

18004227NC AY 1 of 4

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1811434060

Doc# 1811434060 Fee \$82.00

RHSP FEE:\$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 04/24/2018 01:26 PM PG: 1 OF 23

The property identified as: PIN: 10-15-100-029-0000

Address:

Street: 9599 Skokie Blvd

Street line 2:

City: Skokie

State: IL

ZIP Code: 60077

Lender: PFP Holding Company V, LLC

Borrower: Waterton Skokie Hotel Property Company, L.L.C.

Loan / Mortgage Amount: \$40,000,000.00

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

Certificate number: DD257810-712C-4552-B2EF-4D6F65D1E1BE

Execution date: 4/16/2018

JA

UNOFFICIAL COPY

WATERTON SKOKIE HOTEL PROPERTY COMPANY, L.L.C.
(Mortgagor)

To

PEP HOLDING COMPANY V, LLC
(Mortgagee)

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

Dated: As of April 20, 2018

Property Location: 9599 Skokie Blvd., Skokie, Illinois 60077

DOCUMENT PREPARED BY AND WHEN RECORDED, RETURN TO:

Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, New York 10019-9710
Attention: Aaron Lehrfield, Esq.

UNOFFICIAL COPY

MORTGAGE, ASSIGNMENT OF LEASES AND RENTS AND SECURITY AGREEMENT (this "*Mortgage*"), made as of April 20, 2018, by **WATERTON SKOKIE HOTEL PROPERTY COMPANY, L.L.C.**, a Delaware limited liability company, having an office at 30 South Wacker Drive, 36th Floor, Chicago, Illinois 60606 (together with its successors and permitted assigns, "*Mortgagor*"), to **PFP HOLDING COMPANY V, LLC**, a Delaware limited liability company (together with its successors and assigns, "*Mortgagee*"), having an address c/o Prime Finance Partners, 233 North Michigan Avenue, Suite 1915, Chicago, Illinois 60601.

Mortgagee, as lender, and Mortgagor, as borrower, have entered into a Loan Agreement dated as of the date hereof (as amended, modified, restated, consolidated, replaced or supplemented from time to time, the "*Loan Agreement*") pursuant to which Mortgagee is making a secured loan to Mortgagor and an Affiliate of Mortgage (collectively, "*Borrower*") in the original principal amount of \$40,000,000 (the "*Loan*"). Capitalized terms used herein without definition are defined in the Loan Agreement. The Loan is evidenced by a Promissory Note dated the date hereof made by Borrower to Mortgagee in such original principal amount (as the same may be amended, modified, restated, severed, consolidated, renewed, replaced, or supplemented from time to time, the "*Note*").

To secure the payment of the Note and all sums which may or shall become due thereunder or under any of the other documents evidencing or securing the Loan or executed in favor of Mortgagee in connection with the Loan (the Note, this Mortgage, the Loan Agreement and such other documents, as any of the same may, from time to time, be modified, amended, restated, replaced or supplemented, being hereinafter collectively referred to as the "*Loan Documents*"), including (i) the payment of interest and other amounts which would accrue and become due but for the filing of a petition in bankruptcy (whether or not a claim is allowed against Mortgagor for such interest or other amounts in any such bankruptcy proceeding) or the operation of the automatic stay under Section 362(a) of Title 11 of the United States Code (the "*Bankruptcy Code*"), and (ii) the costs and expenses of enforcing any provision of any Loan Document (all such sums being hereinafter collectively referred to as the "*Debt*"), Mortgagor hereby irrevocably mortgages, grants, bargains, sells, conveys, transfers, pledges, sets over and assigns, and grants a security interest, to and in favor of Mortgagee, WITH POWER OF SALE, in all of Mortgagor's right, title and interest in and to the land described in Exhibit A (the "*Premises*"), and the buildings, structures, fixtures and other improvements now or hereafter located thereon (the "*Improvements*");

TOGETHER WITH: all right, title, interest and estate of Mortgagor now owned, or hereafter acquired, in and to the following property, rights, interests and estates (the Premises, the Improvements, and the property, rights, interests and estates hereinafter described are collectively referred to herein as the "*Mortgaged Property*");

(a) all easements, rights-of-way, strips and gores of land, streets, ways, alleys, passages, sewer rights, water, water courses, water rights and powers, air rights and development rights, rights to oil, gas, minerals, coal and other substances of any kind or character, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining to the Premises and the Improvements; and the reversion and reversions, remainder and remainders, and all land lying in

UNOFFICIAL COPY

the bed of any street, road, highway, alley or avenue, opened, vacated or proposed, in front of or adjoining the Premises, to the center line thereof; and all the estates, rights, titles, interests, dower and rights of dower, curtesy and rights of curtesy, property, possession, claim and demand whatsoever, both at law and in equity, of Mortgagor of, in and to the Premises and the Improvements and every part and parcel thereof, with the appurtenances thereto;

(b) all machinery, furniture, furnishings, equipment, computer software and hardware, fixtures (including all heating, air conditioning, plumbing, lighting, communications and elevator fixtures), inventory, materials, supplies and other articles of personal property and accessions thereof, renewals and replacements thereof and substitutions therefor, (including, without limitation, beds, bureaus, chiffoniers, chests, chairs, desks, lamps, mirrors, bookcases, tables, rugs, carpeting, drapes, draperies, curtains, shades, venetian blinds, screens, paintings, hangings, pictures, divans, couches, luggage carts, luggage racks, stools, sofas, chinaware, linens, pillows, blankets, glassware, foodcarts, cookware, dry cleaning facilities, dining room wagons, keys or other entry systems, bars, bar fixtures, 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, heating, lighting and plumbing fixtures, fire prevention and extinguishing apparatus, cooling and air-conditioning systems, elevators, escalators, fittings, plants, apparatus, stoves, ranges, refrigerators, laundry machines, tools, machinery, engines, dynamos, motors, boilers, incinerators, switchboards, conduits, compressors, vacuum cleaning systems, floor cleaning, waxing and polishing equipment, call systems, brackets, electrical signs, bulbs, bells, ash and fuel, conveyors, cabinets, lockers, shelving, spotlighting equipment, dishwashers, garbage disposals, washers and dryers), other customary hotel equipment and other property of every kind and nature, tangible or intangible, owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Premises or the Improvements, or appurtenant thereto, and usable in connection with the present or future operation and occupancy of the Premises and the Improvements (hereinafter collectively referred to as the "**Equipment**"), including any leases of, deposits in connection with, and proceeds of any sale or transfer of any of the foregoing, and the right, title and interest of Mortgagor in and to any of the Equipment that may be subject to any "security interest" as defined in the Uniform Commercial Code, as in effect in the State where the Mortgaged Property is located (the "**UCC**"), superior in lien to the lien of this Mortgage;

(c) all awards or payments, including interest thereon, that may heretofore or hereafter be made with respect to the Premises or the Improvements, whether from the exercise of the right of eminent domain or condemnation (including any transfer made in lieu of or in anticipation of the exercise of such right), or for a change of grade, or for any other injury to or decrease in the value of the Premises or Improvements;

