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Illinois Anti-Predatory Lending Database Program

Certificate of Exemption



Report Mortgage Fraud
844-768-1713



1836541068

Doc# 1836541068 Fee \$100.00

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

EDWARD M. MOODY

COOK COUNTY RECORDER OF DEEDS

DATE: 12/31/2018 12:09 PM PG: 1 OF 32

The property identified as: **PIN:** 03-02-200-108-0000

Address:

Street: 601 N. Milwaukee Avenue

Street line 2:

City: Wheeling

State: IL

ZIP Code: 60090

Lender: MANUFACTURERS AND TRADERS TRUST COMPANY, AS ADMINISTRATIVE AGENT AND COLLATERAL AGENT FOR THE LENDERS, AS MORTGAGEE

Borrower: AVR WHEELING HOTEL I LLC, AVR WHEELING HOTEL II LLC, AVR WHEELING HOTEL III LLC, AND AVR WHEELING HOTEL TENANT LLC, COLLECTIVELY AND JOINTLY AND SEVERALLY, AS MORTGAGOR

Loan / Mortgage Amount: \$265,950,000.00

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

When Recorded Return To: Deborah Cross
First American Title Insurance Company
National Commercial Services
30 N. LaSalle Street, Suite 2700
Chicago, IL 60602
File No: NCS 912970-07

4 of 8

Certificate number: 3A201ABC-D712-4401-9B00-9E215EF9859A

Execution date: 12/20/2018

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PREPARED BY, RECORDING
REQUESTED
BY AND WHEN RECORDED
RETURN TO:

Riemer & Braunstein LLP
Three Center Plaza
Boston, Massachusetts 02108
Attention: Richard I. Lefkowitz,
Esq.

Property Address: 601 N Milwaukee
Avenue, Wheeling, Illinois 60090

PIN(s): 03-02-200-108-0000, 03-
02-200-110-0000, 03-02-200-106-
0000, and 03-02-200-109-0000

(Space Above For Recorder's Use)

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING
(With Future Advances and Future Obligations Governed by
765 ILCS 5/39 and 735 ILCS 5/15-1302)

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made by

AVR WHEELING HOTEL I LLC, AVR WHEELING HOTEL II LLC, AVR WHEELING
HOTEL III LLC, and AVR WHEELING HOTEL TENANT LLC, collectively and jointly and
severally,
as Mortgagor

for the benefit of

MANUFACTURERS AND TRADERS TRUST COMPANY, as administrative agent and
collateral agent for the Lenders,
as Mortgagee

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THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") made as of December 20, 2018 by AVR WHEELING HOTEL I LLC ("Wheeling Hotel I Borrower"), AVR WHEELING HOTEL II LLC ("Wheeling Hotel II Borrower"), AVR WHEELING HOTEL III LLC ("Wheeling Hotel III Borrower"), and AVR WHEELING HOTEL TENANT LLC ("Wheeling Hotel OT Borrower"), and together with Wheeling Hotel I Borrower, Wheeling Hotel II Borrower, and Wheeling Hotel III Borrower, collectively, "Mortgagor"), each a Delaware limited liability company having an address of c/o AVR Realty Company, LLC, 1 Executive Boulevard, Yonkers, NY 10701, to MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation, having an address of c/o M&T Bank, 350 Park Avenue, New York, New York 10022, as administrative agent and collateral agent (in such capacity, together with its successors and assigns, "Administrative Agent" or "Mortgagee") for the Lenders (as defined in the Loan Agreement (as hereinafter defined)).

WITNESSETH:

WHEREAS:

A. Lenders are this day making a loan to Mortgagor and certain other co-borrowers under the Notes (as defined below) (such other co-borrowers under the Notes, individually and collectively, jointly and severally, the "Co-Borrowers") in the principal amount of TWO HUNDRED SIXTY-FIVE MILLION NINE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$265,950,000.00) (the "Loan"), which Loan shall be governed by that certain Loan Agreement dated of even date herewith made by and among Mortgagor, Co-Borrowers, Administrative Agent and Lenders (as the same may be amended, modified, extended, supplemented, restated or replaced from time to time, the "Loan Agreement");

