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KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 10/25/2018 03:11 PM PG: 1 OF 25

THIS DOCUMENT PREPARED BY AND
AFTER RECORDING RETURN TO:

Kimpton Hotel & Restaurant Group, LLC
222 Kearny Street, 2nd Floor
San Francisco, California 94108
Attn: General Counsel

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2017

ASSIGNMENT, CONSENT AND SUBORDINATION OF HOTEL OPERATING AGREEMENT

THIS ASSIGNMENT, CONSENT AND SUBORDINATION OF HOTEL OPERATING AGREEMENT (this "**Agreement**") is dated as of October 25, 2018, by and among KIMPTON HOTEL & RESTAURANT GROUP, LLC, a Delaware limited liability company ("**Manager**"), 39 CHICAGO MASTER TENANT LLC, a Delaware limited liability company ("**Master Tenant**"), KHP III 39 CHICAGO LLC, a Delaware limited liability company ("**Ground Tenant**"), 39 CHICAGO BUILDING LLC, a Delaware limited liability company ("**Borrower**", and together with Master Tenant and Ground Tenant, the "**Borrower Parties**" and each a "**Borrower Party**") and PNC BANK, NATIONAL ASSOCIATION (together with its successors and assigns as the lender in respect of the Loan referred to below, "**Lender**").

RECITALS

A. Pursuant to the terms of a Ground Lease, dated January 9, 2014, between Ground Tenant (as successor by assignment from ROC II IL LaSalle, LLC), and The University of Chicago, Ground Tenant leases certain real property and improvements (the "**Property**") located at 39 South LaSalle Street, Chicago, Illinois, which Property is more specifically described in Exhibit A.

B. Pursuant to the terms of a Ground Sublease, dated July 2, 2015, between Ground Tenant and Borrower, Borrower subleases the Property from Ground Tenant.

C. Pursuant to the terms of a Master Lease, dated July 2, 2015, between Borrower and Master Tenant, Master Tenant sub-subleases the Property from Borrower.

D. Manager and Master Tenant (as successor by assignment from Ground Tenant) are parties to that certain Hotel Operating Agreement, dated as of September 15, 2014 (as assigned (to

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Master Tenant) pursuant to a Confirmation of Assignment and Assumption of Hotel Agreements, dated July 2, 2015), and as amended by a letter agreement, dated November 28, 2017 (as heretofore and hereafter amended, supplemented, or modified, the “**Hotel Operating Agreement**”). The Hotel Operating Agreement describes Manager’s rights and obligations regarding the management of the hotel at the Property (the “**Hotel**”). Capitalized terms used but not defined herein shall have the meanings given to such terms in the Hotel Operating Agreement.

E. Pursuant to the terms of that certain Loan Agreement, dated of even date herewith, executed by Ground Tenant, Borrower and Lender (as amended, restated or modified from time to time, the “**Loan Agreement**”), Lender has made a loan (the “**Loan**”) in the principal amount of Sixty-Eight Million Dollars (\$68,000,000) to Borrower. The Loan is evidenced by, among other things, a Secured Promissory Note, executed by Borrower for the benefit of Lender in the principal amount of the Loan (as the same may be amended, restated or replaced from time to time, the “**Note**”), and secured by, among other things, Leasehold and Subleasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, executed by Borrower and Ground Tenant, together as mortgagor, for the benefit of Lender, as mortgagee, and recorded, or to be recorded, in the real estate records of Cook County, Illinois, on or about the date of this Agreement (as the same may be amended, restated or replaced from time to time, the “**Security Instrument**”). The Note, the Security Instrument and each of the other agreements entered into in connection with the Loan are referred to herein, collectively, as the “**Loan Documents**”.

F. At Borrower Parties’ and Lender’s request, and as required pursuant to the terms of the Loan Documents, Manager, Borrower and Borrower Parties desire to subordinate Manager’s interest in the Property, if any, to the Security Instruments and the Loan upon the terms and conditions contained in this Agreement.

NOW THEREFORE, in consideration of Lender making the Loan, and for other good and valuable consideration, the receipt and sufficiency of which Manager, Borrower, Ground Tenant and Master Tenant acknowledge, Lender, Manager, Borrower and Ground Tenant agree as follows:

1. **Assignment; Consent; Cure Rights.** As additional security for the performance by Borrower Parties of their obligations under the Loan Documents, Master Tenant (and should any of the Borrower Parties succeed to the interest of Master Tenant with respect to the Hotel Operating Agreement, such Borrower Party) (Master Tenant or the applicable Borrower Party in its capacity as “Owner” under the Hotel Operating Agreement being referred to hereinafter as “**Owner Party**”) hereby assigns, transfers and pledges to Lender, and hereby grants to Lender a security interest in, all of Owner Party’s right, title and interest in, to and under the Hotel Operating Agreement. Manager hereby acknowledges and consents to the assignment to Lender of Owner Party’s rights under the Hotel Operating Agreement, including without limitation Owner Party’s interest in all Accounts (as defined below), subject to the terms hereof. Lender shall have the right to cure any default of Owner Party under the Hotel Operating Agreement as provided in Section 7 below, and may perform any act, duty or obligation required to be performed by Owner Party under the Hotel Operating Agreement; provided, however, that nothing herein shall require Lender to cure any such default or to perform any such act, duty or obligation.

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2. **Subordination by Manager.** In consideration for Lender's covenants and obligations set forth in Section 3, Manager agrees that any interest, right, and title it may have in the Property arising by virtue of the Hotel Operating Agreement shall be subordinate to the lien of the Security Instrument, together with any amendments, modifications, supplements, renewals, extensions and restatements thereof and additional advances made thereunder.