(d) all leases, subleases and other agreements or arrangements heretofore or hereafter entered into affecting the use, enjoyment or occupancy of, or the conduct of any activity upon or in, the Premises or the Improvements, including any extensions, renewals, modifications or amendments thereof (hereinafter collectively referred to as the "**Leases**") and all rents, rent equivalents, moneys payable as damages (including payments by reason of the rejection of a Lease in a Bankruptcy Proceeding or in lieu of rent or rent equivalents), royalties (including all oil and gas or other mineral royalties and bonuses), income, fees, receivables,

UNOFFICIAL COPY

receipts, revenues, deposits (including security, utility and other deposits), accounts, cash, issues, profits, charges for services rendered, all revenues and credit card receipts collected from guest rooms, restaurants, bars, meeting rooms, banquet rooms and recreational facilities, parking charges, and other consideration of whatever form or nature received by or paid to or for the account of or benefit of Mortgagor or its agents or employees from any and all sources arising from or attributable to the Premises and/or the Improvements, including all receivables, customer obligations, installment payment obligations and other obligations now existing or hereafter arising or created out of the sale, lease, sublease, license, concession or other grant of the right of the use and occupancy of the Premises or the Improvements, or rendering of services by Mortgagor or any of its agents or employees, or rendering of services by Mortgagor or any operator or manager of the hotel or the commercial space located in the Improvements or acquired from others (including, without limitation, from the rental of any office space, retail space, guest rooms or other space, halls, stores, and offices, and deposits securing reservations of such space), license, lease, sublease and concession fees and rentals, health club membership fees, food and beverage wholesale and retail sales, service charges, vending machine sales and proceeds, if any, from business interruption or other loss of income insurance (hereinafter collectively referred to as the "*Rents*"), together with all proceeds from the sale or other disposition of the Leases and the right to receive and apply the Rents to the payment of the Debt;

(e) all proceeds or and any unearned premiums on any insurance policies covering the Mortgaged Property, including without limitation, the right to receive and apply the proceeds of any insurance, judgments, or settlements made in lieu thereof, for damage to the Mortgaged Property;

(f) the right, in the name and on behalf of Mortgagor, to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to commence any action or proceeding to protect the interest of Mortgagee in the Mortgaged Property;

(g) all accounts (including reserve accounts), escrows, documents, instruments, chattel paper, claims, deposits and general intangibles, as the foregoing terms are defined in the UCC, and all franchises, franchise agreements, trade names, trademarks, symbols, service marks, books, records, plans, specifications, designs, drawings, surveys, title insurance policies, permits, consents, licenses, management agreements, contract rights (including any contract with any architect or engineer or with any other provider of goods or services for or in connection with any construction, repair or other work upon the Mortgaged Property), approvals, actions, refunds of real estate taxes and assessments (and any other governmental impositions related to the Mortgaged Property) and causes of action that now or hereafter relate to, are derived from or are used in connection with the Mortgaged Property, or the use, operation, maintenance, occupancy or enjoyment thereof or the conduct of any business or activities thereon (hereinafter collectively referred to as the "*Intangibles*");

(h) any interest rate protection arrangement to which Mortgagor is a party, including the Interest Rate Protection Agreement, and all agreements, instruments, documents and contracts now or hereafter entered into by Mortgagor with respect to any such interest rate protection arrangement, including the Interest Rate Protection Agreement; and

UNOFFICIAL COPY

(i) all proceeds, products, offspring, rents and profits from any of the foregoing, including those from sale, exchange, transfer, collection, loss, damage, disposition, substitution or replacement of any of the foregoing.

Without limiting the generality of any of the foregoing, in the event that a case under the Bankruptcy Code is commenced by or against Mortgagor, pursuant to Section 552(b)(2) of the Bankruptcy Code, the security interest granted by this Mortgage shall automatically extend to all Rents acquired by Mortgagor after the commencement of the case and shall constitute cash collateral under Section 363(a) of the Bankruptcy Code.

TO HAVE AND TO HOLD the Mortgaged Property unto Mortgagee, and its heirs, successors and assigns, forever;

PROVIDED, HOWEVER, these presents are upon the express condition that, if Borrower shall well and truly pay to Mortgagee the Debt at the time and in the manner provided in the Loan Documents, these presents and the estate hereby granted shall cease, terminate and be void;

AND Mortgagor represents and warrants to and covenants and agrees with Mortgagee as follows:

1. Payment of Debt and Incorporation of Covenants, Conditions and Agreements. Mortgagor shall pay the Debt at the time and in the manner provided in the Loan Documents. All the covenants, conditions and agreements contained in the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same force as if fully set forth herein. Without limiting the generality of the foregoing, Mortgagor (i) agrees to insure, repair, maintain and restore damage to the Mortgaged Property, pay Taxes and other charges, and comply with Legal Requirements, in accordance with the Loan Agreement, and (ii) agrees that the Proceeds of Insurance and Awards for Condemnation shall be settled, held and applied in accordance with the Loan Agreement.

2. Leases and Rents.

(a) Mortgagor does hereby absolutely and unconditionally assign to Mortgagee all of Mortgagor's right, title and interest in all current and future Leases and Rents, it being intended by Mortgagor that this assignment constitutes a present, absolute assignment and not an assignment for additional security only. Such assignment shall not be construed to bind Mortgagee to the performance of any of the covenants or provisions contained in any Lease or otherwise impose any obligation upon Mortgagee. Nevertheless, subject to the terms of this paragraph, Mortgagee grants to Mortgagor a revocable license to operate and manage the Mortgaged Property, administer the Leases and to collect the Rents subject to the requirements of the Loan Agreement (including the deposit of Rents into the Clearing Account). Upon an Event of Default, without the need for notice or demand, the license granted to Mortgagor herein shall automatically be revoked, and Mortgagee shall immediately be entitled to possession of all Rents in (or required by the terms of the Loan Documents to be deposited in) the Clearing Account and the Deposit Account (including all Subaccounts thereof) and all Rents collected thereafter (including Rents past due and unpaid), whether or not Mortgagee enters upon or takes

UNOFFICIAL COPY

control of the Mortgaged Property. Mortgagor hereby grants and assigns to Mortgagee the right, at Mortgagee's option, upon revocation of the license granted herein, to enter upon the Mortgaged Property in person, by agent or by court-appointed receiver to collect the Rents. Any Rents collected after the revocation of such license may be applied toward payment of the Debt in such priority and proportions as Mortgagee in its sole discretion shall deem proper.

(b) Mortgagor shall not enter into, modify, amend, cancel, terminate or renew any Lease except as provided in Section 5.17 of the Loan Agreement.