B. The Loan is evidenced by one or more promissory notes in the aggregate principal amount of \$265,950,000.00 made payable by the Mortgagor and the Co-Borrowers to the Lenders (collectively, as the same may be amended, restated, replaced, supplemented, severed, split, consolidated or otherwise modified from time to time, the "Notes"); and

C. This Mortgage secures (1) the payment of the indebtedness evidenced by the Notes, with interest at the rates set forth in the Loan Agreement, together with all additional advances or fundings made by Mortgagee, and any other amounts required to be paid by Mortgagor and/or the Co-Borrowers under any of the Loan Documents (as defined in the Loan Agreement), and (2) the full performance by Mortgagor and the Co-Borrowers of all of the terms, covenants and obligations set forth in any of the Loan Documents.

CERTAIN DEFINITIONS

Unless the context otherwise specifies or requires, the following terms shall have the meanings herein specified, such definitions to be applicable equally to the singular and the plural forms of such terms.

"Chattels" means all fixtures, fittings, appliances, apparatus, equipment, machinery and articles of personal property and additions thereto and replacements thereof, other than those owned by lessees, contractors or licensees, now or at any time hereafter affixed to, attached to, placed upon, or used in any way in connection with the complete and comfortable present or future use, enjoyment, occupancy or operation of the Property or in any hotel, restaurant, bar, conference or retail facilities thereon and all building equipment, materials (including, without limitation, consumables and inventory), chattels, furniture, furnishings, appliances (including, without limitation, Mortgagor's rights as lessee under leases

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of appliances, furniture, furnishings and equipment) and supplies of any kind or nature whatsoever owned by Mortgagor, or in which Mortgagor has or shall have an interest, now or hereafter located upon the Property and whether stored at the Property or off-site (collectively, the "Equipment"), and all proceeds and products of any of the above.

"Debt" and all other capitalized terms used in this Mortgage which are not defined above or otherwise defined herein shall have the meaning set forth in the Loan Agreement.

"Improvements" means all structures or buildings, and replacements thereof, to be erected or now or hereafter located upon the Premises, including all Equipment, apparatus, machinery and fixtures of every kind and nature whatsoever forming part of said structures or buildings.

"Premises" means that certain plot, piece or parcel of land situate, lying and being in Cook County, Illinois, described in Exhibit A annexed hereto and made a part hereof, together with the Improvements and all of the easements, rights, property, privileges and appurtenances (including, without limitation, any air or development rights) thereunto belonging or in anywise appertaining, and all of the estate, right, title, interest, claim or demand whatsoever of Mortgagor therein and in the rights-of-way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all property, estates, rights, titles, interests, privileges, tenements, hereditaments and appurtenances of any nature whatsoever, in any way belonging, relating or pertaining thereto, either in law or in equity, in possession or expectancy, now or hereafter acquired.

NOW, THEREFORE, Mortgagor, in consideration of the premises and in order to secure the payment of the Debt and any sums due under any Interest Rate Protection Product, which shall be deemed additional interest secured hereby, and the performance and observance of all of the provisions of this Mortgage, the Loan Agreement, the Notes and all of the other Loan Documents, hereby gives, grants, bargains, sells, releases, conveys, assigns, transfers, warrants, hypothecates, pledges, sets over and confirms unto Mortgagee, its successors and assigns, with power of sale and right of entry and possession, all of Mortgagor's estate, right, title and interest in, to and under any and all of the following described property whether now owned or held or hereafter acquired (collectively, the "Property"):

- (i) the Premises;
- (ii) the Improvements;
- (iii) the Chattels;
- (iv) all licenses, permits, property, and rights of Mortgagor relating to the sale and use of liquor, beer, and wine in the Property (the "Liquor Rights"). Mortgagor consents to any application by Mortgagee (or its assignee or a receiver appointed on Mortgagee's behalf) for any permit(s) or license(s) to allow, after the occurrence and during the continuance of an Event of Default, any: (a) exercise of the Liquor Rights; and (b) sale of any collateral that requires any such permit or license. For purposes of the previous sentence, Mortgagor irrevocably authorizes and directs any licensing authority to rely on Mortgagee's certificate as to the existence and continuance of an Event of Default, and to disregard any contrary assertion or direction by Mortgagor;
- (v) all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards, and all rights of Mortgagor to refunds of real estate taxes and assessments and the reasonable attorneys' fees, out-of-pocket costs and disbursements

