (this Mortgage, the Notes, the Loan Agreement, and all other documents evidencing or securing the Loan (as

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amended, modified, replaced or restated from time to time) are collectively hereinafter referred to as the "Loan Documents").

To secure (i) the payment when and as due and payable of the principal of and interest on the Loan or so much thereof as may be advanced from time to time, and any and all late charges, Make Whole Costs (as defined in the Loan Agreement), and all other indebtedness evidenced by or owing under the Notes and any of the other Loan Documents, together with any extensions, modifications, renewals or refinancings of any of the foregoing, (ii) the payment of all other indebtedness which this Mortgage by its terms secures, and (iii) the performance and observance of the covenants and agreements contained in this Mortgage, the Loan Agreement, the Notes and each of the other Loan Documents (all of such indebtedness, obligations and liabilities identified in (i), (ii) and (iii) above being hereinafter referred to as the "Debt"), the Borrower does hereby GRANT, SELL, CONVEY, MORTGAGE and ASSIGN unto the Agent, its successors and assigns, and does hereby grant to Agent, its successors and assigns a security interest in, all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII, and VIII below, all of same being collectively referred to herein as the "Mortgaged Property":

## GRANTING CLAUSE I:

THE LAND located in Cook County, Illinois which is legally described on Exhibit A attached hereto and made a part hereof (the "Land");

## GRANTING CLAUSE II:

TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements to or for any such buildings, structures and improvements and all of the right, title and interest of the Borrower now or hereafter acquired in and to any of the foregoing, including without limitation those certain improvements to be constructed on the Land in accordance with the Loan Agreement (the "Improvements"); provided that notwithstanding the foregoing, the Improvements shall not include any such property owned by any Tenant under the terms of their respective Leases, except to the extent Borrower has a right or interest therein;

## GRANTING CLAUSE III:

TOGETHER WITH all easements, rights of way, strips and gores of land, streets, ways, alleys, sidewalks, vaults, passages, sewer rights, waters, water courses, water drainage and reservoir rights and powers (whether or not appurtenant), all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, easements, franchises, appendages and appurtenances whatsoever, in any way belonging, relating or appertaining to the Land or the Improvements, whether now owned or hereafter acquired by the Borrower, including without limitation all existing and future mineral, oil and gas rights which are appurtenant to or which have been used in connection with the Land, all existing and future water stock relating to the Land or the Improvements, all existing and future share of stock respecting water and water

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rights pertaining to the Land or the Improvements or other evidence of ownership thereof, and the reversions and remainders thereof (the "Appurtenant Rights");

## GRANTING CLAUSE IV:

TOGETHER WITH all machinery, apparatus, equipment, fittings and fixtures of every kind and nature whatsoever, and all furniture, furnishings and other personal property now or hereafter owned by the Borrower and forming a part of, or used or obtained for use in connection with, the Land or the Improvements or any present or future operation, occupancy, maintenance or leasing thereof; including, but without limitation, any and all heating, ventilating and air conditioning equipment and systems, antennae, appliances, apparatus, awnings, basins, bathtubs, bidets, boilers, bookcases, cabinets, carpets, communication systems, coolers, curtains, dehumidifiers, dishwashers, disposals, doors, drapes, drapery rods, dryers, ducts, dynamos, elevators, engines, equipment, escalators, fans, fittings, floor coverings, furnaces, furnishings, furniture, hardware heaters, humidifiers, incinerators, lighting, machinery, motors, ovens, pipes, plumbing and electric equipment, pool equipment, pumps, radiators, ranges, recreational facilities and equipment, refrigerators, screens, sprinklers, stokers, stoves, shades, shelving, sinks, security systems, toilets, ventilators, wall coverings, washers, windows, window covering, wiring, beds, bureaus, chiffoniers, chests, chairs, desks, mirrors, tables, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, liquor and other drink dispensers, icemakers, radios, television sets, intercom and paging equipment, electric and electronic equipment, dictating equipment, private telephone systems, facsimile machines, medical equipment, potted plants, lighting fixtures, fire prevention and extinguishing apparatus, fittings, plants, laundry machines, tools, machinery, engines, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, lockers, spotlighting equipment, garbage disposals, and other customary hotel equipment and all extensions, renewals or replacements thereof or substitutions therefor or additions thereto, whether or not the same are or shall be attached to the Land or the Improvements in any manner (collectively, the "Fixtures"); it being agreed that all of said property owned by the Borrower and placed on the Land or on or in the Improvements (whether affixed or annexed thereto or not) shall, so far as permitted by law, conclusively be deemed to be real property and conveyed hereby for purposes of this Mortgage;

## GRANTING CLAUSE V:

TOGETHER WITH the following (the "Personal Property");

All personal property of every nature whatsoever now or hereafter owned by Borrower or used in connection with the Land or the improvements thereon, including all extensions, additions, improvements, betterments, renewals, substitutions and replacements thereof and all of the right, title and interest of Borrower in and to any such personal property together with the benefit of any deposits or payments now or hereafter made on such personal property by Borrower or on its behalf, including without limitation, any and all Goods, Investment Property, Instruments, Chattel Paper, Documents, Letter of Credit Rights, Accounts, Deposit Accounts,

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Commercial Tort Claims and General Intangibles, each as defined in the Uniform Commercial Code of the State of Illinois (the "Code");

All proceeds of the foregoing, including, without limitation, all judgments, awards of damages and settlements hereafter made resulting from condemnation proceeds or the taking of the Land or improvements thereon or any portion thereof under the power of eminent domain, any proceeds of any policies of insurance, maintained with respect to the Land or improvements thereon or proceeds of any sale, option or contract to sell the Land or improvements thereon or any portion thereof;

Any and all additions and accessories to all of the foregoing and any and all proceeds (including proceeds of insurance, eminent domain or other governmental takings and tort claims), renewals, replacements and substitutions of all of the foregoing;

All of the books and records pertaining to the foregoing;

## GRANTING CLAUSE VI:

TOGETHER WITH all right, title and interest which the Borrower hereafter may acquire in and to all leases and other agreements now or hereafter entered into for the occupancy or use of the Land, the Appurtenant Rights, the Improvements, the Fixtures and the Personal Property or any portion thereof, whether written or oral (herein collectively referred to as the "Leases"), and all rents, issues, incomes and profits in any manner arising thereunder (herein collectively referred to as the "Rents"), credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities and parking charges, the rendering of services by Borrower or any operator or manager of a hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and any other items of revenue, receipts and/or income as identified in the Uniform System of Accounts for the Lodging Industry, 11th Edition, published by the American Hotel and Lodging Association in conjunction with the Hotel Financial and Technology Professionals, as from time to time amended), and all right, title and interest which the Borrower now has or hereafter may acquire in and to any bank accounts, security deposits, and any and all other amounts held as security under the Leases, reserving to the Borrower any statutory rights;

## GRANTING CLAUSE VII:

TOGETHER WITH all of Borrower's right, title and interest in any and all Awards and Insurance Proceeds, or proceeds of any sale, option or contract to sell the Mortgaged Property or any portion thereof (provided that no right, consent or authority to sell the Mortgaged Property or any portion thereof shall be inferred or deemed to exist by reason hereof); and the Borrower hereby authorizes, directs and empowers the Agent, at its option, on the Borrower's behalf, or on behalf of the successors or assigns of the Borrower, subject to the terms of the Loan Agreement, to adjust, compromise, claim, collect and receive such proceeds; to give acquittances therefor; and, after deducting expenses of collection, including reasonable third party attorneys' fees, costs

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and disbursements actually incurred, to apply the Net Insurance Proceeds to the extent not utilized for the Restoration of the Mortgaged Property as provided in the Loan Agreement hereof, to payment of the Debt, notwithstanding the fact that the same may not then be due and payable or that the Debt is otherwise adequately secured; and following the occurrence and during the continuance of an Event of Default, the Borrower agrees to execute and deliver from time to time such further instruments as may be reasonably requested in writing by the Agent to confirm such assignment to the Agent of any such proceeds;

## GRANTING CLAUSE VIII:

TOGETHER WITH all estate, right, title and interest, homestead or other claim or demand, as well in law as in equity, which the Borrower now has or hereafter may acquire of, in and to the Mortgaged Property, or any part thereof, and any and all other property of every kind and nature from time to time hereafter (by delivery or by writing of any kind) conveyed, pledged, assigned or transferred as and for additional security hereunder by the Borrower or by anyone on behalf of the Borrower to the Agent;

TO HAVE AND TO HOLD the Mortgaged Property, unto the Agent, and its successors and assigns, IN FEE SIMPLE forever; subject, however, to those encumbrances which the Agent has approved in the Loan Agreement or otherwise approved in writing (the "Permitted Encumbrances");

UPON CONDITION that, subject to the terms hereof and until the occurrence and during the continuance of an Event of Default hereunder, the Borrower shall be permitted to possess and use the Mortgaged Property;

SUBJECT to the covenants and conditions hereinafter set forth.