3. Use of Mortgaged Property. Mortgagor shall not initiate, join in, acquiesce in or consent to any change in any private restrictive covenant, zoning law or other public or private restriction, limiting or defining the uses which may be made of the Mortgaged Property, or grant any easement or right of way with respect to the Mortgaged Property without Mortgagee's prior written consent, which consent shall not be unreasonably withheld or delayed. If under applicable zoning provisions the use of the Mortgaged Property is or shall become a nonconforming use, Mortgagor shall not cause or permit such nonconforming use to be discontinued or abandoned without the consent of Mortgagee. Mortgagor shall not (i) change the use of the Mortgaged Property, except as expressly permitted under the Loan Agreement, (ii) permit or suffer to occur any waste on or to the Mortgaged Property, (iii) take any action that might invalidate any insurance carried on the Mortgaged Property or (iv) take any steps to convert the Mortgaged Property to a condominium or cooperative form of ownership.

4. Transfer or Encumbrance of the Mortgaged Property.

(a) Mortgagor acknowledges that (i) Mortgagee has examined and relied on the creditworthiness and experience of the principals of Mortgagor in owning and operating properties such as the Mortgaged Property in agreeing to make the Loan, (ii) Mortgagee will continue to rely on Mortgagor's ownership of the Mortgaged Property as a means of maintaining the value of the Mortgaged Property as security for the Debt, and (iii) Mortgagee has a valid interest in maintaining the value of the Mortgaged Property so as to ensure that, should Borrower default in the repayment of the Debt, Mortgagee can recover the Debt by a sale of the Mortgaged Property. Mortgagor shall not sell, convey, alienate, mortgage, encumber, pledge or otherwise transfer the Mortgaged Property or any part thereof, or suffer or permit any Transfer to occur, other than a Permitted Transfer.

(b) Mortgagee shall not be required to demonstrate any actual impairment of its security or any increased risk of default under the Loan Documents in order to declare the Debt immediately due and payable upon any Transfer in violation of this Paragraph 4. This provision shall apply to every sale, conveyance, alienation, mortgage, encumbrance, pledge or transfer of the Mortgaged Property (and every other Transfer) regardless of whether voluntary or not. Any Transfer made in contravention of this Paragraph 4 shall be null and void and of no force and effect. Mortgagor agrees to bear and shall pay or reimburse Mortgagee on demand for all reasonable expenses (including reasonable attorneys' fees and disbursements, title search costs and title insurance endorsement premiums) incurred by Mortgagee in connection with the review, approval and documentation of any Permitted Transfer.

UNOFFICIAL COPY

5. **Changes in Laws Regarding Taxation.** If any law is enacted or adopted or amended after the date of this Mortgage which deducts the Debt from the value of the Mortgaged Property for the purpose of taxation or which imposes a tax, either directly or indirectly, on the Debt or Mortgagee's interest in the Mortgaged Property, Mortgagor will pay such tax, with interest and penalties thereon, if any. If Mortgagee is advised by its counsel that the payment of such tax or interest and penalties by Mortgagor would be unlawful, taxable to Mortgagee or unenforceable, or would provide the basis for a defense of usury, unless Borrower affirmatively waives any such defense, then Mortgagee shall have the option, by notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable, which prepayment shall not be subject to a Yield Maintenance Premium; provided, however, that Lender takes such action in similar circumstances under comparable provisions of the documents governing similar loans.

6. **No Credits on Account of the Debt.** Mortgagor shall not claim or demand or be entitled to any credit on account of the Debt for any part of the Taxes or other charges assessed against the Mortgaged Property, and no deduction shall otherwise be made or claimed from the assessed value of the Mortgaged Property for real estate tax purposes by reason of this Mortgage or the Debt. If such claim, credit or deduction shall be required by law, Mortgagee shall have the option, by notice of not less than one hundred twenty (120) days, to declare the Debt immediately due and payable; which prepayment shall not be subject to a Yield Maintenance Premium; provided, however, that Lender takes such action in similar circumstances under comparable provisions of the documents governing similar loans.

7. **Further Acts, Etc.** Mortgagor shall, at its sole cost, perform, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Mortgagee shall, from time to time, reasonably require, for the better assuring, conveying, assigning, transferring, and confirming unto Mortgagee the property and rights hereby mortgaged, given, granted, bargained, sold, alienated, enfeoffed, conveyed, confirmed, pledged, assigned and hypothecated or intended now or hereafter so to be, or which Mortgagor may be or may hereafter become bound to convey or assign to Mortgagee, or for carrying out the intention or facilitating the performance of the terms of this Mortgage, or for filing, registering or recording this Mortgage or for facilitating the sale and transfer of the Loan and the Loan Documents in connection with a "Secondary Market Transaction" as described in Section 9.1 of the Loan Agreement. Upon recording, the appointment of a receiver or any other relevant action, Mortgagor shall, at its sole cost, cooperate fully and completely to effect the assignment or transfer of any license, permit, agreement or any other right necessary or useful to the operation of the Mortgaged Property. Upon the occurrence and during the continuance of an Event of Default, Mortgagor grants to Mortgagee an irrevocable power of attorney coupled with an interest for the purpose of exercising and perfecting any and all rights and remedies available to Mortgagee at law and in equity, including such rights and remedies available to Mortgagee pursuant to this paragraph.

8. **Recording of Mortgage, Etc.** Mortgagor forthwith upon the execution and delivery of this Mortgage and thereafter, from time to time, shall cause this Mortgage, and any security instrument creating a lien or security interest or evidencing the lien hereof upon the Mortgaged Property and each instrument of further assurance to be filed, registered or recorded in such manner and in such places as may be required by any present or future law in order to

UNOFFICIAL COPY

publish notice of and fully to protect the lien or security interest hereof upon, and the interest of Mortgagee in, the Mortgaged Property. Mortgagor shall pay all filing, registration or recording fees, all expenses incident to the preparation, execution and acknowledgment of and all federal, state, county and municipal, taxes, duties, imposts, documentary stamps, assessments and charges arising out of or in connection with the execution and delivery of, this Mortgage, any Mortgage supplemental hereto, any security instrument with respect to the Mortgaged Property or any instrument of further assurance, except where prohibited by law so to do. Mortgagor shall hold harmless and indemnify Mortgagee and its successors and assigns against any liability incurred by reason of the imposition of any tax on the making or recording of this Mortgage.

9. **Right to Cure Defaults.** Upon the occurrence of any Event of Default, Mortgagee may, but without any obligation to do so and without notice to or demand on Mortgagor and without releasing Mortgagor from any obligation hereunder, perform the obligations in Default in such manner and to such extent as Mortgagee may deem necessary to protect the security hereof. Mortgagee is authorized to enter upon the Mortgaged Property for such purposes or appear in, defend or bring any action or proceeding to protect its interest in the Mortgaged Property or to foreclose this Mortgage or collect the Debt, and the cost and expense thereof (including reasonable attorneys' fees and disbursements to the extent permitted by law), with interest thereon at the Default Rate for the period after notice from Mortgagee that such cost or expense was incurred to the date of payment to Mortgagee, shall constitute a portion of the Debt, shall be secured by this Mortgage and the other Loan Documents and shall be due and payable to Mortgagee upon demand.