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incurred by Administrative Agent or Lenders in connection with the collection of such award or payment;

- (vi) all Leases now or hereafter entered into and all right, title and interest of Mortgagor thereunder, including, without limitation, cash or securities deposited thereunder to secure performance by the lessees of their obligations thereunder, whether such cash or securities are to be held until the expiration of the terms of such leases or applied to one or more of the installments of rent coming due immediately prior to the expiration of such terms, including, further, the right upon the happening and during the continuance of an Event of Default, to collect, receive, retain, use and enjoy the Rents thereunder;
- (vii) that certain Operating Lease dated as of the date hereof by and between Wheeling Hotel I Borrower, Wheeling Hotel II Borrower, and Wheeling Hotel III Borrower, collectively, as lessor, and Wheeling Hotel OT Borrower, as lessee, including without limitation, Wheeling Hotel OT Borrower's leasehold interest under the Operating Lease (the "Leasehold Estate");
- (viii) Rents;
- (ix) all proceeds of (or return of any unearned premiums on) any insurance policies covering all or any part of the Premises, 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 Premises;
- (x) all monies, funds, bank accounts, accounts receivable, contract rights, other rights and any other intangible assets derived from or related to the rental, operation or ownership of the Premises or any part thereof, and all the agreements, instruments or documents evidencing or relating to any of the same, whether or not identified to or known by Administrative Agent or Lenders;
- (xi) all trade names, trademarks, logos, copyrights, good will and books and records relating to or used in connection with the operation of the Property or any part thereof;
- (xii) all accounts, accounts receivables and revenues arising from the operation of the Property, including, without limitation, (x) any right to payment now existing or hereafter arising for rental of hotel rooms, hotel suites or other space or for goods sold or leased or for services rendered, whether or not yet earned by performance, arising from the operation of the Property, (y) all rights to payment from any consumer credit charge card organization or entity, including, without limitation, payments arising from the use of the American Express Card, the Visa Card, the Carte Blanche Card, the Mastercard, the Discover Card, Diner's Club or any other credit card, including those now existing or hereafter created, substitutions therefor, proceeds thereof (whether cash or non-cash, movable or immovable, tangible or intangible) received upon the sale, exchange, transfer, collection or other disposition or substitution thereof and (z) all operating accounts, reserve accounts, checking accounts, time deposit accounts and management accounts associated with the ownership or operation of the Property or the payment for rental of hotel rooms or suites, banquet rooms, conference rooms or other space or for goods sold or leased or services rendered with respect to any of the foregoing;
- (xiii) all contracts from time to time executed by Mortgagor or any manager or agent on Mortgagor's behalf relating to the ownership, management, leasing, sale, marketing,

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construction, maintenance, repair, operation, occupancy or financing of the Property or any part thereof and all agreements relating to the purchase or lease of any portion of same; all consents, licenses, building permits, certificates of occupancy and other governmental approvals relating to construction, completion, occupancy, use or operation of the Property or any part thereof; and all drawings, plans, specifications and similar or related items relating to the Property;

- (xiv) all so-called "air rights," (inclusionary or otherwise), bulk development rights, floor area, floor area ratio, zoning rooms and other rights and privileges now or hereafter appurtenant to the Premises and Improvements or any part thereof, as defined in, under or with respect to the zoning and building codes or ordinances of all applicable jurisdictions and the regulations and interpretations thereunder or thereof, whether or not transferable, and any or all of the same that may now or hereafter be acquired for use with the Premises or Improvements; and
- (xv) all proceeds and replacements of and substitutions for all or any of the foregoing.

TO HAVE AND TO HOLD the Property, unto Mortgagee, its successors and assigns, IN FEE SIMPLE (and in leasehold, with respect to the Leasehold Estate) forever subject to the terms, covenants and conditions of this Mortgage.