PROVIDED, NEVERTHELESS, that if (i) the Borrower shall pay and perform in full when due the Debt and shall duly and timely perform and observe all of the covenants and conditions herein and in the other Loan Documents required to be performed and observed by the Borrower, and (ii) the Agent shall have no further obligation to make any further disbursements of the Loan to or for the benefit of Borrower under the provisions of the Loan Agreement, then the Agent shall execute and deliver to the Borrower such instruments as may be reasonably requested by the Borrower which are sufficient to release this Mortgage.

## THE BORROWER FURTHER COVENANTS AND AGREES AS FOLLOWS:

1. Representations of Borrower. Borrower hereby represents and warrants as of the date hereof to the Agent as follows:

(a) Borrower (i) is a limited liability company duly formed and validly existing under the laws of the State of Illinois and has complied with all conditions prerequisite to its doing business in the State of Illinois; (ii) has the power and authority to own its property and to carry on its business as now being conducted; (iii) is qualified to do business in every jurisdiction in which the nature of its business or its property makes such qualification necessary; and (iv) to Borrower's Best Knowledge is in

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compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

(b) The Borrower has good and marketable title to an indefeasible fee simple estate in the Mortgaged Property, subject to no liens, charges or encumbrances, other than the Permitted Encumbrances; that it has good, right and lawful authority to mortgage the Mortgaged Property in the manner and form herein provided; that to Borrower's Best Knowledge this Mortgage is and shall remain a valid and enforceable lien on the Mortgaged Property subject only to the Permitted Encumbrances; that Borrower and its successors and assigns shall defend the same and the priority of this lien forever against the lawful claims and demands of all persons whomsoever, and that this covenant shall not be extinguished by any foreclosure hereof but shall run with the Land.

(c) The Borrower has and shall maintain title to the collateral for the Loan, including any additions or replacements thereto, free of all security interests, liens and encumbrances, other than the security interest hereunder and the Permitted Encumbrances and liens and encumbrances expressly permitted by the Loan Documents.

(d) No person who owns twenty percent (20.00%) or more of the equity interests in the Borrower, or otherwise controls the Borrower or any of its subsidiaries, is listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control ("OFAC"), the Department of the Treasury or included in any Executive Orders, and the proceeds of the Loan will not violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto.

2. Borrower's Covenants. For the purpose of further securing the Debt and for the protection of the security of this Mortgage, subject to the provisions of the Loan Agreement, for so long as the Debt remains unpaid, Borrower covenants and agrees that:

(a) Payment of Debt. The Borrower shall, prior to the expiration of any grace period: (i) pay the Debt when due, and (ii) duly and punctually perform and observe all of the covenants and conditions to be performed or observed by the Borrower as provided in the Notes, the Loan Agreement, this Mortgage and the other Loan Documents.

(b) Provisions of Loan Agreement. The proceeds of the Notes are to be disbursed by the Agent in accordance with the terms contained in the Loan Agreement, the provisions of which are incorporated herein by reference to the same extent as if fully set forth herein. Borrower covenants that any and all monetary disbursements made in accordance with the Loan Agreement shall constitute adequate consideration to Borrower for the enforceability of this Mortgage and the Notes, and that all advances and indebtedness arising and accruing under the Loan Agreement from time to time, whether or not the total amount thereof may exceed the face amount of the Notes, shall be secured by this Mortgage.

(c) Construction Loan. The Notes evidence a debt created by one or more disbursements made by Agent to Borrower to finance the cost of the construction of

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certain improvements upon the Land in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the Code.

### 3. Liens, Contest and Defense of Title.

(a) The Borrower shall not create or suffer or permit any lien, charge or encumbrance to attach to or be filed against the Mortgaged Property or any part thereof, or interest thereon, or any other rights and properties conveyed, mortgaged, transferred and granted hereunder (except for Permitted Encumbrances), whether such lien, charge or encumbrance is on a parity, inferior or superior to the lien of this Mortgage, including liens for labor or materials with respect to the Mortgaged Property ("Mechanic's Liens").

(b) Notwithstanding paragraph (a) of this Section, the Borrower may in good faith and with reasonable diligence contest the validity or amount of any Mechanic's Liens and defer payment and discharge thereof during the pendency of such contest, provided that: (i) such contest shall prevent the sale or forfeiture of the Mortgaged Property, or any part thereof or any interest therein, to satisfy such Mechanic's Liens and shall not result in a forfeiture or impairment of the lien of this Mortgage; and (ii) within thirty (30) days after the Borrower has been notified of the filing of any such Mechanic's Liens, the Borrower shall have notified the Agent in writing of the Borrower's intention to contest such Mechanic's Liens, or to cause such other party to contest such Mechanic's Liens, and shall have obtained a title insurance endorsement or bonded over such Mechanic's Liens in form and substance reasonably satisfactory to the Agent, insuring the Agent against loss or damage by reason of such Mechanic's Liens; provided that in lieu of such title insurance endorsement or bond the Borrower may deposit and keep on deposit with the Agent (or such depository as may be reasonably designated by the Agent) a sum of money sufficient, in the reasonable judgment of the Agent, to pay in full such Mechanic's Liens and all interest thereon. Any such deposits are to be held without any allowance of interest and may be used by the Agent in its sole discretion to protect the priority of this Mortgage. In case the Borrower shall fail to maintain such title insurance or deposit, or to prosecute or cause the prosecution of such contest with reasonable diligence, or to pay or cause to be paid the amount of the Mechanic's Lien, plus any interest finally determined to be due upon the conclusion of such contest; then the Agent may, at its option, apply any money and liquidate any securities then on deposit with the Agent (or other depository reasonably designated by the Agent) in payment of or on account of such Mechanic's Liens, or that part thereof then unpaid, together with all interest thereon according to any written bill, notice or statement, without inquiring into the amount, validity or enforceability thereof. If the amount of money so deposited shall (in Agent's reasonable judgment) be insufficient for the payment in full of such Mechanic's Liens, together with all interest thereon, then the Borrower shall forthwith, within five (5) Business Days' after written demand by Agent upon Borrower, deposit with the Agent (or other depository reasonably designated by the Agent) the sum which shall (in Agent's reasonable judgment, when added to the funds then on deposit with Agent) be necessary to make such payment in full (or such other security as shall be reasonably satisfactory to Agent). If a Mechanic's Lien claim is ultimately resolved in the claimant's favor, then the monies so deposited shall be applied



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in full payment of such Mechanic's Lien or that part thereof then unpaid, together with all interest thereon (provided no Event of Default shall then exist and be continuing) when the Agent has been furnished with satisfactory evidence of the amount of payment to be made. Any excess monies remaining on deposit with the Agent (or other depository) under this Section 3(b) shall be paid to the Borrower, provided that no Event of Default shall then exist and be continuing.

(c) If the lien and security interest of the Agent in or to the Mortgaged Property, or any part thereof, shall be endangered or shall be attacked, directly or indirectly, the Borrower shall promptly notify the Agent and shall appear in and defend any action or proceeding purporting to affect the Mortgaged Property, or any part thereof, and shall file and prosecute such proceedings and take all actions necessary to preserve and protect such title, lien and security interest in and to the Mortgaged Property.

#### 4. Payment and Contest of Taxes.

(a) The Borrower shall pay or cause to be paid when due and before any penalty attaches, all general and special taxes, assessments, water charges, sewer charges, and other fees, taxes, charges and assessments of every kind and nature whatsoever levied or assessed against the Mortgaged Property, or any part thereof, or any interest therein, or any income or revenue therefrom, or any obligation or instrument secured hereby, and all installments thereof (collectively, the "Taxes"), on or before the date such Taxes are due, except to the extent Agent makes payments with Borrower's deposits under Section 23 hereof or any reserves established under the Loan Agreement; and the Borrower shall discharge any claim or lien relating to Taxes upon the Mortgaged Property. The Borrower shall provide the Agent with copies of paid receipts for Taxes, if requested in writing by the Agent, within ten (10) days after being requested to do so by the Agent.

(b) Notwithstanding paragraph (a) of this Section, the Borrower may, in good faith and with reasonable diligence, contest or cause to be contested the validity or amount of any such Taxes, provided that: (i) no Event of Default has occurred and is continuing; (ii) such proceeding shall stay the collection of the applicable Taxes from Borrower and from the Mortgaged Property or Borrower shall have paid all of the applicable Taxes under protest, (iii) such proceeding shall be permitted under and be conducted in accordance with the provisions of any other instrument to which Borrower is subject and shall not constitute a default thereunder, (iv) neither the Mortgaged Property nor any part thereof or interest therein will be in danger of being sold, forfeited, terminated, cancelled or lost so long as the contest is being pursued, and (v) Borrower shall have deposited with Agent adequate reserves for the payment of the applicable Taxes, together with all interest and penalties thereon, unless Borrower has paid all of the applicable Taxes under protest, or Borrower shall have furnished such other security as may be accepted by Agent, in its reasonable discretion, to insure the payment of any contested Taxes, together with all interest and penalties thereon. If the Borrower fails to prosecute such contest with reasonable diligence or fails to maintain sufficient funds as hereinabove provided, the Agent may, at its option, liquidate any securities and apply the monies then on deposit with the Agent (or other depository), in payment of, or on account

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of, such Taxes, or any portion thereof then unpaid, including all penalties and interest thereon according to any written bill, notice or statement, without inquiry as to the amount, validity or enforceability thereof. If the amount of money and any such security so deposited shall (in the Agent's reasonable judgment) at any time be insufficient for the payment in full of such Taxes, together with all penalties and interest which are or might become due thereon, the Borrower shall forthwith, within five (5) Business Days after written demand by Agent upon Borrower, either deposit with the Agent (or other depository reasonably designated by the Agent) a sum (or such other security as shall be reasonably satisfactory to the Agent) which when added to the funds then on deposit, shall (in the Agent's reasonable judgment) be sufficient to make such payment in full, or, if the Agent (or other depository) has applied funds so deposited on account of such Taxes, restore such deposit to an amount reasonably satisfactory to the Agent. After final disposition of such contest and upon the Borrower's written request and delivery to the Agent of an official bill for such Taxes if any of the Taxes in contest remain unpaid, the Agent (or other depository) shall (i) return such sum or securities as directed by Borrower, if so requested by Borrower, or (ii) liquidate any securities and apply the monies, if any, then on deposit under this Section 4 to the payment of such Taxes or that part thereof then unpaid and the balance, if any, in excess of the amount required to be on deposit with the Agent (or other depository) under Section 23 hereof shall be refunded to the Borrower after such final disposition, provided that no Event of Default shall then exist and be continuing.