3. **Non-Disturbance.** In consideration for Manager's covenants and obligations set forth in Section 2, Lender agrees as follows:

(a) **Use of Funds.** During the term of the Hotel Operating Agreement (so long as the Hotel Operating Agreement has not been terminated in accordance with its terms), notwithstanding any breach or default by a Borrower Party under the Security Instrument or any of the other Loan Documents, however, subject to the terms of the Hotel Operating Agreement, Manager shall have the right to use all funds and proceeds of the Borrower Parties, however derived, in Manager's custody, possession or control, or to which Manager has the right of access pursuant to the Hotel Operating Agreement (including all proceeds of business interruption insurance), and all income derived from the Hotel operations (collectively, the "**Funds**"), in furtherance of the performance of the services Manager has provided or will provide and in furtherance of Owner Party's obligations, including, without limitation, the payment of Fees (as defined below) and Operating Expenses (including Out-of-Pocket Costs and the Services Fees due and payable for Group Services) as set forth in the Hotel Operating Agreement. Notwithstanding anything to the contrary herein, following receipt by Manager of written notice from Lender of the occurrence of a default by a Borrower Party under the Loan Documents (a "**Borrower Party Default Notice**"), Manager will not be entitled to receive any Incentive Management Fees under the Hotel Operating Agreement; provided, however, that Manager's right to receive Incentive Management Fees shall be reinstated following a cure or waiver by Lender of the default referenced in such notice (a "**Reinstatement**"); provided, further, that following a Reinstatement, Manager shall be entitled to receive payment of any Incentive Management Fees accrued and unpaid as a result of the foregoing; and provided, further, that the foregoing will not relieve Successor Owner (as defined below) from any obligation to pay any Incentive Management Fees accruing during the period of such Successor Owner's ownership of the Property. Owner Party and Lender acknowledge that nothing herein shall relieve Owner Party from any obligation to pay Incentive Management Fees to Manager and, upon repayment of the Loan or after the occurrence of a Foreclosure Event (as defined below), Manager shall have the right to recover any accrued and unpaid Incentive Management Fees from Owner Party.

(b) **Manager Not a Party to Foreclosure.** As long as Manager is not in default under the Hotel Operating Agreement (taking into account all applicable notice, grace and cure periods), Lender shall not name or join Manager as a party defendant in any Foreclosure Action (except only to the extent required for the maintenance of such Foreclosure Action).

(c) **Non-Disturbance.** No Foreclosure Action or Foreclosure Event shall result in the amendment, modification, cancellation or termination of the Hotel Operating Agreement. If a Foreclosure Event occurs, then from and after the date title to the Property is conveyed to a Successor Owner, the Hotel Operating Agreement shall remain in full force and effect as direct agreement between Successor Owner, as owner, and Manager, as operator, subject to the terms of the Hotel Operating Agreement, together with any amendments, modifications and restatements

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which have been approved by Lender in writing, with the same force and effect as if originally entered into between Successor Owner and Manager.

(d) **Limitation on Lender's Obligations.** Notwithstanding the foregoing in Section 3(c), Manager agrees that upon a Successor Owner succeeding to the interest of Owner Party under the Hotel Operating Agreement, such Successor Owner shall not be: (i) liable for any breach or default or any damages arising from any breach or default by Owner Party under the Hotel Operating Agreement, (ii) subject to any offsets or defenses that Manager might have against Owner Party, (iii) liable for any Fees due to Manager for any period prior to date when Successor Owner succeeds to Owner Party's interest under the Hotel Operating Agreement, or (iv) bound by any amendment or modification of the Hotel Operating Agreement entered into without Lender's written consent.

(e) **Successor Owner.** Notwithstanding anything to the contrary in this Agreement, Lender shall not permit any person or entity to become a Successor Owner unless such person or entity satisfies the requirements of Section 11.2 of the Hotel Operating Agreement, provided that the foregoing shall not apply to any Foreclosure Event, other than a deed or assignment in lieu of foreclosure or subsequent sale or assignment by Lender, so long as the foreclosure pleadings filed or submitted by Lender request that the court order or other foreclosure documents include a requirement that any purchaser will take title to the Hotel subject to the Hotel Operating Agreement. In the event that a Person that does not satisfy the requirements of Section 11.2 of the Hotel Operating Agreement becomes a Successor Owner in accordance with the terms hereof, Manager shall have the right to elect to terminate the Hotel Operating Agreement by giving written notice thereof to the applicable Successor Owner within forty-five (45) days after the date of such Foreclosure Event (or, if later, after the earlier of the date on which Manager is (i) first notified or (ii) otherwise first actually learns of the identity of the applicable Successor Owner that does not satisfy the requirements of such Section 11.2). Any subsequent transfer of the Property following a Foreclosure Event (whether by Lender or any other Successor Owner) shall be subject to the requirements of Section 11.2 of the Hotel Operating Agreement.

(f) **Limitation of Liability.** Subject to Section 3(c) above, upon the transfer of title to the Hotel to a Successor Owner, Lender shall have no liability for the acts or omissions of Successor Owner under the Hotel Operating Agreement assumed by such Successor Owner in accordance herewith, including, without limitation, Successor Owner's failure to comply with the terms of this Agreement, unless Successor Owner is Lender or an affiliate of Lender.

(g) **Definitions.** The following terms used herein shall have the respective meanings set forth below:

i. **Fees.** The "Fees" shall mean, collectively, the Base Management Fee, the Incentive Management Fee and all other amounts to be paid to Manager, from time to time, under the Hotel Operating Agreement.

ii. **Foreclosure Action.** A "Foreclosure Action" shall mean commencement of any legal proceeding or other remedies by Lender against a Borrower Party to enforce its rights under the Security Instrument or applicable law with respect to

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the Loan, including, without limitation, commencement of proceedings for the appointment of a receiver for the Property.

iii. **Foreclosure Event.** A “Foreclosure Event” shall mean any foreclosure, deed or assignment in lieu of foreclosure, sale or assignment by Lender, by judicial action or pursuant to a power of sale, or other transfer (voluntary or involuntary) of the Property or any portion thereof or interest therein in connection with the exercise of Lender’s remedies under the Security Instrument or otherwise with respect to the Loan.

iv. **Successor Owner.** A “Successor Owner” shall mean Lender or any other person or entity that becomes the owner of the Property or any portion thereof or interest therein in connection with a Foreclosure Event, and any successor, transferee or assignee of Lender or such other person or entity.