As to any of the Property aforesaid which does not form a part and parcel of the real estate, this Mortgage is also intended to encumber and create a security interest in, and Mortgagor hereby grants to Mortgagee, its successors and assigns, to secure the Debt or any other obligations stated to be secured hereby that may at any time exist, all of Mortgagor's right, title and interest, in, to and under the following property, whether now owned or existing or hereafter acquired or arising and wheresoever located: (i) the Property to the full extent that the Property may be subject to the Uniform Commercial Code as in effect in the State of Illinois (the "UCC"), including, without limitation, the Chattels, the Leases and the Rents, (ii) any accounts, chattel paper, inventory, equipment, instruments, investment property, documents, deposit accounts, commercial tort claims, letter-of-credit rights, goods, general intangibles and supporting obligations (each term in this clause (ii) having the meaning given to it under the Uniform Commercial Code as in effect in the State of Illinois), (iii) all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto and (iv) all proceeds and products of the foregoing (said property described in clauses (i) through (iv) is hereinafter referred to collectively as the "Collateral"). The foregoing sentence is intended to grant in favor of the Mortgagee a continuing lien and security interest in all of the Mortgagor's assets. In addition, to the extent the Property or Collateral is personal property or fixtures under the law of the State of Illinois, this Mortgage constitutes a security agreement under the UCC and any other applicable law and is filed as a fixture filing. The Mortgagor authorizes the Mortgagee and its counsel to file UCC financing statements in form and substance satisfactory to the Mortgagee, describing the collateral as "all assets of the debtor, whether now owned or existing or hereafter acquired or arising, 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. Upon the occurrence of an Event of Default, Mortgagee may, at its option, pursue any and all rights and remedies available to a secured party with respect to any portion of the Property and/or Collateral and/or Mortgagee may, at its option, proceed as to all or any part of the Property and/or Collateral in accordance with Mortgagee's rights and remedies with respect to the lien created by this Mortgage. This financing statement shall remain in effect as a fixture filing until this Mortgage is released or satisfied of record.

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ARTICLE I.

REPRESENTATIONS, WARRANTIES AND COVENANTS OF MORTGAGOR

Mortgagor represents, warrants and covenants as follows:

SECTION 1.01. Title; No Encumbrances. Mortgagor warrants title to the Property subject to no lien, charge or encumbrance, except for the applicable Permitted Encumbrances; that Mortgagor owns the Chattels free and clear of liens and claims; and that this Mortgage is and shall remain a valid first lien on the Property, subject only to the exceptions referred to above. Mortgagor has full power and lawful authority to sell, convey and encumber the Property in the manner and form herein done or intended hereafter to be done. Mortgagor shall preserve such title, and shall forever warrant and defend the same to Mortgagee and Mortgagor shall forever warrant and defend the validity and priority of the lien hereof against the claims of all persons and parties whomsoever.

SECTION 1.02. Related Loan Documents; Further Assurances. Mortgagor shall, at Mortgagor's sole cost and expense, and without expense to Administrative Agent or Lenders, do, execute, acknowledge and deliver all and every such further agreements, documents, acts, deeds, conveyances, mortgages, deeds of trust, estoppel certificates, financing statements, assignments, notices of assignment, subordinations, transfers and assurances as Mortgagee shall from time to time reasonably require, for the better clarifying, assuring, conveying, assigning, transferring and confirming unto Mortgagee, its successors and assigns, the property and rights hereby conveyed or assigned 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, provisions, covenants and conditions of this Mortgage, or for filing, registering or recording this Mortgage or any of the other Loan Documents and, on demand, shall execute and deliver, and hereby authorizes Mortgagee to execute and file in Mortgagor's name, to the extent Mortgagee may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien of this Mortgage upon the Chattels.

SECTION 1.03. Filing and Recording of Documents.

(a) Recording. 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 evidencing the lien of this Mortgage upon the Chattels 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 publish notice of and fully to protect the lien of this Mortgage upon, and the interest of Mortgagee in, the Property, provided that no such instrument of further assurance shall materially increase the obligations of Mortgagor under this Mortgage.

(b) Recording Fees. Mortgagor shall pay all filing, registration or recording fees, and all expenses incident to the execution and acknowledgment of this Mortgage, any mortgage or deeds of trust supplemental hereto, any security instrument with respect to the Chattels, and any instrument of further assurance, and all federal, state, county, and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Loan Agreement, the Notes, this Mortgage, any mortgage or deeds of trust supplemental hereto, any security instrument with respect to the Chattels or any instrument of further assurance.