## 5. Change in Tax Laws.

(a) If, by the laws of the United States of America, or of any state or municipality having jurisdiction over the Agent, the Borrower or the Mortgaged Property, any tax is imposed or becomes due in respect of the Notes or this Mortgage (excluding income, excise or franchise taxes imposed upon the Agent, except as provided in Section 5(c) below), or any liens on the Mortgaged Property created thereby, then the Borrower shall pay such tax in the manner required by such law.

(b) If any law, statute, rule, regulation, order or court decree effects a deduction from the value of the Mortgaged Property for the purpose of taxation by creating any lien thereon, or imposing upon the Agent any liability for the payment of all or any part of the Taxes required to be paid by the Borrower, or changing in any way the laws relating to the taxation of mortgages or deeds of trusts or debts secured by mortgages or deeds of trust or the interest of the Agent in the Mortgaged Property, or the manner of collection of Taxes so as to adversely affect this Mortgage, the Debt, or the Agent, then, and in any such event, the Borrower, within fifteen (15) Business Days after written demand by the Agent upon Borrower, shall pay such Taxes, or reimburse the Agent therefor on written demand, unless the Agent determines, in the Agent's reasonable judgment, that such payment or reimbursement by the Borrower is unlawful or that the payment might, in the Agent's reasonable judgment, constitute usury or render the Debt wholly or partially usurious; in which event the Agent may elect to declare the Debt to be due and payable within ninety (90) days after written notice.

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(c) Nothing contained herein shall require the Borrower to pay any income, franchise, excise or similar tax imposed upon the Agent, excepting only such income, franchise or excise tax which may be levied against the income of the Agent as a complete or partial substitute for Taxes required to be paid by the Borrower hereunder.

6. Insurance Coverage. For so long as this Mortgage is in effect, Borrower shall continuously maintain insurance in accordance with the provisions of the Loan Agreement.

7. The Agent's Performance of the Borrower's Obligations.

(a) Upon the occurrence and during the continuance of an Event of Default hereunder, the Agent may, but without any obligation to do so, upon simultaneous written notice to the Borrower, make any payment or perform any act which the Borrower is required to make or perform hereunder or under any other Loan Document (to the extent the Borrower is personally liable therefor) in any form and lawful manner deemed expedient to the Agent, including without limitation, the right to enter into possession of the Mortgaged Property, or any portion thereof, and to take any action (including without limitation the release of any non-confidential information regarding the Mortgaged Property, the Borrower and the obligations secured hereby) which the Agent reasonably deems necessary or desirable in connection therewith, all at the sole cost and expense of the Borrower. The Agent, in addition to any rights or powers granted or conferred hereunder but without any obligation to do so, may complete construction of, rent, operate, and manage the Mortgaged Property, or any part thereof, including payment of management fees and other operating costs and expenses, of every kind and nature in connection therewith, so that the Mortgaged Property shall be operational and usable for their intended purposes. All monies paid, and all reasonable expenses paid or incurred in connection therewith, including but not limited to reasonable costs of surveys, evidence of title, court costs and reasonable third party attorneys' fees and expenses and other monies advanced by the Agent to protect the Mortgaged Property and the lien hereof, to complete construction of, rent, operate and manage the Mortgaged Property or to pay any such operating costs and expenses thereof or to keep the Mortgaged Property operational and usable for their intended purposes shall be so much additional Debt, and shall become immediately due and payable on written demand, and with interest thereon at the Default Rate.

(b) The Agent, in making any payment, may do so according to any written bill, notice, statement or estimate, without inquiry into the amount, validity or enforceability thereof.

(c) Nothing contained herein shall be construed to require the Agent to advance or expend monies for any purpose mentioned herein, or for any other purposes.

8. Security Agreement.

(a) Grant of Security Interest. Borrower hereby grants to Agent, to the extent of Borrower's right, title and interest in same, a security interest in the Personal Property to secure the Debt. This Mortgage constitutes a security agreement with respect to all

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Personal Property in which Agent is granted a security interest hereunder, and Agent shall have all of the rights and remedies of a secured party under the Code, as well as all other rights and remedies available at law or in equity.

(b) Perfection. Borrower hereby consents to any instrument that may be requested in writing by Agent to publish notice or protect, perfect, preserve, continue, extend, or maintain the security interest and lien, and the priority thereof, of this Mortgage or the interest of Agent in the Mortgaged Property, including, without limitation, deeds of trust, security agreements, financing statements, continuation statements, and instruments of similar character, and Borrower shall pay or cause to be paid (i) all filing and recording taxes and fees incident to each such filing or recording, (ii) all reasonable expenses, including without limitation, reasonable and actual attorneys' fees and costs (of outside counsel), incurred by Agent in connection with the preparation and acknowledgement of all such instruments, and (iii) all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments, and charges arising out of or in connection with the delivery of such instruments. Borrower hereby consents to, and hereby ratifies, the filing of any financing statements relating to the Loan made prior to the date hereof. Borrower hereby irrevocably constitutes and appoints Agent as the attorney-in-fact of Borrower, for the sole purpose of filing with the appropriate filing office any such instruments. In addition, Borrower hereby authorizes Agent to cause any financing statement or fixture filing to be filed or recorded without the necessity of obtaining the consent of Borrower.

(c) Place of Business. Borrower maintains its chief executive office as set forth as the address of Borrower in Section 28 below, and Borrower will notify Agent in writing of any change in its place of business within ten (10) days of such change.

(d) Fixture Filing. This Mortgage is intended to be a financing statement within the purview of Section 9-502(b) of the Code and will be recorded as a "fixture filing" in accordance with the Code.

(e) Representations and Warranties. As of the date hereof, the Borrower represents and warrants that: (i) the Borrower is the record owner of the Mortgaged Property; (ii) the Borrower's chief executive office is located in the State of Illinois; (iii) the Borrower's state of organization is the State of Illinois; (iv) the Borrower's exact legal name is as set forth on Page 1 of this Mortgage; (v) the Borrower's organizational identification number is 04768256, (vi) Borrower is the owner of the Personal Property subject to no liens, charges or encumbrances other than the lien hereof, (vii) other than in the ordinary course of business, the Personal Property will not be removed from the Mortgaged Property without the consent of the Agent, not to be unreasonably withheld, delayed or conditioned, provided that no such consent shall be required with respect to Personal Property that has been damaged, destroyed, or become obsolete, and (viii) no financing statement covering any of the Personal Property or any proceeds thereof is on file in any public office except pursuant hereto.

9. Restrictions on Transfer. For the purpose of protecting the Agent's security, and keeping the Mortgaged Property free from subordinate financing liens, the Borrower agrees that

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it, the members of Borrower, and the members, partners or stockholders of any entity controlling, directly or indirectly, Borrower, will not:

- (a) sell, assign, transfer, hypothecate, grant a security interest in or convey title to (i) the Mortgaged Property or any part thereof, or (ii) any membership interest in Borrower, unless following such transaction, Scott D. Greenberg and/or Gerald M. Greenberg controls, directly or indirectly, the management and operation of the Borrower, any membership interest, partnership interest or stock in any entity controlling, directly or indirectly, Borrower;
- (b) obtain any financing, all or a part of which, will be secured by (i) except for Permitted Equipment Leases (as defined in the Loan Agreement), the Mortgaged Property, or (ii) any membership interest in Borrower, or (iii) any membership interest, partnership interest or stock in any entity controlling, directly or indirectly, Borrower; or
- (c) convert the Borrower from one type of legal entity into another type of legal entity,

without, in each instance, the Agent's prior written consent. Any violation of this Section 9 shall be deemed a "Prohibited Transfer."