10. **Remedies.**

(a) Upon the occurrence and during the continuance of any Event of Default, Mortgagee may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Mortgagor and in and to the Mortgaged Property, by Mortgagee itself or otherwise, including the following actions, each of which may be pursued concurrently or otherwise, at such time and in such order as Mortgagee may determine, in its sole and absolute discretion, without impairing or otherwise affecting the other rights and remedies of Mortgagee:

- (i) declare the entire Debt to be immediately due and payable;
- (ii) institute a proceeding or proceedings, judicial or nonjudicial, to the extent permitted by law, by advertisement or otherwise, for the complete foreclosure of this Mortgage, in which case the Mortgaged Property may be sold for cash or upon credit in one or more parcels or in several interests or portions and in any order or manner;
- (iii) with or without entry, to the extent permitted and pursuant to the procedures provided by applicable law, institute proceedings for the partial foreclosure of this Mortgage for the portion of the Debt then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due;

UNOFFICIAL COPY

(iv) sell for cash or upon credit the Mortgaged Property and all estate, claim, demand, right, title and interest of Mortgagor therein and rights of redemption thereof, pursuant to the power of sale, to the extent permitted by law, or otherwise, at one or more sales, as an entirety or in parcels, at such time and place, upon such terms and after such notice thereof as may be required or permitted by law;

(v) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained herein or in any other Loan Document;

(vi) recover judgment on the Note either before, during or after any proceeding for the enforcement of this Mortgage;

(vii) apply for the appointment of a trustee, receiver, liquidator or conservator of the Mortgaged Property, without notice and without regard for the adequacy of the security for the Debt and without regard for the solvency of the Mortgagor or of any Person liable for the payment of the Debt;

(viii) enforce Mortgagee's interest in the Leases and Rents and enter into or upon the Mortgaged Property, either personally or by its agents, nominees or attorneys and dispossess Mortgagor and its agents and employees therefrom, and Mortgagee may (A) use, operate, manage, control, insure, maintain, repair, restore and otherwise deal with the Mortgaged Property and conduct the business thereat; (B) complete any construction on the Mortgaged Property in such manner and form as Mortgagee deems advisable; (C) make alterations, additions, renewals, replacements and improvements to or on the Mortgaged Property; (D) exercise all rights and powers of Mortgagor with respect to the Mortgaged Property, whether in the name of Mortgagor or otherwise, including the right to make, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive Rents; and (E) apply the receipts from the Mortgaged Property to the payment of the Debt, after deducting therefrom all expenses (including reasonable attorneys' fees and disbursements) incurred in connection with the aforesaid operations and all amounts necessary to pay the Taxes, insurance and other charges in connection with the Mortgaged Property, as well as just and reasonable compensation for the services of Mortgagee, and its counsel, agents and employees;

(ix) require Mortgagor to pay monthly in advance to Mortgagee, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Mortgagor, and require Mortgagor to vacate and surrender possession of the Mortgaged Property to Mortgagee or to such receiver, and, in default thereof, evict Mortgagor by summary proceedings or otherwise; or

(x) pursue such other rights and remedies as may be available at law or in equity or under the UCC, including the right to receive and/or establish a lock box for all Rents and proceeds from the Intangibles and any other receivables or rights to payments of Mortgagor relating to the Mortgaged Property.

UNOFFICIAL COPY

In the event of a sale, by foreclosure or otherwise, of less than all of the Mortgaged Property, this Mortgage shall continue as a lien on the remaining portion of the Mortgaged Property.

(b) The proceeds of any sale made under or by virtue of this Paragraph 10, together with any other sums which then may be held by Mortgagee under this Mortgage, whether under the provisions of this paragraph or otherwise, shall be applied by Mortgagee to the payment of the Debt in such priority and proportion as Mortgagee in its sole and absolute discretion shall deem proper.

(c) Mortgagee may adjourn from time to time any sale by it to be made under or by virtue of this Mortgage by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, except as otherwise provided by any applicable law, Mortgagee, without further notice or publication, may make such sale at the time and place to which the same shall be so adjourned.

(d) Upon the completion of any sale or sales pursuant hereto, Mortgagee, or an officer of any court empowered to do so, shall execute and deliver to the accepted purchaser or purchasers a good and sufficient instrument, or good and sufficient instruments, conveying, assigning and transferring all estate, right, title and interest in and to the property and rights sold. Upon the occurrence and during the continuance of an Event of Default, Mortgagee is hereby irrevocably appointed the true and lawful attorney of Mortgagor, which appointment is coupled with an interest, in its name and stead, to make all necessary conveyances, assignments, transfers and deliveries of the Mortgaged Property and rights so sold and for that purpose Mortgagee may execute all necessary instruments of conveyance, assignment and transfer, and may substitute one or more persons with like power, Mortgagor hereby ratifying and confirming all that its said attorney or such substitute or substitutes shall lawfully do by virtue hereof. Any sale or sales made under or by virtue of this Paragraph 10, whether made under the power of sale herein granted or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, shall operate to divest all the estate, right, title, interest, claim and demand whatsoever, whether at law or in equity, of Mortgagor in and to the properties and rights so sold, and shall be a perpetual bar both at law and in equity against Mortgagor and against any and all persons claiming or who may claim the same, or any part thereof, from, through or under Mortgagor.

(e) Upon any sale made under or by virtue of this Paragraph 10, whether made under a power of sale or under or by virtue of judicial proceedings or of a judgment or decree of foreclosure and sale, Mortgagee may bid for and acquire the Mortgaged Property or any part thereof and in lieu of paying cash therefor may make settlement for the purchase price by crediting upon the Debt the net sales price after deducting therefrom the expenses of the sale and costs of the action and any other sums which Mortgagee is authorized to deduct under this Mortgage or any other Loan Document.

(f) No recovery of any judgment by Mortgagee, and no levy of an execution under any judgment upon the Mortgaged Property or upon any other property of Mortgagor, shall affect in any manner or to any extent the lien of this Mortgage upon the Mortgaged Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee

UNOFFICIAL COPY

hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(g) Mortgagee may terminate or rescind any proceeding or other action brought in connection with its exercise of the remedies provided in this Paragraph 10 at any time before the conclusion thereof, as determined in Mortgagee's sole and absolute discretion and without prejudice to Mortgagee.

(h) Mortgagee may resort to any remedies and the security given by this Mortgage or in any other Loan Document in whole or in part, and in such portions and in such order as determined in Mortgagee's sole and absolute discretion. No such action shall in any way be considered a waiver of any rights, benefits or remedies evidenced or provided by any Loan Document. The failure of Mortgagee to exercise any right, remedy or option provided in any Loan Document shall not be deemed a waiver of such right, remedy or option or of any covenant or obligation secured by any Loan Document. No acceptance by Mortgagee of any payment after the occurrence of any Event of Default and no payment by Mortgagee of any obligation for which Mortgagor is liable under the Loan Documents shall be deemed to waive or cure any Event of Default, or Mortgagor's liability to pay such obligation. No sale of all or any portion of the Mortgaged Property, no forbearance on the part of Mortgagee and no extension of time for the payment of the whole or any portion of the Debt or any other indulgence given by Mortgagee to Mortgagor, shall operate to release or in any manner affect the interest of Mortgagee in the remaining Mortgaged Property or the liability of Mortgagor to pay the Debt. No waiver by Mortgagee shall be effective unless it is in writing and then only to the extent specifically stated. All costs and expenses of Mortgagee in exercising its rights and remedies under this Paragraph 10 (including reasonable attorneys' fees and disbursements to the extent permitted by law), shall be paid by Mortgagor immediately upon notice from Mortgagee, with interest at the Default Rate for the period after notice from Mortgagee, and such costs and expenses shall constitute a portion of the Debt and shall be secured by this Mortgage.