4. **Representations, Warranties, Acknowledges and Certifications.**

(a) Master Tenant hereby represents, warrants, certifies and acknowledges to Lender and to Manager as follows as of the date hereof: (a) a true and complete copy of the Hotel Operating Agreement has been provided to Lender, and the Hotel Operating Agreement has not been further amended or modified; (b) the Hotel Operating Agreement represents the entire agreement between Manager and Master Tenant with respect to the Property; (c) the Hotel Operating Agreement is not a lease; (d) as of the date hereof, management fees, management commissions, incentive management fees, affiliate payments, termination fees, liquidated damages, reimbursements of advances made by Manager to the Master Tenant and all other compensation payable to Manager under the Hotel Operating Agreement are being paid on a current basis; (e) to Master Tenant’s knowledge, Manager has no existing defenses or claims against Master Tenant with respect to the Hotel Operating Agreement or any payments due and owing to Manager thereunder; (f) as of the date hereof, the Hotel Operating Agreement is in full force and effect as to Master Tenant and, to Master Tenant’s knowledge, as to Manager; (g) to Master Tenant’s knowledge, no default under the Hotel Operating Agreement exists that has not been cured; and (h) the aggregate indebtedness secured by the Hotel equals \$68,000,000. As used in this Agreement, “Master Tenant’s knowledge” means the actual knowledge of Ben Rowe, Managing Partner of KHP Capital Partners, L.P., a Delaware limited partnership (“KHPCP”); Judy Miles, general counsel of KHPCP; Joe Long, Managing Partner of KHPCP; Eric Moulton, KHPCP’s asset manager and Connie Chan, Senior Director of KHPCP. Neither Master Tenant nor any of Master Tenant’s employees, agents or representatives shall be personally liable to Lender with respect to any inaccuracies in the statements made by Master Tenant in this Agreement; however, Master Tenant shall be estopped from asserting against Lender any facts inconsistent with the statements made by Master Tenant in this Agreement.

(b) Manager hereby represents, warrants, certifies and acknowledges to Lender and to Master Tenant as follows as of the date hereof: (a) a true and complete copy of the Hotel Operating Agreement (including, without limitation, all modifications and amendments thereto, if any) has been provided to Lender; (b) the Hotel Operating Agreement represents the entire agreement between Manager and Master Tenant with respect to the Property; (c) the Hotel Operating Agreement is not a lease; (d) as of the date hereof, management fees, management commissions, incentive management fees, affiliate payments, termination fees, liquidated

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damages, reimbursements of advances made by Manager to the Master Tenant and all other compensation that are due and payable to Manager under the Hotel Operating Agreement have been paid; (e) to Manager's knowledge, Manager has no existing defenses or claims against Master Tenant with respect to the Hotel Operating Agreement or any payments due and owing to Manager thereunder; (f) as of the date hereof, the Hotel Operating Agreement is in full force and effect as to Manager and, to Manager's knowledge, as to Master Tenant (g) no event of default on the part of either party thereunder has occurred and is continuing and, to Manager's knowledge, no default under the Hotel Operating Agreement exists that has not been cured; and (h) Master Tenant has no obligation with respect to so called "key money" under the Hotel Operating Agreement. As used in this Agreement, "Manager's knowledge" means the actual knowledge of Melinda Stier, Senior Vice President of Manager. Neither Manager nor any of Manager's employees, agents or representatives shall be personally liable to Lender with respect to any inaccuracies in the statements made by Manager in this Agreement; however, Manager shall be estopped from asserting against Lender any facts inconsistent with the statements made by Manager in this Agreement.

5. **Default; Lender's Exercise of Rights.** Manager and Owner Party agree that during the continuance of a Default (as defined in the Loan Agreement) ("**Loan Default**"), under the Loan Agreement or any of the other Loan Documents during the term of this Agreement, Lender may, subject to the terms and conditions of the Hotel Operating Agreement, take, in Lender's own name or in the name of Owner Party or either or both of them, any action or exercise any rights of Owner Party under the Hotel Operating Agreement (including amending, modifying or extending the Hotel Operating Agreement to the extent agreed to by Manager). Lender shall incur no liability if any action taken by or on its behalf in good faith pursuant hereto shall prove to be, in whole or in part, inadequate or invalid. Owner Party hereby irrevocably empowers and authorizes Lender and hereby irrevocably appoints Lender as Owner Party's attorney-in-fact to take the actions set forth above and Owner Party hereby irrevocably authorizes Manager to take any such direction directly from Lender, as if such direction and actions were given or taken by Owner Party itself (and Manager shall not be in breach or default of the Hotel Operating Agreement for taking such action or direction from Lender). Manager may rely conclusively on any notice from Lender that a Loan Default has occurred.

6. **Attornment.** Manager acknowledges and consents to the collateral assignment by Owner Party to Lender of all of Owner Party's interest in the Hotel Operating Agreement as security for the Loan and other obligations secured by the Security Instrument, and subject to the terms of this Agreement, Manager agrees that (a) following any Foreclosure Event, Manager shall attorn to Successor Owner, subject to the terms of the Hotel Operating Agreement and (b) such attornment (as well as the assumption of the Hotel Operating Agreement by Successor Owner) shall be effective and self-operative, without the execution of any other instruments. Upon written request of Successor Owner, Manager shall enter into an agreement attorning to such Successor Owner, subject to the terms of this Agreement.

7. **Lender Cure Rights.**

(a) **Notice to Lender.** Manager shall provide a copy to Lender of any written notice (a "**Default Notice**") of default or termination under the Hotel Operating Agreement (a "**Default**") concurrently with the delivery of such Default Notice to Owner Party. Manager

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shall not terminate the Hotel Operating Agreement as a result of any default by Owner Party under the Hotel Operating Agreement prior to the expiration of Lender's Cure Period as set forth in this Section 7.