10. Events of Default. Any one or more of the following events shall constitute an "Event of Default" under this Mortgage:

- (a) If the Borrower shall fail (i) to make any payment of principal or interest under the Notes within five (5) days of the date when due, or (ii) to make any other payment under the Loan Documents within ten (10) days of the date when due or, if no date is stated, ten (10) days after demand (or such shorter period as may be expressly provided for herein or therein); or
- (b) If a Prohibited Transfer shall occur; or
- (c) Borrower fails to perform or cause to be performed any other obligation or observe any other condition, covenant, term, agreement or provision required to be performed or observed by Borrower contained in this Mortgage and not specifically referred to elsewhere in this Section 10; provided, however, that if such failure by its nature can be cured, then so long as the continued operation and safety of the Mortgaged Property, and the priority, validity and enforceability of the liens created by this Mortgage or any of the other Loan Documents and the value of the Mortgaged Property are not impaired, threatened or jeopardized in any material respect, then Borrower shall have a period ("Cure Period") of thirty (30) days after Borrower obtains actual knowledge of such failure or receives from Agent written notice of such failure to cure the same and an Event of Default shall not be deemed to exist during the Cure Period (provided, however, such period shall be limited to ten (10) days if such failure can be cured by the payment of money), provided further that if Borrower commences to cure such failure during the Cure Period and is diligently and in good faith attempting to effect such cure, the Cure Period shall be extended for forty-five (45) additional days, but in no event shall the Cure Period be longer than seventy-five (75) days in the aggregate ; or

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(d) If any Event of Default occurs and is continuing under any other Loan Document.

11. Remedies. Upon the occurrence of an Event of Default (regardless of the pendency of any proceeding which has or might have the effect of preventing Borrower from complying with the terms of this instrument), and in addition to such other rights as may be available under any other Loan Document or under applicable law, but subject at all times to any mandatory legal requirements:

(a) Acceleration. Agent may declare the outstanding principal balance of the Notes and all unpaid indebtedness of Borrower hereby secured, including interest then accrued thereon, to be forthwith due and payable, whereupon the same shall become and be forthwith due and payable, without other notice or demand of any kind; provided, however, if the Event of Default is under Section 10(e) of the Loan Agreement, at Agent's option, all unpaid indebtedness of Borrower hereby secured shall be immediately due and payable without any action by Agent.

(b) Uniform Commercial Code. Agent shall, with respect to the Personal Property, have all the rights, options and remedies of a secured party under the Code, including without limitation, the right to the possession of any such property or any part thereof, and the right to enter with legal process any premises where any such property may be found. Any requirement of said Code for reasonable notification shall be met by mailing written notice to Borrower at its address set forth in Section 28 hereof at least ten (10) days prior to the sale or other event for which such notice is required. Any such sale may be held as part of and in conjunction with any foreclosure sale of the other properties and rights constituting the Mortgaged Property in order that the Mortgaged Property, including the Personal Property, may be sold as a single parcel if the Agent elects. The Borrower hereby agrees that if the Agent demands or attempts to take possession of the Personal Property or any portion thereof in exercise of its rights and remedies hereunder, the Borrower will promptly turn over and deliver possession thereof to the Agent, and the Borrower authorizes, to the extent the Borrower may now or hereafter lawfully grant such authority, the Agent, its employees and agents, and potential bidders or purchasers to enter upon the Mortgaged Property or any other office, building or property where the Personal Property or any portion thereof may at the time be located (or believed to be located) and the Agent may (i) remove the same therefrom or render the same inoperable (with or without removal from such location); (ii) repair, operate, use or manage the Personal Property or any portion thereof; (iii) maintain, repair or store the Personal Property or any portion thereof; (iv) view, inspect and prepare the Personal Property or any portion thereof for sale, lease or disposition; (v) sell, lease, dispose of or consume the same or bid thereon; or (vi) incorporate the Personal Property or any portion thereof into the Land or the Improvements or Fixtures and sell, convey or transfer the same. The expenses of retaking, selling and otherwise disposing of the Personal Property, including reasonable third party attorneys' fees and legal expenses incurred in connection therewith, shall constitute so much additional Debt and shall be payable upon demand with interest at the Default Rate.

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(c) Foreclosure. Agent may proceed to protect and enforce the rights of Agent hereunder (i) by any action at law, suit in equity or other appropriate proceedings, whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, or (ii) by the foreclosure of this Mortgage. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Debt in the decree of sale, all expenditures and expenses authorized by the Illinois Mortgage Foreclosure Law, 735 ILCS 5/15-1101 et. seq., as from time to time amended (the "Act") and all other expenditures and expenses which may be paid or incurred by or on behalf of Agent for reasonable third party attorney's fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs (which may be reasonably estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Agent may deem reasonably necessary either to prosecute such suit or to evidence to bidders at sales which may be had pursuant to such decree the true conditions of the title to or the value of the Mortgaged Property. All expenditures and expenses of the nature mentioned in this paragraph, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and Rents and income therefrom and the maintenance of the lien of this Mortgage, including the reasonable fees of any third party attorney employed by Agent in any litigation or proceedings affecting this Mortgage, the Notes or the Mortgaged Property, including bankruptcy proceedings, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

(d) Appointment of Receiver. To the extent permitted by applicable law, Agent shall, as a matter of right, without notice and without giving bond to Borrower or anyone claiming by, under or through it, and without regard to the solvency or insolvency of Borrower or the then value of the Mortgaged Property, be entitled to have a receiver appointed pursuant to the Act of all or any part of the Mortgaged Property and the Rents, issues and profits thereof, with such power as the court making such appointment shall confer, and Borrower hereby consents to the appointment of such receiver and shall not oppose any such appointment. Any such receiver may, to the extent permitted under applicable law, without notice, enter upon and take possession of the Mortgaged Property or any part thereof by summary proceedings, ejectment or otherwise, and may remove Borrower or other persons and any and all property therefrom, and may hold, operate and manage the same and receive all earnings, income, Rents, issues and proceeds accruing with respect thereto or any part thereof, whether during the pendency of any foreclosure or until any right of redemption shall expire or otherwise.

(e) Taking Possession, Collecting Rents, Etc. Upon written demand by Agent, Borrower shall surrender to Agent and Agent may enter and take possession of the Mortgaged Property or any part thereof personally, by its agent or attorneys or be placed in possession pursuant to court order as mortgagee in possession or receiver as provided in the Act, and Agent, in its discretion, personally, by its agents or attorneys or pursuant to court order as mortgagee in possession or receiver as provided in the Act may enter

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upon and take and maintain possession of all or any part of the Mortgaged Property, together with all documents, books, records, papers, and accounts of Borrower relating thereto, and may exclude Borrower and any agents and servants thereof wholly therefrom and may, on behalf of Borrower, or in its own name as Agent and under the powers herein granted:

(i) hold, operate, manage and control all or any part of the Mortgaged Property and conduct the business, if any, thereof, either personally or by its agents, with full power to use such measures, legal or equitable, as in its discretion may be deemed proper or necessary to enforce the payment or security of the Rents, issues, deposits, profits, and avails of the Mortgaged Property, including without limitation actions for recovery of rent, actions in forcible detainer, and actions in distress for rent, all without notice to Borrower;

(ii) extend or modify any then existing Leases and make new Leases of all or any part of the Mortgaged Property, which extensions, modifications, and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the Maturity Date of the Loan and the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Borrower, all persons whose interests in the Mortgaged Property are subject to the lien hereof, and the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the Debt, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any such purchaser;

(iii) make all necessary or proper repairs, renewals, replacements, alterations, additions, betterments, and improvements in connection with the Mortgaged Property as may seem judicious to Agent, to insure and reinsure the Mortgaged Property and all risks incidental to Agent's possession, operation and management thereof, and to receive all Rents, issues, deposits, profits, and avails therefrom;

(iv) apply the net income, after allowing a reasonable fee for the collection thereof and for the management of the Mortgaged Property, to the payment of Taxes, Premiums and other charges applicable to the Mortgaged Property, or in reduction of the Debt in such order and manner as Agent shall select, in its sole discretion; and

(v) receive and collect the Rents, issues, profits and revenues of the Mortgaged Property personally or through a receiver so long as an Event of Default shall exist and be continuing and during the pendency of any foreclosure proceedings and during any redemption period, and the Borrower agrees to consent to a receiver if it is believed necessary or desirable by the Agent to enforce its rights under this subsection. The collection of Rents, issues, profits or revenues of the Mortgaged Property by the Agent shall in no way waive the right



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of the Agent to foreclose this Mortgage in the event of any continuance of said Event of Default.

Nothing herein contained shall be construed as constituting Agent a mortgagee in possession in the absence of the actual taking of possession of the Mortgaged Property. The right to enter and take possession of the Mortgaged Property and use any Personal Property therein, to manage, operate, conserve and improve the same, and to collect the Rents, issues and profits thereof, shall be in addition to all other rights or remedies of Agent hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof or under the other Loan Documents. The expenses (including any receiver's fees, reasonable counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby which expenses Borrower promises to pay upon written demand together with interest thereon at the Default Rate. Agent shall not be liable to account to Borrower for any action taken pursuant hereto other than to account for any Rents actually received by Agent. Without taking possession of the Mortgaged Property, Agent may, in the event the Mortgaged Property become vacant or are abandoned, take such steps as it deems appropriate to protect and secure the Mortgaged Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute so much additional Debt payable upon written demand with interest thereon at the Default Rate.