(i) The interests and rights of Mortgagee under the Loan Documents shall not be impaired by any indulgence, including (x) any renewal, extension or modification which Mortgagee may grant with respect to any of the Debt, (y) any surrender, compromise, release, renewal, extension, exchange or substitution which Mortgagee may grant with respect to the Mortgaged Property or any portion thereof or (z) any release or indulgence granted to any maker, endorser, guarantor or surety of any of the Debt.

11. Right of Entry. In addition to any other rights or remedies granted under this Mortgage, Mortgagee and its agents shall have the right to enter and inspect the Mortgaged Property at any reasonable time during the term of this Mortgage, subject to the rights of tenants under the Leases and the rights of guests on the Mortgaged Property. The cost of such inspections or audits shall be borne by Mortgagor during the continuance of an Event of Default, including the cost of all follow up or additional investigations or inquiries deemed reasonably necessary by Mortgagee. The cost of such inspections, if not paid for by Mortgagor following demand, may be added to the principal balance of the sums due under the Note and this Mortgage and shall bear interest thereafter until paid at the Default Rate.

UNOFFICIAL COPY

12. **Security Agreement.** This Mortgage is both a real property mortgage and a “security agreement” within the meaning of the UCC. The Mortgaged Property includes both real and personal property and all other rights and interests, whether tangible or intangible in nature, of Mortgagor in the Mortgaged Property. Mortgagor by executing and delivering this Mortgage has granted and hereby grants to Mortgagee, as security for the Debt, a security interest in the Mortgaged Property to the full extent that the Mortgaged Property may be subject to the UCC (such portion of the Mortgaged Property so subject to the UCC being called in this paragraph the “*Collateral*”). The foregoing sentence is intended to grant in favor of Mortgagee a first priority continuing lien and security interest in all of Mortgagor’s assets. Mortgagor authorizes Mortgagee and its counsel to file UCC financing statements in form and substance satisfactory to Mortgagee, describing the collateral as “all assets of Mortgagor, whether now owned or existing or hereafter acquired or arising and wheresoever located, and all proceeds and products thereof, including, without limitation, all fixtures on the Premises” or words to that effect, and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the Collateral described in this Mortgage. This Mortgage shall also constitute a “fixture filing” for the purposes of the UCC. As such, this Mortgage covers all items of the Collateral that are or are to become fixtures. Information concerning the security interest herein granted may be obtained from the parties at the addresses of the parties set forth in the first paragraph of this Mortgage. If an Event of Default shall occur, Mortgagee, in addition to any other rights and remedies which it may have, shall have and may exercise immediately and without demand, any and all rights and remedies granted to a secured party upon default under the UCC, including, without limiting the generality of the foregoing, the right to take possession of the Collateral or any part thereof, and to take such other measures as Mortgagee may deem necessary for the care, protection and preservation of the Collateral. Upon request or demand of Mortgagee, Mortgagor shall at its expense assemble the Collateral and make it available to Mortgagee at a convenient place acceptable to Mortgagee. Mortgagor shall pay to Mortgagee on demand any and all expenses, including reasonable attorneys’ fees and disbursements, incurred or paid by Mortgagee in protecting the interest in the Collateral and in enforcing the rights hereunder with respect to the Collateral. Any notice of sale, disposition or other intended action by Mortgagee with respect to the Collateral sent to Mortgagor in accordance with the provisions hereof at least ten days prior to such action, shall constitute commercially reasonable notice to Mortgagor. The proceeds of any disposition of the Collateral, or any part thereof, may be applied by Mortgagee to the payment of the Debt in such priority and proportions as Mortgagee in its sole and absolute discretion shall deem proper. In the event of any change in name, identity, structure or place of incorporation, organization or formation of Mortgagor, Mortgagor shall notify Mortgagee thereof and promptly after request shall file and record such UCC forms as are necessary to maintain the priority of Mortgagee’s lien upon and security interest in the Collateral, and shall pay all expenses and fees in connection with the filing and recording thereof. If Mortgagee shall require the filing or recording of additional UCC forms or continuation statements, Mortgagor shall, promptly after request, file and record such UCC forms or continuation statements as Mortgagee shall deem necessary, and shall pay all expenses and fees in connection with the filing and recording thereof, it being understood and agreed, however, that no such additional documents shall increase Mortgagor’s obligations under the Loan Documents. Mortgagor hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, to file with the appropriate public office on its behalf any financing or

UNOFFICIAL COPY

other statements naming Mortgagee, as secured party, and Mortgagor, as debtor, in connection with the Collateral covered by this Mortgage.

13. Actions and Proceedings. Mortgagee has the right to appear in and defend any action or proceeding brought with respect to the Mortgaged Property and to bring any action or proceeding, in the name and on behalf of Mortgagor, which Mortgagee, in its sole discretion, decides should be brought to protect its interest in the Mortgaged Property. Mortgagee shall, at its option, be subrogated to the lien of any mortgage or other security instrument discharged in whole or in part by the Debt, and any such subrogation rights shall constitute additional security for the payment of the Debt.

14. Marshaling and Other Matters. Mortgagor hereby waives, to the extent permitted by law, the benefit of all appraisement, valuation, stay, extension, reinstatement and redemption laws now or hereafter in force and all rights of marshaling in the event of any sale hereunder of the Mortgaged Property or any part thereof or any interest therein. Further, Mortgagor hereby expressly waives any and all rights of redemption from sale under any order or decree of foreclosure of this Mortgage on behalf of Mortgagor, and on behalf of each and every Person acquiring any interest in or title to the Mortgaged Property subsequent to the date of this Mortgage and on behalf of all Persons to the extent permitted by applicable law. The lien of this Mortgage shall be absolute and unconditional and shall not in any manner be affected or impaired by any acts or omissions whatsoever of Mortgagee and, without limiting the generality of the foregoing, the lien hereof shall not be impaired by (i) any acceptance by Mortgagee of any other security for any portion of the Debt, (ii) any failure, neglect or omission on the part of Mortgagee to realize upon or protect any portion of the Debt or any collateral security therefor or (iii) any release (except as to the property released), sale, pledge, surrender, compromise, settlement, renewal, extension, indulgence, alteration, changing, modification or disposition of any portion of the Debt or of any of the collateral security therefor; and Mortgagee may foreclose or exercise any other remedy available to Mortgagee under the other Loan Documents without first exercising or enforcing any of its remedies under this Mortgage, and any exercise of the rights and remedies of Mortgagee hereunder shall not in any manner impair the Debt or the liens of any other Loan Document or any of Mortgagee's rights and remedies thereunder.