(b) **Lender's Right to Cure.** Lender shall have a period of (i) twenty (20) days after the delivery of a Default Notice to cure any Default that can be cured solely by the payment of money, and (ii) thirty (30) days after the delivery of a Default Notice to Lender to cure any Default which cannot be cured solely by the payment of money (or if such cure described in this subsection (ii) cannot be completed within thirty (30) days, such time, not to exceed one hundred eighty (180) days after the service of the Default Notice, as is necessary to complete such cure, provided that such cure is commenced within such thirty (30) day period and Lender diligently pursues such cure to completion and provided further that Lender shall have notified Manager in writing prior to the expiration of said thirty (30) day period that such cure cannot be completed within said thirty (30) day period together with an explanation of the reason that same cannot be completed within said period) (the "**Lender's Cure Period**"), and Manager shall provide reasonable access to the Property to Lender, its employees, agents and representatives, to the extent necessary to perform such cure. Notwithstanding the foregoing, (x) Lender shall not be obligated to cure any such Default, and (y) if Lender undertakes to cure any Default which requires access to the Property, (a) Lender shall use reasonable efforts to minimize any disturbance or interference with the operation of the Property, and (b) Lender shall indemnify and hold harmless Manager from and against any liability, damage, loss, cost or expense incurred by Manager as a result of any gross negligence or intentional misconduct by Lender, its employees, agents or representatives in connection with the cure of such Default. Notwithstanding the foregoing, all time periods set forth in this Section for Lender's cure of non-monetary Defaults shall be tolled during any period of time when Lender is precluded or prevented from taking actions under the Security Instrument due to a stay in bankruptcy or other similar legal or court prohibition. Notwithstanding the foregoing, if, in Manager's reasonable judgment, the ongoing Default places Manager at risk of criminal liability or at imminent and material risk of civil liability if the Hotel Operating Agreement is not terminated, then Manager shall be entitled to exercise termination rights in respect of the Default in accordance with the terms of the Hotel Operating Agreement; provided, however, if (1) a Successor Owner that satisfies the requirements of Section 11.2 of the Hotel Operating Agreement takes title to the Hotel as a result of a Foreclosure Event within one hundred eighty (180) days after the Hotel Operating Agreement is terminated pursuant to the foregoing, (2) the facts giving rise to the potential for criminal or civil liability no longer exist and (3) Successor Owner requests that Manager enter into a replacement hotel operating agreement with such Successor Owner, then Manager shall enter into a replacement hotel operating agreement with Successor Owner in the same form as the Hotel Operating Agreement (including term and economic provisions) within thirty (30) days after such request, provided that all costs and expenses of Manager or otherwise relating to Manager's take-over following Manager's earlier termination shall be borne solely by Successor Owner and shall not be Hotel Operating Expenses.

8. **Cash Sweep Notice.** From time to time Lender may (but shall not be required to) deliver written notice (the "**Cash Sweep Notice**") to Manager directing Manager to deliver to Lender all excess funds in the Operating Accounts or Sub-Accounts that would otherwise be disbursed to Owner pursuant to Section 4.6.3 of the Hotel Operating Agreement (the "**Excess Funds**"). Commencing on the date of its receipt of a Cash Sweep Notice until Manager receives written notice from Lender that such Cash Sweep Notice is no longer effective, on a monthly basis

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Manager shall deliver any Excess Funds directly to Lender in accordance with any delivery instructions or wire transfer requirements specified in such Cash Sweep Notice. Manager shall be entitled to rely solely upon such Cash Sweep Notice without any duty to independently confirm Lender's right under the Loan Documents to provide such notice, and Master Tenant hereby indemnifies and agrees to defend and hold Manager harmless from and against any and all expenses, losses, claims, damages or liabilities arising out of Manager's compliance with such Cash Sweep Notice.

9. **Insurance Proceeds.** During the term of the Hotel Operating Agreement, and notwithstanding anything to the contrary in the Loan Agreement, the Security Instrument or any other document governing the Loan, in the event of a casualty or condemnation, all proceeds shall be applied to the restoration of the Property, as long as the conditions of Section 6 of the Security Instrument for release and disbursement of such proceeds are satisfied, which conditions are attached hereto as Exhibit C, and otherwise may be applied by Lender in accordance with Section 6 of the Security Instrument. Notwithstanding the foregoing, any business interruption insurance proceeds payable in respect of the Operating Fee shall be paid directly to Operator to the extent of amounts available therefor.

10. **Accounts.**

(a) **FF&E Reserve.** Manager hereby acknowledges that Borrower Parties are required, pursuant to the terms of the Loan Agreement, to make deposits into an account referred to in the Loan Agreement as the "FF&E Reserve Account." Manager further acknowledges and agrees that for so long as the Loan remains outstanding, Owner Party's obligation to deposit funds in the "Replacement Reserve Fund" pursuant to Section 4.3.4 of the Hotel Operating Agreement shall be deemed satisfied, on a monthly basis, so long as Borrower Parties continue to make the required deposit into the FF&E Reserve Account and that withdrawals from the FF&E Reserve Account shall be governed by the Hotel Operating Agreement. Notwithstanding the foregoing, following receipt by Manager of a Default Notice from Lender, Manager will be required to obtain Lender's consent prior to making any expenditures from the FF&E Reserve Account if Owner Party's consent is required as a condition to Manager making such expenditure pursuant to the terms of the Hotel Operating Agreement.

(b) **Accounts Generally.** Manager hereby acknowledges that (i) the accounts identified on Exhibit B hereto are the only accounts to be utilized by Manager in connection with the operation of the Property (the "**Accounts**"), (ii) intentionally omitted and (iii) all of the Accounts and all funds on deposit therein have been pledged to Lender as additional security for the Loan. Manager's designees shall be the sole signatories to the Accounts as provided in Section 4.6.1.1 of the Hotel Operating Agreement and Manager shall have the right to access and use the funds in the Accounts for the purposes set forth in the Hotel Operating Agreement, subject to the limitations set forth therein. Manager shall not use or open any deposit accounts in connection with the operation of the Property other than the Accounts.

11. **Manager's Right to Notice of Default.** Lender shall provide a copy to Manager of any written notice of default or termination under the Loan Agreement or the Security Instrument or any other Loan Document concurrently with the delivery of such notice to Borrower. Notwithstanding the foregoing, Lender's failure to deliver such notice to Manager will not affect

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the validity of the notice delivered to Borrower and Lender will have no liability for failure to deliver such notice to Manager.

12. **Excess Funds**. At Lender's written request stating that Lender is then entitled to receive such funds under the terms of the Loan Agreement, Manager shall pay any funds to which Owner Party would be entitled under Section 4.6.3 of the Hotel Operating Agreement directly to Lender as and when contemplated by Section 4.6.3 of the Hotel Operating Agreement. Owner Party hereby instructs Manager to comply with any such request by Lender and agrees to hold Manager harmless from any claims resulting from Manager's compliance with any such request.