(f) Indemnity. The Borrower hereby agrees to indemnify, defend, protect and hold harmless the Agent and its employees, officers and agents from and against any and all liabilities, claims and obligations which may actually be incurred, asserted or imposed upon them or any of them as a result of or in connection with any use, operation, or lease of any of the Mortgaged Property, or any part thereof, or as a result of the Agent seeking to obtain performance of any of the obligations due from Borrower to Agent with respect to the Mortgaged Property; provided, however, that the foregoing indemnity shall not extend to such liabilities, claims or obligations as result from the gross negligence or intentional misconduct of the Agent, its employees, officers or agents.

## 12. Compliance with Illinois Mortgage Foreclosure Law.

(a) In the event that any provision in this Mortgage shall be inconsistent with any provision of the Act, the provisions of the Act shall take precedence over the inconsistent provisions of this Mortgage, but shall not invalidate or render unenforceable any other provision of this Mortgage that can be construed in a manner consistent with the Act.

(b) If any provision of this Mortgage shall grant to Agent any rights or remedies upon the occurrence of an Event of Default which are more limited than the rights that would otherwise be vested in Agent under the Act in the absence of said provision, Agent shall be vested with the rights granted in the Act to the full extent permitted by law.

(c) Without limiting the generality of the foregoing, all expenses incurred by Agent to the extent reimbursable under Sections 5/15-1510 and 5/15-1512 of the Act, whether incurred before or after any decree or judgment of foreclosure, and whether

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enumerated in Sections 11(c) or 14 of this Mortgage, shall be added to the Debt and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid or shall be included in the judgment of foreclosure.

13. Waiver of Right to Redeem - Waiver of Appraisalment, Valuation, Etc. Borrower shall not and will not apply for or avail itself of any appraisalment, valuation, stay, extension or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted in order to prevent or hinder the enforcement or foreclosure of this Mortgage, but hereby waives the benefit of such Moratorium Laws. Borrower for itself and all who may claim through or under it waives any and all right to have the property and estates comprising the Mortgaged Property marshalled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Mortgaged Property sold as an entirety. In the event of any sale made under or by virtue of this instrument, the whole of the Mortgaged Property may be sold in one parcel as an entirety or in separate lots or parcels at the same or different times, all as the Agent may determine in its sole discretion. Agent shall have the right to become the purchaser at any sale made under or by virtue of this instrument and Agent so purchasing at any such sale shall have the right to be credited upon the amount of the bid made therefor by Agent with the amount payable to Agent out of the net proceeds of such sale. In the event of any such sale, the outstanding principal amount of the Loan and the other Debt, if not previously due, shall be and become immediately due and payable without demand or notice of any kind. Borrower acknowledges that the Mortgaged Property does not constitute agricultural real estate, as defined in Section 5/15-1201 of the Act, or residential real estate, as defined in Section 5/15-1219 of the Act. To the fullest extent permitted by law, Borrower, on behalf of Borrower, and each and every person acquiring any interest in, or title to the Mortgaged Property described herein subsequent to the date of this Mortgage, and on behalf of all other persons to the extent permitted by applicable law, hereby voluntarily and knowingly waives (i) any and all rights of redemption pursuant to Section 5/15-1601(b) of the Act, and (ii) any and all rights of reinstatement.

14. Costs and Expenses of Foreclosure. In any suit to foreclose the lien hereof there shall be allowed and included as additional indebtedness in the decree for sale all expenditures and expenses which may be paid or incurred by or on behalf of Agent for appraiser's fees, outlays for documentary and expert evidence, stenographic charges, publication costs and costs (which may be estimated as to items to be expended after the entry of the decree) of procuring all such abstracts of title, title searches and examination, guarantee policies, and similar data and assurances with respect to title as Agent may deem to be reasonably necessary either to prosecute any foreclosure action or to evidence to the bidder at any sale pursuant thereto the true condition of the title to or the value of the Mortgaged Property, and reasonable third party attorneys' fees, all of which expenditures shall become so much additional Debt which Borrower agrees to pay and all of such expenditures shall be immediately due and payable with interest thereon from the date of expenditure until paid at the Default Rate.

15. Protective Advances.

(a) Advances, disbursements and expenditures made by Agent for the following purposes, after the occurrence of an Event of Default, whether before and during a foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, for the following purposes, shall, in

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addition to those otherwise authorized by this Mortgage, constitute "Protective Advances":

(i) all advances by Agent in accordance with the terms of this Mortgage to: (A) preserve or maintain, repair, restore or rebuild the improvements upon the Mortgaged Property; (B) preserve the lien of this Mortgage or the priority thereof; or (C) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 5/15-1302 of the Act;

(ii) payments by Agent of: (A) when due, installments of principal, interest or other obligations in accordance with the terms of any prior lien or encumbrance; (B) when due, installments of Taxes and assessments, general and special and all other Taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the mortgaged real estate or any part thereof; (C) other obligations authorized by this Mortgage; or (D) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title to the Mortgaged Property, as referred to in Section 5/15-1505 of the Act;

(iii) advances by Agent in settlement or compromise of any claims asserted by claimants under any prior liens;

(iv) reasonable third party attorneys' fees and other costs incurred: (A) in connection with the foreclosure of this Mortgage as referred to in Section 5/15-1504(d)(2) and 5/15-1510 of the Act; (B) in connection with any action, suit or proceeding brought by or against the Agent for the enforcement of this Mortgage or arising from the interest of the Agent hereunder or under any of the other Loan Documents; or (C) in the preparation for the commencement or defense of any such foreclosure or other action;

(v) Agent's fees and costs, including reasonable third party attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection (b)(1) of Section 5/15-1508 of the Act;

(vi) advances of any amount required to make up a deficiency in deposits for installments of Taxes and assessments and insurance Premiums as may be authorized by this Mortgage;

(vii) expenses deductible from proceeds of sale as referred to in Subsections (a) and (b) of Section 5/15-1512 of the Act; and

(viii) expenses incurred and expenditures made by Agent for any one or more of the following: (A) Premiums for casualty and liability insurance paid by Agent whether or not Agent or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the mortgaged real estate imposed by Subsection (c)(1) of Section 5/15-1704 of the Act; (B) repair or Restoration of damage or

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destruction to the Mortgaged Property in excess of available Insurance Proceeds or condemnation awards; (C) payments required or deemed by Agent to be for the benefit of the Mortgaged Property under any grant or declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Mortgaged Property; (D) shared or common expense assessments payable to any association or corporation in which the owner of the mortgaged real estate is a member in any way affecting the Mortgaged Property; or (E) pursuant to any lease or other agreement for occupancy of the mortgaged real estate.

(b) All Protective Advances shall be so much additional Debt, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the Default Rate.

(c) This Mortgage shall be a lien for all Protective Advances as to subsequent purchasers and judgment creditors from the time this Mortgage is recorded pursuant to Subsection (b)(5) of Section 5/15-1302 of the Act.

(d) All Protective Advances shall, except to the extent, if any, that any of the same is clearly contrary to or inconsistent with the provisions of the Act, apply to and be included in the:

(i) determination of the amount of Debt at any time;

(ii) indebtedness found due and owing to the Agent in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;

(iii) determination of amounts deductible from sale proceeds pursuant to Section 5/15-1512 of the Act;

(iv) application of income in the hands of any receiver or mortgagee in possession; and

(v) computation of any deficiency judgment pursuant to Subsections (b)(2) and (e) of Section 5/15-1508 and Section 5/15-1511 of the Act.

16. Application of Proceeds. The proceeds of any foreclosure sale of the Mortgaged Property or of any sale of property pursuant to Section 11(c) hereof shall be distributed in the following order of priority: First, on account of all costs and expenses incident to the foreclosure or other proceedings including all such items as are mentioned in Sections 11(c) and Section 14 hereof; second, to all items, other than principal and interest evidenced by the Notes, which under the terms hereof constitute Debt with interest thereon as herein provided; third, to all unpaid interest on the Notes; fourth, to all unpaid principal on the Notes; and fifth, to whomsoever shall be lawfully entitled to the same.

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## 17. Rights Cumulative.

(a) Each right, power and remedy herein conferred upon the Agent is cumulative, except as otherwise required by applicable law, and in addition to every other right, power or remedy, express or implied, now or hereafter provided by law or in equity, and each and every right, power, and remedy herein set forth or otherwise so existing may be exercised from time to time concurrently or independently and as often and in such order as may be deemed expedient by the Agent.

(b) By accepting payment of any sums secured by this Mortgage after the due date thereof, by accepting performance of any of the Borrower's obligations hereunder after such performance is due, or by making any payment or performing any act on behalf of the Borrower which the Borrower was obligated but failed to perform or pay, the Agent shall not waive, nor be deemed to have waived, its rights to require payment when due of all sums secured hereby and the due, punctual and complete performance of the Borrower's obligations under this Mortgage, the Notes, and all other Loan Documents. No waiver or modification of any of the terms of this Mortgage shall be binding on the Agent unless set forth in writing signed by the Agent and any waiver by the Agent of any Event of Default by the Borrower under this Mortgage shall not constitute a waiver of any other Event of Default under the same or any other provision hereof. If the Agent holds any additional security for any of the obligations secured hereby, it may pursue its rights or remedies with respect to such security at its option either before, contemporaneously with, or after a sale of the Mortgaged Property or any portion thereof.