15. Consent to Jurisdiction. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST MORTGAGEE OR MORTGAGOR ARISING OUT OF OR RELATING TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT MAY AT MORTGAGEE'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF NEW YORK, COUNTY OF NEW YORK, PURSUANT TO SECTION 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW, AND MORTGAGOR WAIVES ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH SUIT, ACTION OR PROCEEDING, AND MORTGAGOR HEREBY IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING. MORTGAGOR DOES HEREBY DESIGNATE AND APPOINT CORPORATION SERVICE COMPANY AT 1180 AVENUE OF THE AMERICAS, SUITE 210, NEW YORK, NEW YORK 10036-8401 AS ITS AUTHORIZED AGENT TO RECEIVE (AND PERMIT ITSELF TO BE SERVED) ON ITS BEHALF SERVICE OF ANY AND ALL PROCESS WHICH MAY BE SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY FEDERAL OR STATE COURT IN NEW

UNOFFICIAL COPY

YORK, NEW YORK, AND AGREES THAT SERVICE OF PROCESS UPON SAID AGENT AT SAID ADDRESS AND WRITTEN NOTICE OF SAID SERVICE MAILED OR DELIVERED TO MORTGAGOR IN THE MANNER PROVIDED HEREIN SHALL BE DEEMED IN EVERY RESPECT EFFECTIVE SERVICE OF PROCESS UPON MORTGAGOR IN ANY SUCH SUIT, ACTION OR PROCEEDING IN THE STATE OF NEW YORK. MORTGAGOR (I) SHALL GIVE PROMPT NOTICE TO MORTGAGEE OF ANY CHANGED ADDRESS OF ITS AUTHORIZED AGENT HEREUNDER, (II) MAY AT ANY TIME AND FROM TIME TO TIME DESIGNATE A SUBSTITUTE AUTHORIZED AGENT WITH AN OFFICE IN NEW YORK, NEW YORK (WHICH SUBSTITUTE AGENT AND OFFICE SHALL BE DESIGNATED AS THE PERSON AND ADDRESS FOR SERVICE OF PROCESS), AND (III) SHALL PROMPTLY DESIGNATE SUCH A SUBSTITUTE IF ITS AUTHORIZED AGENT CEASES TO HAVE AN OFFICE IN NEW YORK, NEW YORK OR IS DISSOLVED WITHOUT LEAVING A SUCCESSOR.

16. **Notices.** All notices, consents, approvals and requests required or permitted hereunder shall be in writing, and shall be sent, and shall be deemed effective, as provided in the Loan Agreement.

17. **Inapplicable Provisions.** If any term, covenant or condition of this Mortgage is held to be invalid, illegal or unenforceable in any respect, this Mortgage shall be construed without such provision.

18. **Headings.** The paragraph headings in this Mortgage are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

19. **Duplicate Originals.** This Mortgage may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original.

20. **Definitions.** Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Mortgage may be used interchangeably in singular or plural form; and the word "*Mortgago*," shall mean "each Mortgagor and any subsequent owner or owners of the Mortgaged Property or any part thereof or any interest therein," the word "*Mortgagee*" shall mean "Mortgagee and any subsequent holder of the Note," the words "*Mortgaged Property*" shall include any portion of the Mortgaged Property and any interest therein, the word "*including*" means "including but not limited to" and the words "*attorneys' fees*" shall include any and all attorneys' fees, paralegal and law clerk fees, including, fees at the pre-trial, trial and appellate levels incurred or paid by Mortgagee in protecting its interest in the Mortgaged Property and Collateral and enforcing its rights hereunder.

21. **Homestead.** Mortgagor hereby waives and renounces all homestead and exemption rights provided by the Constitution and the laws of the United States and of any state, in and to the Mortgaged Property as against the collection of the Debt, or any part thereof.

22. **Assignments.** Mortgagee shall have the right to assign, delegate, pledge, participate or transfer its rights and obligations under this Mortgage without limitation. Any

UNOFFICIAL COPY

assignee or transferee shall be entitled to all the benefits afforded Mortgagee under this Mortgage. Mortgagor shall not be permitted to assign or delegate any of its rights or duties under this Mortgage.

23. **Waiver of Jury Trial.** MORTGAGOR HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THIS MORTGAGE OR ANY OTHER LOAN DOCUMENT, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY MORTGAGOR.

24. **Consent.** Any consent or approval by Mortgagee in any single instance shall not be deemed or construed to be Mortgagee's consent or approval in any like matter arising at a subsequent date, and the failure of Mortgagee to promptly exercise any right, power, remedy, consent or approval provided herein or at law or in equity shall not constitute or be construed as a waiver of the same nor shall Mortgagee be estopped from exercising such right, power, remedy, consent or approval at a later date. Any consent or approval requested of and granted by Mortgagee pursuant hereto shall be narrowly construed to be applicable only to Mortgagor and the matter identified in such consent or approval and no third party shall claim any benefit by reason thereof, and any such consent or approval shall not be deemed to constitute Mortgagee a venturer or partner with Mortgagor nor shall privity of contract be presumed to have been established with any such third party. If Mortgagee deems it to be in its best interest to retain assistance of persons, firms or corporations (including attorneys, title insurance companies, appraisers, engineers and surveyors) with respect to a request for consent or approval, Mortgagor shall reimburse Mortgagee for all costs reasonably incurred in connection with the employment of such persons, firms or corporations.

25. **Intentionally Omitted.**

26. **Loan Repayment.** Provided no Event of Default exists, this Mortgage will be satisfied and discharged of record by Mortgagee prior to the Maturity Date only in accordance with the terms and provisions set forth in Section 2.3 and Section 2.4 of the Loan Agreement.

27. **Other Mortgages; No Election of Remedies.**

(a) The Debt is now or may hereafter be secured by one or more other mortgages, deeds of trust and other security agreements (collectively, as the same may be amended and in effect from time to time, are herein collectively called the "***Other Mortgages***"), which cover or will hereafter cover other properties that are or may be located in various states (the "***Other Collateral***"). The Other Mortgages will secure the Debt and the performance of the

UNOFFICIAL COPY

other covenants and agreements of Borrower set forth in the Loan Documents. Upon the occurrence of an Event of Default, Mortgagee may proceed under this Mortgage and/or any or all the Other Mortgages against either the Mortgaged Property and/or any or all the Other Collateral in one or more parcels and in such manner and order as Mortgagee shall elect. Mortgagor hereby irrevocably waives and releases, to the extent permitted by law, and whether now or hereafter in force, any right to have the Mortgaged Property and/or the Other Collateral marshaled upon any foreclosure of this Mortgage or any Other Mortgage.