13. **Indebtedness**. Borrower hereby represents and on such basis Manager hereby acknowledges that the principal amount of the Loan does not violate Section 12.1.2 of the Hotel Operating Agreement.

14. **Intentionally Omitted**.

15. **Liability of Lender**. Manager agrees that Lender and its successors and assigns shall not have any liability under the Hotel Operating Agreement until such time, if any, as Lender or such successor or assign, as applicable, shall have explicitly assumed the obligations of Owner Party under the Hotel Operating Agreement in writing and elected to cause Manager to continue its management of the Property (provided that the foregoing shall not limit the Lender's express obligations under this Agreement). In any event, Manager shall look only to the estate and property of Lender or its successors or assigns in the Property for the satisfaction of Manager's remedies for the collection of a judgment (or other judicial process) requiring the payment of money in the event of any default by Lender or its successors or assigns under the Hotel Operating Agreement, and no other property or assets of Lender (or its successors or assigns) shall be subject to levy, execution or other enforcement procedure for the satisfaction of Manager's remedies under or with respect to the Hotel Operating Agreement or the relationship of the parties thereunder.

16. **Indemnification**. Borrower agrees to indemnify Lender and defend and hold Lender harmless from and against any and all liabilities, claims, demands, losses, damages, costs and expenses (including but not limited to reasonable attorney's fees) which Lender may incur under the Hotel Operating Agreement or this Agreement and from any alleged or actual obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Hotel Operating Agreement, except to the extent such liability, claim, demand, loss, damages, cost or expense is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of Lender. This indemnification will not apply to actions taken by Lender subsequent to Lender's acquisition of title by foreclosure. This provision shall survive any termination of the Hotel Operating Agreement and any foreclosure of the Security Instrument or deed-in-lieu thereof.

17. **Notices**. All notices, demands, or other communications under this Agreement shall be in writing and shall be delivered to the appropriate party at the address provided below (subject to change from time to time by written notice to all other parties to this Agreement). All notices, demands or other communications shall be considered as properly given if delivered personally, sent by first class United States Postal Service mail, postage prepaid, sent by certified mail, return receipt requested, or sent by overnight delivery by DHL, Federal Express, or other

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similar courier service or by overnight commercial courier service, charges prepaid. Notices so sent shall be effective three (3) days after mailing, if mailed by first class mail, and otherwise upon receipt. Each party may establish a new address from time to time by written notice to the other given in accordance with this Section 16; provided, however, that no change of address will be effective until written notice thereof actually is received by the party to whom such change of address is sent. Notice to outside counsel designated by a party entitled to receive notice is for convenience only and is not required for notice to a party to be effective in accordance with this Section 17:

To Lender: PNC Bank, National Association
575 Market Street, 28th Floor
San Francisco, CA 94105
Attention: Michael Wiedman

To Manager: Kimpton Hotel & Restaurant Group, LLC
222 Kearny Street, Suite 200
San Francisco, California 94108
Attention: Chief Financial Officer

With a copy to the same address, marked:
Attention: General Counsel

To Ground Tenant: KHP III 39 Chicago LLC
c/o KHP Capital Partners, L.P.
101 California Street, Suite 980
San Francisco, CA 94111
Attention: General Counsel and Managing Partner

To Master Tenant: 39 Chicago Master Tenant LLC
c/o KHP Capital Partners, L.P.
101 California Street, Suite 980
San Francisco, CA 94111
Attention: General Counsel and Managing Partner

To Borrower: 39 Chicago Building LLC
c/o KHP Capital Partners, L.P.
101 California Street, Suite 980
San Francisco, CA 94111
Attention: General Counsel and Managing Partner

Manager hereby agrees, upon Lender's request from time to time (provided that Lender agrees to treat such information in a confidential manner), to provide Lender with the Monthly Statements, the Annual Statements and the Annual Plan (and any modification thereto) provided by Manager to Borrower under the Hotel Operating Agreement to the extent Lender claims in such request that Borrower has not provided any of the foregoing to Lender. In accordance with Section 4.8.4 of the Hotel Operating Agreement, Master Tenant hereby consents to Manager's disclosure to Lender

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of the items required in this paragraph, including the Monthly Statements, Annual Statements and other information regarding the performance and operation of the Property.

18. **Governing Law.**

(a) THIS AGREEMENT, THE OBLIGATIONS ARISING HEREUNDER, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THE AGREEMENT, THE RELATIONSHIP OF THE PARTIES, AND/OR THE INTERPRETATION AND ENFORCEMENT OF THE RIGHTS AND DUTIES OF THE PARTIES SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA. TO THE FULLEST EXTENT PERMITTED BY LAW, LENDER, BORROWER PARTIES AND MANAGER HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVE ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS AGREEMENT, THE NOTE AND THE OTHER LOAN DOCUMENTS.

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST LENDER, MASTER TENANT, GROUND TENANT, BORROWER OR MANAGER ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY AT LENDER'S OPTION BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN THE CITY OF SAN FRANCISCO, CALIFORNIA, AND LENDER, MASTER TENANT, GROUND TENANT, BORROWER AND MANAGER WAIVE 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 LENDER, MASTER TENANT, GROUND TENANT, BORROWER AND MANAGER HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

19. **Relation to Hotel Operating Agreement.** In the event of any conflict or discrepancy between any provision in this Agreement and any provision of the Hotel Operating Agreement, the applicable provision of this Agreement shall control. Without limiting the foregoing, Manager agrees and acknowledges that Lender is an Institutional Lender and that this Agreement satisfies the requirements set forth in Section 12.1.4, 12.1.5, 12.1.6, 12.1.7 (with respect to delivery of a subordination and non-disturbance agreement), and 12.7 of the Hotel Operating Agreement. Any right granted to Manager in the Hotel Operating Agreement vis-a-vis Lender, and any obligation of Lender vis-a-vis Manager provided in the Hotel Operating Agreement and not expressly provided for herein or incorporated by reference is hereby deemed satisfied or waived by Manager.