(c) No act or omission by the Agent shall release, discharge, modify, change or otherwise affect the liability of Borrower under the Notes, this Mortgage, or any of the other Loan Documents, or any other obligation of the Borrower, or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor, or preclude the Agent from exercising any right, power or privilege herein granted or intended to be granted in the event of any Event of Default then made or of any subsequent Event of Default, or alter the security interest or lien of this Mortgage or any of the other Loan Documents except as expressly provided in an instrument or instruments executed by the Agent. The exercise of one right, power or remedy shall not be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy; and no delay or omission of the Agent in the exercise of any right, power or remedy accruing hereunder or under any of the other Loan Documents or arising otherwise shall impair any such right, power or remedy, or be construed to be a waiver of any Event of Default or acquiescence therein. Except as otherwise specifically required herein, notice of the exercise of any right, remedy or power granted to the Agent by this Mortgage is not required to be given.

## 18. Successors and Assigns; Assignment.

(a) This Mortgage and each and every provision hereof shall be binding upon the Borrower and its successors and assigns (including, without limitation, each and every record owner from time to time of the Mortgaged Property or any other person

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having an interest therein), and shall inure to the benefit of the Agent and its successors and assigns.

(b) All of the covenants of this Mortgage shall run with the Land and be binding on any successor owners of the Land. In the event that the ownership of the Mortgaged Property or any portion thereof becomes vested in a person or persons other than the Borrower, the Agent may, without notice to the Borrower, deal with such successor or successors in interest of the Borrower with reference to this Mortgage and the Debt in the same manner as with the Borrower without in any way releasing or discharging the Borrower from its obligations hereunder. The Borrower will give immediate written notice to the Agent of any conveyance, transfer or change of ownership of the Mortgaged Property, but nothing in this Section shall vary or negate the provisions of Section 9 hereof.

(c) The rights and obligations of Borrower under this Mortgage may not be assigned and any purported assignment by Borrower shall be null and void. Agent shall have the right to sell, assign or transfer portions of its right, title and/or interest in and to this Mortgage and the other Loan Documents (including the sale of participation interests therein), without the consent or approval of Borrower, and Borrower agrees to cooperate, at no expense to Borrower, in all respects with Agent in connection therewith, including, without limitation, the execution of all documents and instruments reasonably requested in writing by Agent or such transferee provided that such documents and instruments do not materially adversely affect any of Borrower's duties or obligations or reduce any of Borrower's rights under this Mortgage and the other Loan Documents.

## 19. Execution of Separate Security Agreements, Financing Statements, Etc.; Estoppel Letter; Corrective Documents.

(a) Promptly after Borrower's receipt of Agent's written request therefor, the Borrower will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, conveyances, notes, mortgages, security agreements, financing statements and assurances as the Agent shall reasonably require for the better assuring, conveying, mortgaging, assigning and confirming unto the Agent all property mortgaged hereby or property intended so to be, whether now owned by the Borrower or hereafter acquired. Without limitation of the foregoing, the Borrower will assign to the Agent, upon written request, as further security for the Debt, its interest in all agreements, contracts, licenses and permits affecting the Mortgaged Property, such assignments to be made by instruments reasonably satisfactory to the Agent and the Borrower, but no such assignment shall be construed as a consent by the Agent to any agreement, contract, license or permit or to impose upon the Agent any obligations with respect thereto.

(b) From time to time, the Borrower will furnish, within ten (10) days after written request from the Agent, a written and duly acknowledged statement of the amount due under the Notes and this Mortgage and whether Borrower has actual knowledge of any alleged offsets or defenses then existing against the Debt.

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(c) The Borrower and the Agent shall, at the written request of the other, promptly correct any defect, error or omission which may be discovered in the contents of this Mortgage or any of the other Loan Documents in the execution or acknowledgment hereof or thereof or in any other instrument executed in connection herewith or therewith or in the execution or acknowledgment of such instrument and will execute and deliver any and all additional instruments as may be requested in writing by the Agent or the Borrower, as the case may be, to correct such defect, error or omission.

20. Subrogation. If any part of the Debt is used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then by advancing the monies to make such payment, the Agent shall be subrogated to the rights of the holder thereof in and to such other lien or encumbrance and any additional security held by such holder, and shall have the benefit of the priority of the same.

21. Governing Law. The validity, enforcement and interpretation of this Mortgage shall for all purposes be governed by and construed in accordance with the laws of the State of Illinois, without reference to the conflicts of law principles of that State, and applicable United States federal law, and is intended to be performed in accordance with, and only to the extent permitted by, such laws.

22. Business Loan.

(a) The Borrower declares, represents, certifies and agrees that the proceeds of the Notes will be used solely for business purposes and that the loan is exempt from interest limitations pursuant to the provisions of 815 ILCS 205/4 and is an exempted transaction under the Truth in Lending Act, 15 U.S.C. Section 1601 et seq.

(b) All rights, remedies and powers provided by this Mortgage may be exercised only to the extent that the exercise thereof does not violate any applicable provisions of law, and all the provisions of this Mortgage are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Mortgage invalid or unenforceable under the provisions of any applicable law.

23. Escrow Deposits. Upon Agent's written request, and without limiting the effect of Sections 4 and 5 hereof, upon the occurrence and during the continuance of an Event of Default, the Agent may require that the Borrower pay to the Agent on the first business day of each calendar month an amount equal to one-twelfth (1/12th) of what the Agent reasonably estimates is necessary to pay, on an annualized basis, (1) all Taxes, and (2) all premiums for the insurance policies required pursuant to the Loan Agreement ("Premiums") and to enable the Agent to pay same at least thirty (30) days before the Taxes would become delinquent and the Premiums are due, and, within five (5) Business Days after written demand by Agent upon Borrower, from time to time shall pay to the Agent additional sums necessary to pay the Premiums and Taxes if there is an insufficiency in the deposits held by the Agent. No amounts so paid shall be deemed to be trust funds, but may be commingled with the general funds of the Agent, and no interest shall be payable thereon. In the event that the Borrower does not make

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any such escrow deposit for Premiums and Taxes, then the Agent may, but shall not be obligated to, pay such Premiums and Taxes and any money so paid by the Agent shall constitute additional Debt hereunder and shall be payable by Borrower to Agent on written demand with interest thereon from the date of disbursement by Agent at the Default Rate until repaid to Agent. If an Event of Default occurs and is continuing, the Agent shall have the right, at its election, to apply any amounts so held under this Section 23 against all or any part of the Debt, or in payment of the Premiums or Taxes for which the amounts were deposited. The Borrower will furnish to the Agent bills for Taxes and Premiums not less than thirty (30) days before Taxes become delinquent and such Premiums become due.

24. Assignment of Leases and Other Agreements Affecting the Mortgaged Property. In order to further secure payment of the Debt and the observance, performance and discharge in all material respects of the Borrower's obligations under the Loan Documents, the Borrower hereby assigns to the Agent all of the Borrower's right, title, interest and estate in, to and under all of the Leases and in and to all of the Rents and Profits (defined as all rents, income, issues and profits arising from any Leases or other agreements affecting the use, enjoyment or occupancy of the Mortgaged Property now or hereafter made affecting the Mortgaged Property or any portion thereof), as more particularly described in that certain Assignment of Leases and Rents dated as of even herewith from Borrower to and for the benefit of Agent. Unless and until an Event of Default occurs and is continuing, the Borrower shall be entitled to collect the Rents and Profits (except as otherwise provided in this Mortgage) as and when they become due and payable. Neither these assignments nor Agent's enforcement of the provisions of these assignments (including the receipt of the Rents) will operate to subordinate the lien of this Mortgage to any of the rights of any tenant of all or any part of the Mortgaged Property, or to subject Agent to any liability to any such tenant for the performance of any obligations of Borrower under any such Lease unless and until Agent agrees to such subordination or assumes such liability by an appropriate written instrument.

25. Inspection of Mortgaged Property and Records. The Agent and its representatives and agents shall have the right to inspect the Mortgaged Property and all books, records and documents relating thereto at all reasonable times during normal business hours, after giving reasonable written notice to the Borrower, and access thereto, subject to the rights of tenants pursuant to Leases. The Agent shall use reasonable efforts to avoid disturbing business operations on the Mortgaged Property during such inspections. The Borrower or the Agent thereof shall keep and maintain full and correct books and records showing in detail the income and expenses of the Mortgaged Property and permit the Agent or its agents to examine such books and records and all supporting vouchers and data at any time and from time to time after giving reasonable written notice to Borrower at its offices at the address hereinafter identified or at such other location as may be mutually agreed upon. Agent shall use reasonable efforts to keep confidential all information and documentation obtained by Agent pursuant to this Section 25.