(b) Without limiting the generality of the foregoing, and without limitation as to any other right or remedy provided to Mortgagee in this Mortgage or the other Loan Documents, in the case of an Event of Default (i) Mortgagee shall have the right to pursue all of the rights and remedies under this Mortgage and the Loan Documents, at law and/or in equity, in one proceeding, or separately and independently in separate proceedings from time to time, as Mortgagee in its sole and absolute discretion, shall determine from time to time, (ii) Mortgagee shall not be required to either marshal assets, sell the Mortgaged Property and/or any Other Collateral in any particular order of alienation (and may sell the same simultaneously and together or separately), or be subject to any "one action" or "election of remedies" law or rule with respect to the Mortgaged Property and/or any Other Collateral, (iii) the exercise by Mortgagee of any remedies against any one item of Mortgaged Property and/or any Other Collateral will not impede Mortgagee from subsequently or simultaneously exercising remedies against any other item of Mortgaged Property and/or Other Collateral, (iv) all liens and other rights, remedies or privileges provided to Mortgagee herein shall remain in full force and effect until Mortgagee has exhausted all of its remedies against the Mortgaged Property and all Mortgaged Property has been foreclosed, sold and/or otherwise realized upon in satisfaction of the Debt, and (v) Mortgagee may resort for the payment of the Debt to any security held by Mortgagee in such order and manner Mortgagee, in its discretion, may elect and Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage.

(c) Without notice to or consent of Mortgagor and without impairment of the lien and rights created by this Mortgage, Mortgagee may, at any time (in its sole and absolute discretion, but Mortgagee shall have no obligation to), execute and deliver to Mortgagor a written instrument releasing all or a portion of the lien of this Mortgage as security for any or all of the obligations of Mortgagor now existing or hereafter arising under or in respect of the Note, the Loan Agreement and each of the other Loan Documents, whereupon following the execution and delivery by Mortgagee to Mortgagor of any such written instrument of release, this Mortgage shall no longer secure such obligations of Mortgagor so released.

28. Governing Law. With respect to matters relating to the creation, perfection and procedures relating to the enforcement of the Liens created pursuant to this Mortgage, this Mortgage shall be governed by, and construed in accordance with, the laws of the State in which the Property is located (without regard to conflict of law provisions thereof), it being understood that, except as expressly set forth in this paragraph and to the fullest extent permitted by the law of such State, the law of the State of New York (without regard to conflict of law provisions thereof) shall govern all matters relating to this Mortgage and the other Loan Documents and all of the indebtedness or obligations arising hereunder or thereunder. All provisions of the Loan Agreement incorporated herein by reference shall be governed by, and

UNOFFICIAL COPY

construed in accordance with, the laws of the State of New York (without regard to conflict of law provisions thereof).

29. **Exculpation.** The liability of Mortgagor hereunder is limited pursuant to Section 10.1 of the Loan Agreement.

30. **State Specific Provisions.**

(a) **Conflicts with this Section.** In the event of any conflict between the provisions of this Section 30 and any other Section of this Mortgage, then the provisions of this Section 30 shall control and be binding.

(b) **Illinois Mortgage Foreclosure Law.** It is the intention of Mortgagor and Mortgagee that the enforcement of the terms and provisions of this Security Instrument shall be accomplished in accordance with all of the provisions of the Illinois Mortgage Foreclosure Law (735 ILCS 5/15-1101 *et seq.*), as amended from time to time (the "**IMFL**") and, with respect to thereto, Mortgagor agrees and covenants that:

(i) Mortgagor and Mortgagee shall have the benefit of all of the provisions of the IMFL, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of the IMFL which is specifically referred to herein may be repealed, Mortgagee shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference;

(ii) Wherever provision is made in this Security Instrument, the Note, the Loan Agreement or the other Loan Documents for insurance policies to bear mortgage clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale.

(iii) Subject to, and to the maximum extent allowed under, the IMFL, all advances, disbursements and expenditures made or incurred by Mortgagee before and during a foreclosure, and before and after judgment of foreclosure, and at any time prior to sale, and, where applicable, after sale, and during the pendency of any related proceedings, of the type contemplated under Subsection b(5) of Section 15-1302 of the IMFL (collectively "**IMFL Protective Advances**"), shall have the benefit of all applicable provisions of the IMFL. To the maximum extent allowed under the IMFL, all IMFL Protective Advances shall be additional indebtedness secured by this Security Instrument, and shall become immediately due and payable without notice and with interest thereon from the date of the advance until paid at the rate of interest payable after default under the terms of the Loan Documents. To the maximum extent allowed under the IMFL, this Security Instrument shall be a lien for all IMFL Protective Advances as to subsequent purchasers and judgment creditors from the time this Security Instrument is recorded pursuant to Subsection (b)(5) of Section 15-1302 of the IMFL;

(iv) In addition to any provision of this Security Instrument authorizing the Mortgagee to take or be placed in possession of the Mortgaged Property, or for

UNOFFICIAL COPY

the appointment of a receiver, Mortgagee shall have the right, in accordance with, and subject to, Sections 15-1701 and 15-1702 of the IMFL, to be placed in possession of the Mortgaged Property or at its request to have a receiver appointed, and such receiver, or Mortgagee, if and when placed in possession, shall have, in addition to any other powers provided in this Security Instrument, all rights, powers, immunities, and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMFL;

(v) Mortgagor acknowledges that (i) the Mortgaged Property does not constitute agricultural real estate, as said term is defined in Section 15-1201 of the IMFL or residential real estate as defined in Section 15-1219 of the IMFL and (ii) the entire principal obligation secured hereby constitutes a "loan secured by a mortgage on real estate" within the purview of the operation of 815 ILCS 205/4(1)(l). To the fullest extent permitted by the IMFL and any other applicable law, pursuant to Section 15-1601(b) of the IMFL, Mortgagor hereby waives any and all right of redemption;

(vi) In addition to the prior grant of a security interest set forth above, Mortgagor hereby grants to Mortgagee a continuing security interest in all chattels and articles of personal property described in the GRANTING CLAUSES of this Security Instrument, including all existing and future equipment, general intangibles, accounts, instruments, chattel paper, documents, and other items so included therein, now owed or hereafter acquired by Mortgagor or in which Mortgagor has or shall acquire an interest in any way belonging, relating or pertaining to, or used in connection with, or located on and now or hereafter owned by Mortgagor, the properties referenced in the GRANTING CLAUSES, or placed on any part thereof, and in all accessories, parts and accessions attached to or used in connection therewith and in cash and in non-cash proceeds thereof;

(vii) Without limiting the generality of the foregoing, all expenses incurred by Mortgagee to the extent reimbursable under Sections 15-1510 and 15-1512 of the IMFL, whether incurred before or after any decree or judgment of foreclosure, and whether or not enumerated in this Security Instrument, shall be added to the Debt;