20. **Amendments to Agreement.** No amendment or modification to any terms of this Agreement, waiver of the obligations of any party hereunder, or termination of this Agreement (other than pursuant to the terms of the Agreement), shall be valid unless in writing and signed by the party against whom enforcement of such provision is sought.

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21. **Successors and Assigns.** This Agreement shall apply to, bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns. As used herein “Lender” shall include any subsequent holder of the Security Instrument.

22. **Severability.** If any term or provision of this Agreement is held to be or rendered invalid or unenforceable at any time in any jurisdiction, such term or provision shall not affect the validity or enforceability of any other terms or provisions of this Agreement, or the validity or enforceability of such affected terms or provisions at any other time or in any other jurisdiction.

23. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall constitute one and the same instrument. Signature and acknowledgement pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature and acknowledgement pages are physically attached to the same instrument.

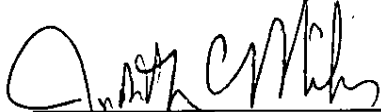
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IN WITNESS HEREOF, Master Tenant, Borrower, Manager and Lender have caused this Assignment, Consent and Subordination of Hotel Operating Agreement to be duly executed and delivered as of the date first set forth above.

MASTER TENANT:

39 CHICAGO MASTER TENANT LLC,
a Delaware limited liability company


By: 

Name: Judith C. Miles

Title: Executive Member and Secretary

BORROWER:

39 CHICAGO BUILDING LLC,
a Delaware limited liability company

By: 

Name: Judith C. Miles

Title: Executive Member and Secretary

GROUND TENANT:

KHP III 39 CHICAGO LLC,
a Delaware limited liability company

By: 

Name: Judith C. Miles

Title: Executive Member and Secretary

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

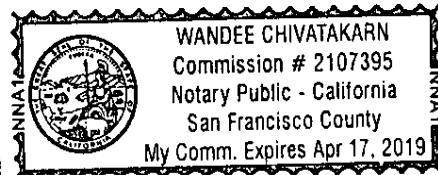
COUNTY OF San Francisco)

On October 22, 2018 before me, Wandee Chivatakarn, Notary Public, personally appeared Judith C. Mias, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Wandee Chivatakarn (Seal)



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

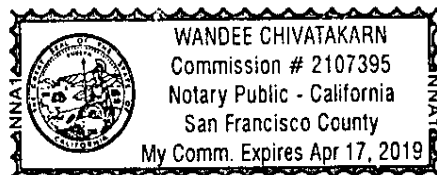
COUNTY OF San Francisco)

On October 22, 2018 before me, Wandee Chivatakarn, Notary Public, personally appeared Judith C. Mias, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Wandee Chivatakarn (Seal)



UNOFFICIAL COPY

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF SAN FRANCISCO)

On October 22, 2018 before me, Wandee Chivatakarn, Notary Public, personally appeared Matthew Miles, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Wandee Chivatakarn (Seal)



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MANAGER:

KIMPTON HOTEL & RESTAURANT GROUP, LLC,
a Delaware limited liability company

By: Melinda Stier
Name: Melinda Stier
Title: V.P., Secretary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
COUNTY OF San Francisco)

On October 23, 2018 before me, Altyan Abdakhmanova Notary Public, personally appeared MELINDA TISCH STIER, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

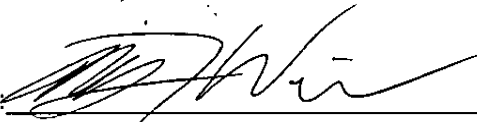
Signature A. Stier (Seal)



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LENDER:

PNC BANK, NATIONAL ASSOCIATION

By: 
 Name: Michael Wiedman
 Title: Vice President

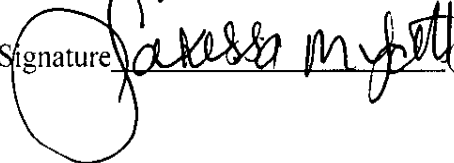
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

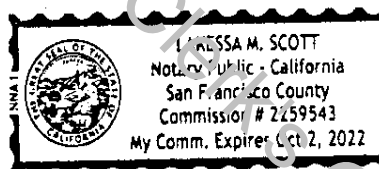
STATE OF CALIFORNIA)
 COUNTY OF San Francisco)

On Oct 23, 2018 before me, Jakessa M Scott, Notary Public, personally appeared Michael Wiedman who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



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EXHIBIT A
TO
ASSIGNMENT, CONSENT AND SUBORDINATION OF HOTEL OPERATING
AGREEMENT

LEGAL DESCRIPTION

Estate A:

(A) The fee estate in the improvements located on parcels 1 and 2 of the land described below:

(B) The leasehold estate created by the instrument herein referred to as the lease, executed by the University of Chicago, a not for profit corporation of Illinois, as Lessor, and Roc II IL LaSalle, LLC, a Delaware limited liability company dated January 9, 2014, an amended Memorandum of Lease recorded January 10, 2014 as document 1401022120 and as further amended by that certain ground lease assignment to KHP III 39 Chicago LLC, a Delaware limited liability company recorded January 10, 2014 as document number 1401022121, which lease demises the following described land for a term of years beginning January 9, 2014 and ending July 7, 2103.

Estate B:

The estate or interest in the Land described below and covered herein is: The subleasehold estate (said subleasehold estate being defined in paragraph 1.C. Of the ALTA leasehold endorsement(s) attached Hereto), created by the instrument herein referred to as the sublease, executed by: KHP III 39 Chicago LLC, as sublessor, and 39 Chicago Building LLC, as Sublessee, Dated as of July 2, 2015, Which Lease Was recorded July 6, 2015 as document 1518716067, which lease demises the following described Land for a term of years beginning July 2, 2015 and ending July 6, 2103:

Parcel 1:

The South 80.00 feet of Lots 6, 7 and 8 (except that part of Lot 8 taken and used for LaSalle Street) in Block 118 in School Section Addition to Chicago in Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, in Cook County, Illinois, excepting ownership of the buildings and improvements located on the Land.