26. Financial Statements. The Borrower represents and warrants that the financial statements for the Borrower and the Mortgaged Property previously submitted to the Agent are true, complete and correct in all material respects, disclose all actual and contingent liabilities of the Borrower or relating to the Mortgaged Property and do not contain any untrue statement of a material fact or omit to state a fact material to such financial statements. To Borrower's Best



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Knowledge, no material adverse change has occurred in the financial condition of the Borrower or the Mortgaged Property from the dates of said financial statements until the date hereof. The Borrower shall furnish to the Agent such financial information regarding the Borrower, the Member or the Manager, as the case may be, the Mortgaged Property and any guarantor of the Loan as the Agent may from time to time reasonably request in writing, which shall include, without any further request therefor the financial statements required to be delivered to Agent pursuant to the Loan Agreement.

27. Environmental Matters. Concurrently herewith, Borrower, Scott D. Greenberg, Gerald M. Greenberg and The Scott David Greenberg Trust dated October 3, 2001, shall execute and deliver an Environmental Indemnity Agreement in form satisfactory to Agent and such signatories (the "Environmental Indemnity Agreement"). The performance of the covenants, undertakings and obligations of the indemnitors under the Environmental Indemnity Agreement shall be secured by this Mortgage.

28. Notices. All notices or other written communications hereunder shall be deemed to have been properly given if (i) delivered in person, (ii) deposited for overnight delivery with any reputable overnight courier service, or (iii) deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth below in this Section or as such party may from time to time designate by written notice to the other parties. Notices shall be deemed given upon receipt or the refusal to accept receipt. Any party by notice to the other in the manner provided herein may designate additional or different addresses for subsequent notices or communications:

|               |  |
|---------------|--|
| To Agent:     | Associated Bank, National Association<br>525 West Monroe Street<br>24 <sup>th</sup> Floor<br>Chicago, Illinois 60661<br>Attn: Krista Casper, Senior Vice President |
| With copy to: | Dykema Gossett PLLC<br>10 South Wacker Drive<br>Suite 2300<br>Chicago, Illinois 60606<br>Attn: Michael S. Kurtzon, Esq.  |
| To Borrower:  | SMASHotels Chicago, LLC<br>250 Parkway Drive<br>Suite 120<br>Lincolnshire, Illinois 60069<br>Attn: Renee Solomon   |

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With additional copy to: SMASHotels Chicago, LLC  
 30 South Havana Street  
 Suite 307  
 Aurora, Colorado 80012  
 Attn: David Lilierose

With copy to: DLA Piper LLP (US)  
 203 North LaSalle Street  
 Suite 1900  
 Chicago, Illinois 60601  
 Attn: David Glickstein, Esq.

29. Releases.

(a) Upon payment in full of all sums then due under the Notes and this Mortgage and the other Loan Documents, the Agent shall, upon the request of, and at the cost of, the Borrower, execute a proper release of this Mortgage and the other security interests under the Loan Documents.

(b) The Agent may, regardless of consideration, cause the release of any part of the Mortgaged Property from the lien of this Mortgage without in any manner affecting or impairing the lien or priority of this Mortgage as to the remainder of the Mortgaged Property not so released.

30. Single Asset Borrower. Borrower was organized solely for the purpose of acquiring, developing, constructing, improving, furnishing, owning, holding, selling, assigning, transferring, operating, mortgaging, pledging, managing and otherwise dealing with the Mortgaged Property and does not own any real property other than the Mortgaged Property and does not operate any business other than the development, construction, ownership, management and operation of the Mortgaged Property. Borrower shall not during the term of the Loan, including any extensions, modifications, renewals or refinancings thereof, acquire any real property or assets other than the Mortgaged Property, operate any business other than the acquisition, development, construction, improvement, furnishing, ownership, management and disposition of the Mortgaged Property, or incur any liability or obligation other than those incurred in the ownership, development, construction, management and operation of the Mortgaged Property. Borrower will not commingle any of its funds or assets with those of any other entity and has held, and will hold, all of its assets and conduct all of its business in its own name (provided, however, that Borrower may operate the Mortgaged Property under any name approved by Hotel Licensor or Manager). Borrower has paid and will pay all of its liabilities out of its own funds and assets. Borrower will use separate stationery, invoices and checks in connection with the conduct of its business. Borrower has not entered into and will not enter into, or be a party to, any transaction with any of its equity interest holders or its affiliates except for the Hotel Management Agreement, except in the ordinary course of its business and on terms which are no less favorable in any material respect to it than would be obtained in an arm's-length transaction with an unaffiliated third party. Borrower will not engage in, seek, or consent to any dissolution, winding up or liquidation, without the express consent of Agent. Borrower's

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operating agreement limits its purpose to the acquisition, development, construction, improvement, furnishing, ownership, holding, sale, assignment, transfer, operation, lease, mortgage, pledge, management and other dealing of the Mortgaged Property, and such purposes shall not be amended without the prior written consent of Agent, which consent may be withheld by Agent in its sole and absolute discretion.

31. Indemnification by the Borrower. The Borrower shall protect and indemnify the Agent from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable third party attorneys' fees and disbursements), actually imposed upon or incurred by or asserted against the Agent or the members, partners, stockholders, directors, officers, agents or employees of the Agent by reason of (a) ownership of the Mortgaged Property or any interest therein, or receipt of any Rents or other sum therefrom, (b) any accident to, injury to or death of persons or loss of or damage to Mortgaged Property occurring on or about the Mortgaged Property or the adjoining sidewalks, curbs, vaults or vault space, if any, streets or ways, (c) any failure on the part of the Borrower or any Guarantor of the Notes to perform or comply with any of the terms, covenants, conditions and agreements set forth in this Mortgage, the Notes, any of the other Loan Documents, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Borrower, or any Guarantor of the Notes, (d) any failure on the part of the Borrower to perform or comply with (i) any other agreement executed by the Borrower or any Guarantor of the Notes, or (ii) any requirement of law, (e) payment of sums for the protection of the lien and security interest of the Agent in and to the Mortgaged Property, (f) performance of any labor or services or the furnishing of any materials or other Mortgaged Property in respect of the Mortgaged Property or any part thereof for construction or maintenance or otherwise, or (g) any action brought against the Agent attacking the validity, priority or enforceability of this Mortgage, the Notes, any other Loan Document, or any agreement, reimbursement agreement, guaranty, or any other agreements executed by the Borrower. Any amounts payable to the Agent under this paragraph if not paid to Agent within five (5) Business Days after written demand by Agent upon Borrower shall bear interest at the Default Rate until paid and shall be secured by this Mortgage. In the event any action, suit or proceeding is brought against the Agent or the members, partners, stockholders, directors, officers, agents or employees of the Agent by reason of any such occurrence, the Borrower, upon the written request of the Agent and at Borrower's sole expense, shall resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Borrower and reasonably approved by the Agent. Such obligations under this paragraph shall survive the termination, satisfaction or release of this Mortgage but will not cover any liabilities, obligations, claims, damages, penalties causes of action, costs and expenses (i) arising after Agent or its designee take possession or control of the Mortgaged Property (except to the extent due to Borrower's gross negligence or willful misconduct), or (ii) that result from the gross negligence or willful misconduct of Agent, its officers, employees, contractors or agents.

32. OFAC Covenant. Borrower shall ensure, and cause each of its subsidiaries to ensure, that (i) no person who owns twenty percent (20.00%) or more of the equity interests in the Borrower, or otherwise controls the Borrower or any of its subsidiaries is or shall be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the OFAC, the Department of the Treasury or included in any Executive Orders, (ii) the proceeds of the Loan do not violate any of the foreign asset control regulations of OFAC or any enabling

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statute or Executive Order relating thereto, and (iii) it shall comply, and cause each of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

33. Miscellaneous.

(a) Time is of the Essence. Time is of the essence of this Mortgage.

(b) Captions and Pronouns. The captions and headings of the various Sections of this Mortgage are for convenience only, and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular, and the masculine, feminine and neuter shall be freely interchangeable.

(c) Maximum Indebtedness. Notwithstanding anything contained herein to the contrary, in no event shall the Debt exceed an amount equal to \$72,000,000.00; provided, however, in no event shall the Agent be obligated to advance funds in excess of the face amount of the Notes.

(d) The Borrower Not a Joint Venturer or Partner. The Borrower and the Agent acknowledge and agree that in no event shall the Agent be deemed to be a partner or joint venturer with the Borrower. Without limitation of the foregoing, the Agent shall not be deemed to be such a partner or joint venturer on account of its becoming a mortgagee in possession or exercising any rights pursuant to this Mortgage or pursuant to any other instrument or document evidencing or securing any of the Debt, or otherwise.

(e) Replacement of the Notes. Upon notice to the Borrower of the loss, theft, destruction or mutilation of the Notes, the Borrower will, at no cost to Borrower, execute and deliver, in lieu thereof, a replacement note, identical in form and substance to the Notes and dated as of the date of the Notes and upon such execution and delivery all references in any of the Loan Documents to the Notes shall be deemed to refer to such replacement note, provided that Agent executes and delivers to Borrower in form and substance reasonably satisfactory to Borrower (i) an affidavit that the Agent has lost the Note and that the Agent does not know the location of the Note and has not transferred, pledged, or negotiated the Note; and (ii) an indemnification in favor of Borrower and any guarantor, from any liabilities, losses, costs and expenses (including reasonable third party attorney's fees and costs) arising from any attempts by any person to enforce such lost note.