(viii) Upon the occurrence of an Event of Default hereunder Mortgagee shall, at its option and without notice or demand (to the extent permitted by law), be entitled to enter upon the Premises to take immediate possession of any personal property pledged hereunder. Upon request, Mortgagor shall assemble and make such personal property available to Mortgagee at a place designated by Mortgagee which is reasonably convenient to both parties. Mortgagee may sell all or any portion of such personal property at public or private sale in accordance with the UCC or in accordance with the foreclosure sale provisions under this Security Instrument. Mortgagor agrees that a commercially reasonable manner of disposition of such personal property upon the occurrence of an Event of Default shall include, without limitation and at the option of Mortgagee, the sale of such personal property, in whole or in part, concurrently with a foreclosure sale of the Mortgaged Property in accordance with the provisions of this Security Instrument; and

(ix) Except to the extent contrary to law, Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any valuation or appraisalment before sale of any portion of the Mortgaged Property, (ii) any exemption, under and by virtue of any statute of the State of Illinois or the United States, (iii) the benefit of all laws that may be hereafter enacted in any way extending the time for the enforcement and collection

UNOFFICIAL COPY

of the Debt or creating or extending a period of redemption from any sale made in collecting the Debt, and (iv) any rights and remedies which Mortgagor may have or be able to assert by reason of (a) the laws of the State of Illinois pertaining to the rights and remedies of sureties, (b) any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce the Note or other obligations, or (c) any rights, legal or equitable, to require marshaling of assets or to require foreclosure sales in a particular order. If any law now or hereafter in force referred to in this paragraph of which Mortgagor or Mortgagor's successor or successors might take advantage despite the provisions hereof, shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the operation or application of the provisions of this paragraph.

Notwithstanding anything contained in this Security Instrument to the contrary, if any provision in this Security Instrument shall be inconsistent with any provision of the IMFL, the provisions of the IMFL shall take precedence over the provisions of this Security Instrument with respect to such inconsistent provision, but shall not invalidate or render unenforceable any other provision of this Security Instrument that can be construed in a manner consistent with the IMFL.

(c) Use of Loan Proceeds. Mortgagor covenants that the proceeds of the loan evidenced by the Note and secured by this Security Instrument will be used for business purposes as specified in 815 ILCS 205/4, as amended, and that the principal obligation secured hereby constitutes a business loan which comes within the purview of such Section.

(d) Possession of the Premises. Mortgagor hereby releases and waives any and all rights to retain possession of the Premises after the occurrence of an Event of Default and any and all rights of redemption from sale under any order or decree of foreclosure, pursuant to rights therein granted, on behalf of Mortgagor, all persons and entities interested in Mortgagor and each and every person (except judgment creditors of Mortgagor) acquiring any interest in, or title to, the Premises subsequent to the date of this Security Instrument, and on behalf of all other persons to the extent permitted by the provisions of 735 ILCS 5/15-1603, as amended.

(e) Insurance Default. In the event Mortgagor, at any time, fails to provide Mortgagee with evidence of the insurance coverage as required by this Security Instrument or the other Loan Documents, Mortgagee may purchase the insurance coverage at Mortgagor's expense to protect Mortgagee's interests in the Mortgaged Property. Pursuant to 815 ILCS 180/10, such insurance may, but need not, protect Mortgagor's interests, and Mortgagee shall be under no obligation to so protect Mortgagor's interests. The insurance coverage that Mortgagee purchases on behalf of Mortgagor may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Mortgaged Property. Mortgagor may later cancel any insurance coverage purchased by Mortgagee, but only after providing Mortgagee with evidence that insurance coverage has been obtained as provided for in this Security Instrument and the other Loan Documents. In the event Mortgagee purchases all or any portion of the insurance coverage for the Mortgaged Property or as otherwise required hereunder or in the other Loan Documents, Mortgagor will be responsible for all costs and expenses of such insurance coverage, including, but not limited to, interest and any other charges imposed by Mortgagee in connection with the purchase of the insurance coverage, until the effective date of the cancellation or expiration of the insurance coverage. The costs and expenses of any insurance coverage purchased by Mortgagee shall be added to the Debt secured hereby. Mortgagor acknowledges that the cost of the insurance coverage purchased by

UNOFFICIAL COPY

Mortgagee pursuant hereto may be more than the cost of insurance that Mortgagor may be able to obtain on its own.

(f) Stated Maturity Date. The Stated Maturity Date of the Loan is May 9, 2020, as such maturity date may be extended pursuant to the Loan Agreement.

(g) Maximum Principal Sum. Notwithstanding anything herein to the contrary, it is agreed that the maximum principal amount of the Debt secured by this Security Instrument, including all advancements, at any one time shall not exceed TWENTY SIX MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$26,500,000).

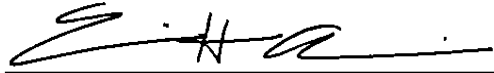
[Remainder of Page Intentionally Left Blank; Signature Page to Follow]

Property of Cook County Clerk's Office

UNOFFICIAL COPY

IN WITNESS WHEREOF, Mortgagor has executed this instrument as of the day and year first above written.

WATERTON SKOKIE HOTEL PROPERTY COMPANY, L.L.C., a Delaware limited liability company

By: 
Name: Erin H. Ankin
Title: Authorized Signatory

Property of COOK County Clerks Office

ACKNOWLEDGMENT

STATE OF ILLINOIS)


COUNTY OF COOK)

I, the undersigned, a notary public in and for said county in said state, hereby certify that Erin H. Ankin, who is an Authorized Signatory of Waterton Skokie Hotel Property Company, L.L.C., a Delaware limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 16th day of April, 2018.



[NOTARIAL SEAL]


Notary Public

My commission expires: 6/19/2021

UNOFFICIAL COPY

EXHIBIT A

Legal Description

Parcel 1:

Lot 2 in Citibank-Doubletree Subdivision, being a Resubdivision of Lot 1 in Golf-Skokie Associates Subdivision, being a Subdivision of Lot 1 in the Performing Arts Center Subdivision, together with that part of the North 1/2 of the Northwest quarter of the Northwest quarter, all in Section 15, Township 41 North, Range 13 East of the Third Principal Meridian, in Cook County, Illinois

Parcel 2:

Easement for the benefit of Parcel 1 as created by the Grant and Declaration of Easements Uses and Covenants dated February 14, 1995 and recorded February 15, 1995 as document number 95109429 made by and between American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated June 26, 1984 and known as Trust Number 61447; Lasalle National Bank and Trust, N. A., as Trustee under Trust Agreement dated June 30, 1977 and known as Trust Number 52792 and the Centre East Metropolitan Auditorium Exposition and Office Building Authority, for vehicular and pedestrian ingress and egress and parking.

Parcel 3:

Grant and Declaration of Easements and Covenants, for the benefit of Parcel 1, dated November 21, 1996 and recorded November 27, 1996 as document 96905235, made by and between American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated June 26, 1984 and known as Trust Number 61447 and Lasalle National Bank, as Trustee under Trust Agreement dated June 30, 1977 and known as Trust Number 52792 for purposes of non-exclusive easements for vehicular and pedestrian ingress and egress, parking and utilities.

PIN: 10-15-100-029-0000

Property Address: 9599 Skokie Blvd., Skokie, Illinois 60077