Parcel 2:

The vacated Public Alley, lying North of and adjoining Lots 21 to 28, Both Inclusive; lying South of and adjoining Lots 29, 31, 32 and 33; lying East of the East Line of South LaSalle Street, as widened, and lying West of and adjoining Lots 18 and 19 in assessor's division of Block 118 in School Section Addition to Chicago of the East 1/2 of the Northeast 1/4 of Section 16, Township 39 North, Range 14, East of the Third Principal Meridian, more particularly described as follows:

beginning at the Northwest Corner of Lot 28 aforesaid; Thence East along the North Line of Lots 28, 27, 26, 25, 24, 23, 22 and 21 aforesaid to the Northeast Corner of Lot 21 aforesaid; thence

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North along the West Line of Lots 18 and 19 to the Southeast Corner of Lot 33 aforesaid; thence West along the South Line of Lots 33, 32 and 31 and part of Lot 29 to a point 45.10 feet East of the West Line of Said Lot 29; thence South parallel with said West Line, a distance of 8.00 feet; thence West along the South Line of Said Lot 29 to the Southwest corner of Lot 29, being Also the East Line of South LaSalle Street, as widened; thence South along said East Line of South LaSalle Street, as widened, to the point of beginning, excluding therefrom the East 22.75 feet thereof, all in Cook County, Illinois, excepting ownership of the buildings and improvements located on the Land.

Tax Parcel Number: 17-16-204-034-0000

Common Address: 39 S. LaSalle Street
Chicago, IL 60603

**COOK COUNTY
RECORDER OF DEEDS**

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EXHIBIT B
TO
ASSIGNMENT, CONSENT AND SUBORDINATION OF HOTEL OPERATING
AGREEMENT

ACCOUNTS

[EXHIBIT INTENTIONALLY OMITTED FOR RECORDING]

COOK COUNTY
RECORDER OF DEEDS

COOK COUNTY
RECORDER OF DEEDS

Property of Cook County Clerk's Office

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EXHIBIT C
TO
ASSIGNMENT, CONSENT AND SUBORDINATION OF HOTEL OPERATING
AGREEMENT

SECTION 6 OF SECURITY INSTRUMENT

6. Insurance Proceeds.

6.1 Rights of Mortgagee to Insurance Proceeds Subject to the provisions of Sections 6.3 and 6.4 hereof, in the event of a casualty loss with respect to the Project, the Mortgagee shall have the exclusive right to adjust, collect and compromise all insurance claims (other than claims involving business interruption insurance) in excess of \$1,500,000, and the Mortgagor shall not adjust, collect or compromise any claims in excess of \$1,500,000 under said policies without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld, conditioned or delayed. The Mortgagee shall have the exclusive right to adjust, collect and compromise all insurance claims of \$1,500,000 or less. For claims in excess of \$1,500,000, each insurer is hereby authorized and directed to make payment under said policies, including return of unearned premiums, directly to the Mortgagee instead of to the Mortgagor and the Mortgagee jointly, and the Mortgagor appoints the Mortgagee as the Mortgagor's attorney-in-fact to endorse any draft therefor. All insurance proceeds for claims in excess of \$1,500,000 shall be payable to the Mortgagee. In the event of a casualty loss (excluding losses that are covered by business interruption insurance) with respect to the Project of less than \$10,000,000 (a "**Minor Loss**"), provided that the conditions of Sections 6.3 and 6.4 hereof are satisfied at the time of such casualty, the Mortgagee shall apply the insurance proceeds received for a Minor Loss to the repair and restoration of the Property under such terms and conditions as are set forth in Sections 6.3 and 6.4 hereof. Following the occurrence of an Event of Default or if any of the other conditions set forth in Sections 6.3 and 6.4 are not satisfied, or if the casualty loss (excluding losses that are covered by business interruption insurance) with respect to the Project exceeds \$10,000,000, any such proceeds may, at the sole option of the Mortgagee, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Property under such terms and conditions as are set forth in Section 6.3 or otherwise as the Mortgagee may impose. The Mortgagee shall not be deemed to have elected such option until such option is elected specifically in writing. Until so elected, the Mortgagee shall not in any circumstances be deemed to have waived its right to make such election. Notwithstanding anything to the contrary contained herein, any proceeds of any business interruption insurance received by the Mortgagee shall be disbursed by the Mortgagee to the Mortgagor upon receipt after the Mortgagee applies such portion of the proceeds as is required to reimburse the Mortgagee for any expenses incurred by the Mortgagee in settling, prosecuting or defending any claims.

6.2 Condemnation. The Mortgagor, promptly upon obtaining knowledge of the institution of any proceedings for the condemnation or taking by eminent domain of any of the Property, shall notify the Mortgagee of the pendency of such proceedings. The

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Mortgagee may participate in any such proceedings and the Mortgagor shall deliver to the Mortgagee all instruments requested by it to permit such participation. Any award or compensation for property taken or for damage to property not taken, whether as a result of such proceedings or in lieu thereof, is hereby assigned to and shall be received and collected directly by the Mortgagee. In the event that the Mortgagee shall receive any such award or compensation equal to or less than the amount of a Minor Loss, and provided that the conditions of Sections 6.3 and 6.4 hereof are satisfied at the time of such condemnation, the Mortgagee shall apply the award or compensation proceeds received for such Minor Loss to the repair and restoration of the Property under such terms and conditions as are set forth in Sections 6.3 and 6.4 hereof. Following the occurrence of an Event of Default or if any of the other conditions set forth in Sections 6.3 and 6.4 are not satisfied or the award or compensation exceeds \$10,000,000 then any such award or compensation proceeds may, at the sole option of the Mortgagee, be applied to all or any part of the Obligations and in any order (notwithstanding that such Obligations may not then otherwise be due and payable) or to the repair and restoration of any of the Property under such terms and conditions as are set forth in Section 6.3 or otherwise as the Mortgagee may impose. The Mortgagee shall not be deemed to have elected such option until such option is elected specifically in writing. Until so elected, the Mortgagee shall not in any circumstances be deemed to have waived its right to make such election.