(f) Waiver of Consequential Damages. Agent by its acceptance of this Mortgage and Borrower each covenants and agrees that in no event shall either party be liable for consequential damages, whatever the nature of a failure by either party to perform its obligation(s), if any, under the Loan Documents, and each of Borrower, Lenders and Agent hereby expressly waives all claims that it now or may hereafter have against the other party for such consequential damages.

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(g) After Acquired Mortgaged Property. The lien hereof will automatically attach, without further act, to all after-acquired Mortgaged Property attached to and/or used in connection with or in the operation of the Mortgaged Property or any part thereof.

(h) Severability. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Mortgage except that if such provision relates to the payment of any monetary sum, then the Agent may, at its option, exercisable by written notice of not less than ninety (90) days upon Borrower, declare the Debt due and payable on the date specified in such notice.

(i) Interpretation of Agreement. Should any provision of this Mortgage require interpretation or construction in any judicial, administrative, or other proceeding or circumstance, it is agreed that the parties hereto intend that the court, administrative body, or other entity interpreting or construing the same shall not apply a presumption that the provisions hereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that the agents of both parties hereto have fully participated in the preparation of all provisions of this Mortgage, including, without limitation, all Exhibits attached to this Mortgage.

(j) Joint and Several Obligations; Counterparts. If this Mortgage is executed by more than one Borrower, (i) the obligations and liabilities of Borrower under this Mortgage shall be joint and several and shall be binding upon and enforceable against each Borrower and their respective successors and assigns, and (ii) this Mortgage may be executed in counterparts, and all said counterparts when taken together shall constitute one and the same Mortgage.

(k) Effect of Extensions and Amendments. If the payment of the Debt, or any part thereof, be extended or varied, or if any part of the security or guaranties therefor be released, all persons now or at any time hereafter liable therefor, or who holds a fee interest in the Mortgaged Property shall be held to assent to such extension, variation or release, and their liability, and the lien, and all provisions hereof, shall continue in full force and effect; the right of recourse against all such persons being expressly reserved by the Agent, notwithstanding any such extension, variation or release.

(l) Mortgagee-in-Possession. Nothing herein contained shall be construed as constituting the Agent a mortgagee-in-possession in the absence of the actual taking of possession of the Mortgaged Property by the Agent pursuant to this Mortgage.

(m) No Merger. The parties hereto intend that the Mortgage and the lien hereof shall not merge in fee simple title to the Mortgaged Property, and if the Agent acquires any additional or other interest in or to the Mortgaged Property or the ownership thereof, then, unless a contrary intent is manifested by the Agent as evidenced by an express statement to that effect in an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title and this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

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(n) Complete Agreement. This Mortgage, the Notes and the other Loan Documents constitute the complete agreement between the parties with respect to the subject matter hereof and the Loan Documents may not be modified, altered or amended except by an agreement in writing signed by both the Borrower and the Agent.

34. JURISDICTION AND VENUE. AGENT, BY ITS ACCEPTANCE OF THIS MORTGAGE AND BORROWER EACH HEREBY AGREES THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY EITHER PARTY AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS MORTGAGE SHALL BE LITIGATED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS, OR THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS. AGENT, BY ITS ACCEPTANCE OF THIS MORTGAGE AND BORROWER EACH HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY EITHER PARTY IN ANY OF SUCH COURTS, AND HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS AND COMPLAINT, OR OTHER PROCESS OR PAPERS ISSUED THEREIN, AND AGREES THAT SERVICE OF SUCH SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH PARTY AT THE ADDRESS TO WHICH NOTICES ARE TO BE SENT PURSUANT TO THIS MORTGAGE. EACH PARTY WAIVES ANY CLAIM THAT COOK COUNTY, ILLINOIS OR THE NORTHERN DISTRICT OF ILLINOIS IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE. SHOULD SUCH PARTY, AFTER BEING SO SERVED, FAIL TO APPEAR OR ANSWER TO ANY SUMMONS, COMPLAINT, PROCESS OR PAPERS SO SERVED WITHIN THE NUMBER OF DAYS PRESCRIBED BY LAW AFTER THE MAILING THEREOF, SUCH PARTY SHALL BE DEEMED IN DEFAULT AND AN ORDER AND/OR JUDGMENT MAY BE ENTERED AGAINST SUCH PARTY AS DEMANDED OR PRAYED FOR IN SUCH SUMMONS, COMPLAINT, PROCESS OR PAPERS.

35. Waiver of Jury Trial. AGENT, BY ITS ACCEPTANCE OF THIS MORTGAGE AND BORROWER EACH HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN BORROWER AND AGENT ARISING OUT OF OR IN ANY WAY RELATED TO THIS MORTGAGE, ANY OTHER LOAN DOCUMENT, OR ANY RELATIONSHIP BETWEEN BORROWER AND AGENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDERS TO PROVIDE THE LOAN DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

36. Additional Waivers. AGENT, BY ITS ACCEPTANCE OF THIS MORTGAGE AND BORROWER EACH TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION OR PROCEEDING BROUGHT BY EITHER PARTY ON THIS MORTGAGE, ANY AND EVERY RIGHT IT MAY HAVE TO (A) INTERPOSE ANY COUNTERCLAIM THEREIN UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH COUNTERCLAIM MUST BE ASSERTED IN SUCH PROCEEDING, OR (B) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION OR

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PROCEEDING UNLESS UNDER THE APPLICABLE RULES OF COURT SUCH SUIT, ACTION OR PROCEEDING MUST BE CONSOLIDATED WITH THE PROCEEDING BROUGHT BY SUCH PARTY.

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Property of Cook County Clerk's Office

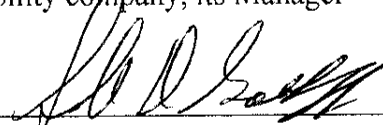
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**IN WITNESS WHEREOF**, the Borrower has caused this Mortgage to be duly executed and delivered as of the day and year first above written.

**BORROWER:**

**SMASHOTELS CHICAGO, LLC**, an Illinois limited liability company

By: SMASHotels Chicago Manager, LLC, an Illinois limited liability company, its Manager

By:   
Name: Scott D. Greenberg  
Title: Manager

By: \_\_\_\_\_  
Name: Gerald M. Greenberg  
Title: Manager

Property of Cook County Clerk's Office



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IN WITNESS WHEREOF, the Borrower has caused this Mortgage to be duly executed and delivered as of the day and year first above written.

**BORROWER:**

**SMASHOTELS CHICAGO, LLC**, an Illinois limited liability company

By: SMASHotels Chicago Manager, LLC, an Illinois limited liability company, its Manager

By: \_\_\_\_\_

Name: Scott D. Greenberg

Title: Manager

By:  \_\_\_\_\_

Name: Gerald M. Greenberg

Title: Manager

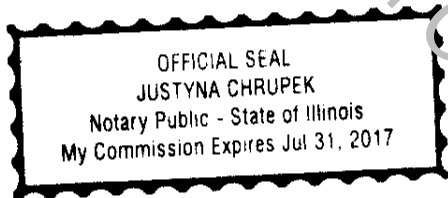
Property of Cook County Clerk's Office

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STATE OF Illinois )  
 ) SS.  
COUNTY OF Lake )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Scott D. Greenberg, the Manager of SMASHotels Chicago Manager, L.L.C, an Illinois limited liability company, the Manager of **SMASHOTELS CHICAGO, LLC**, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 17 day of December, 2015.



Justyna Chrupka  
Notary Public

My Commission Expires:

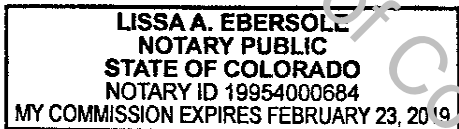
July 31, 2017

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STATE OF Colorado )  
 ) SS.  
COUNTY OF Arapahoe )

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Gerald M. Greenberg, the Manager of SMASHotels Chicago Manager, LLC, an Illinois limited liability company, the Manager of SMASHOTELS CHICAGO, LLC, an Illinois limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that he signed and delivered the said instrument as his own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19<sup>th</sup> day of December, 2015.



Lissa Ebersole  
Notary Public

My Commission Expires: 2-23-19

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## EXHIBIT "A"

### LEGAL DESCRIPTION

#### PARCEL 1:

THE WEST 20 FEET OF LOT 14 IN THE SUBDIVISION OF THE WEST 394 FEET (EXCEPT THE EAST 14 FEET OF THE NORTH 80 FEET THEREOF) IN BLOCK 32 IN KINZIE'S ADDITION TO CHICAGO IN THE NORTH ½ OF SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

#### PARCEL 2:

THE EAST 5 FEET OF LOT 14, ALL OF LOT 15 AND THE WEST 10 FEET OF LOT 16 IN THE SUBDIVISION OF THE WEST 394 FEET (EXCEPT THE EAST 14 FEET OF THE NORTH 80 FEET THEREOF) OF BLOCK 32 IN KINZIE'S ADDITION TO CHICAGO IN SECTION 10, TOWNSHIP 39 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

**ADDRESS:** 224-228 East Ontario Street  
Chicago, IL

**PINS:** 17-10-203-015-0000  
17-10-203-016-0000  
17-10-203-017-0000

Exhibit A-1