6.3 Restoration.

(a) All amounts of casualty insurance or condemnation proceeds received by the Mortgagee pursuant to this Section 6 which are to be applied to the restoration of the Property in accordance with this Section 6 and, in the event that the conditions set forth in this Section 6.3 and Section 6.4 hereof have been satisfied, may either be held in a restoration fund ("**Restoration Fund**") by the Mortgagee or, if it refuses to serve, in a separate identifiable account of a federal or state chartered bank or trust company appointed by the Mortgagee which has a combined capital and surplus of not less than \$100,000,000 as restoration fund trustee (the "**Restoration Fund Trustee**") with any additions thereto that may be required by the Mortgagee as hereinafter provided. The interest or income, if any, received on all deposits or investments of any monies in the Restoration Fund shall be added to the Restoration Fund. If the Mortgagee consents to the deposit of such funds in an interest-bearing account or otherwise consents to the investment of such funds, neither the Mortgagee nor the Restoration Fund Trustee shall be liable or accountable for any loss resulting from any such deposit or investment or for any withdrawal, redemption or sale of deposits or investments. The Mortgagee and the Restoration Fund Trustee may impose reasonable charges for services performed in managing the Restoration Fund and may deduct such charges therefrom. Restoration shall be performed only in accordance with the following conditions:

- (i) prior to commencement of restoration and from time to time during restoration, the Mortgagee may require the Mortgagor to deposit additional monies into the Restoration Fund in amounts which, in the Mortgagee's reasonable judgment, are sufficient to defray all costs to be incurred to complete the restoration and all costs associated therewith, including labor, materials, architectural and design fees and expenses and contractor's fees

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- and expenses, to the extent the same exceed the amounts contained in the Restoration Fund, and the Mortgagee shall have approved a budget and cost breakdown for the restoration, together with a disbursement schedule, all in detail reasonably satisfactory to the Mortgagee;
- (ii) prior to commencement of restoration, plans and specifications for the restoration and contracts for the restoration in amounts in excess of \$250,000 shall have been approved by the Mortgagee and all governmental authorities having jurisdiction, and if requested by the Mortgagee, the Mortgagee shall be provided with acceptable surety bonds or acceptable subguard protection insuring satisfactory completion of the restoration and the payment of all subcontractors and materialmen;
 - (iii) intentionally omitted;
 - (iv) at the time of any disbursement from the Restoration Fund, an Event of Default or Potential Default shall not have occurred, no mechanics' or materialmen's liens shall have been filed and remain undischarged and an endorsement satisfactory to the Mortgagee to its title insurance policy shall have been delivered to the Mortgagee;
 - (v) disbursements from the Restoration Fund shall be made from time to time, but not more frequently than once each calendar month, for completed work under the aforesaid contracts (subject to retainage as provided in (vii) below) and for other costs associated therewith and approved by the Mortgagee upon receipt of evidence satisfactory to the Mortgagee of the stage of completion and of performance of the work in a good and workmanlike manner in accordance with the contracts, plans and specifications as reasonably approved by the Mortgagee in accordance with this Section 6.3;
 - (vi) the Mortgagor will pay the cost of the Mortgagee's inspecting architect or engineer and the cost of any reasonable out-of-pocket attorney's fees and disbursements incurred by the Mortgagee in connection with such restoration;
 - (vii) the Mortgagee shall have the option to retain up to ten percent (10%) of the cost of all work until the restoration is fully completed, as reasonably determined by the Mortgagee, and all occupancy permits therefor have been issued;
 - (viii) the Mortgagee may impose such other reasonable conditions, including a restoration schedule, as are customarily imposed by construction lenders to assure complete and lien-free restoration; and
 - (ix) any sum remaining in the Restoration Fund upon completion of restoration shall be paid to the Mortgagor provided no Event of Default shall have

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occurred and be continuing under the Loan Agreement or other Loan Documents.

(b) If restoration of the Subject Property does not commence pursuant to the requirements of this Section 6.3 within thirty (30) days of receipt by the Mortgagee of such insurance or condemnation proceeds, which commencement may include preparation of plans and specifications for such restoration or similar actions with respect to the restoration, then the Mortgagee may (A) declare all Obligations immediately due and payable, and/or (B) perform or cause to be performed such repair, restoration or rebuilding and may take such other steps as the Mortgagee may elect to carry out such repair, restoration or rebuilding and may enter upon the Property for any of the foregoing purposes, and the Mortgagor hereby waives, for itself and all others holding under it, any claim against the Mortgagee and any receiver and their respective agents (other than a claim based upon the alleged gross negligence or intentional misconduct of the Mortgagee or any such receiver or agent) arising out of anything done by them or any of them pursuant to this paragraph and may apply such insurance or condemnation proceeds to pay the Obligations in such order and amounts as the Mortgagee in its sole discretion may choose.

(c) the Mortgagor waives any and all right to claim or recover against the Mortgagee, its officers, employees, agents and representatives for loss of or damage to the Mortgagor, the Property, the Mortgagor's property or the property of others under the Mortgagor's control from any cause insured against or required to be insured against by the provisions of this Mortgage.

6.4 Proceeds Available for Restoration. In accordance with the provisions of Sections 6.1 and 6.2 hereof and subject to the provision regarding the disbursement of the proceeds of any business interruption insurance as set forth in the last sentence of Section 6.1, the Mortgagee agrees to make casualty and condemnation proceeds available for restoration and reconstruction of the Property in accordance with and subject to the terms of Section 6.3 hereof, provided the following conditions are met to the Mortgagee's reasonable satisfaction at the appropriate time following such casualty or condemnation:

(a) no Event of Default or Potential Default shall have occurred and be continuing;

(b) the casualty or condemnation proceeds (other than proceeds of any business interruption insurance) are less than \$10,000,000;

(c) the Management Agreement remains in full force and effect;

(d) the Mortgagor provides evidence reasonably satisfactory to the Mortgagee that reconstruction of the Improvements can be completed no later than three months prior to the Expiration Date;

(e) the Mortgagee determines, in its reasonable discretion after consulting with the Mortgagee's inspecting architect, that casualty or condemnation proceeds are sufficient to pay in full the cost of reconstruction. In the event that the Mortgagee determines that such proceeds are not sufficient, the Mortgagee shall not be required to make any proceeds

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available for reconstruction unless the Mortgagor complies with the provisions of Section 6.3(a)(i) hereof; and

(f) the Mortgagee determines that upon completion of reconstruction, the value of the Property will not be materially less than the value thereof immediately prior to the relevant casualty or condemnation.

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RECORDER OF DEEDS

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