SECTION 1.04. Manner of Payment. Mortgagor shall punctually pay the principal and interest and all other sums to become due in respect of the Notes at the time and place and in the manner specified in the Notes, according to the true intent and meaning thereof, all in any coin or currency of the United

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States of America which at the time of such payment shall be legal tender for the payment of public and private debts.

SECTION 1.05. Future Acquisitions. All right, title and interest of Mortgagor in and to all extensions, improvements, betterments, renewals, substitutions and replacements of, and all additions and appurtenances to, the Property, hereafter acquired by or released to Mortgagor, or constructed, assembled or placed by Mortgagor on the Property, and all conversions of the security constituted thereby, immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, deed of trust, conveyance, assignment or other act by Mortgagor, shall become subject to the lien of this Mortgage as fully and completely, and with the same effect, as though now owned by Mortgagor and specifically described in the granting clause hereof but at any and all times Mortgagor shall execute and deliver to Mortgagee any and all such further assurances, mortgages, deeds of trust, conveyances or assignments thereof as Mortgagee may reasonably require for the purpose of expressly and specifically subjecting the same to the lien of this Mortgage.

SECTION 1.06. Mortgagee's Right To Cure Defaults. If Mortgagor shall fail to perform or comply with any of the representations, warranties and covenants contained in Sections 1.01, 1.03 or elsewhere herein, and in each of said instances after the expiration of applicable notice and cure periods set forth herein or any other Loan Documents, Mortgagee may make advances to perform the same on its behalf, and all sums so advanced, with interest at the Involuntary Rate, shall immediately be due from Mortgagor to Mortgagee, and shall be added to the Debt and shall be secured by this Mortgage. The provisions of this Section 1.06 shall not prevent any default in the observance of any of the representations, warranties and covenants contained in said Sections 1.01, 1.03 or elsewhere herein from constituting an Event of Default in accordance with the Loan Documents.

SECTION 1.07. Legal Proceedings. Upon the occurrence and during the continuance of an Event of Default, Mortgagee shall have the right, but not the duty or obligation, to intervene or otherwise participate in, prosecute or defend at any legal or equitable proceedings (including, without limitation, any eminent domain proceedings) which, in Mortgagee's reasonable discretion, materially and adversely affect the Property, the Leases or any of the rights created hereunder, the reasonable cost of which shall be reimbursed by Mortgagor to Mortgagee and shall be secured by this Mortgage.

SECTION 1.08. Assignment of Leases. Mortgagor hereby absolutely and unconditionally assigns and transfers to Mortgagee the Leases and the Rents. Mortgagor shall not otherwise assign, transfer or encumber in any manner the Leases or the Rents or any portion thereof. Mortgagor shall have a license to collect and use the Rents as the same become due and payable so long as no Event of Default has occurred and be continuing; provided, however, that upon Mortgagee's acceptance of Mortgagor's cure of any Event of Default, the license granted to Mortgagor pursuant to this Section 1.08 shall be reinstated; provided further that Mortgagee may not collect any Rents more than thirty (30) days in advance of the date the same become due. The assignment in this Section 1.08 shall constitute an absolute and present assignment of the Leases and the Rents, and not an assignment for security, and the existence or exercise of the Mortgagor's conditional license to collect Rents shall not operate to subordinate this assignment to any subsequent assignment. The exercise by Mortgagee of any of its rights or remedies under this Section 1.08 shall not be deemed or construed to make Mortgagee a mortgagee in possession, in the absence of Mortgagee taking actual physical possession of the Premises.

SECTION 1.09. Intentionally Omitted.

SECTION 1.10. Hazardous Materials Indemnity. Mortgagor represents and warrants that Mortgagor shall perform, and comply with, all of the terms, provisions, covenants and conditions of, and

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honor all of the obligations, representations and warranties set forth in, the Environmental Indemnity Agreement (“EIA”) pertaining to Hazardous Materials (as such term is defined in the EIA) given by Mortgagor, the Co-Borrowers and Guarantor to Administrative Agent of even date herewith, which representations and warranties are specifically incorporated herein by reference as though set out at length herein. A default beyond applicable notice and cure periods or material misrepresentation under the EIA shall constitute an Event of Default under this Mortgage. Administrative Agent and Administrative Agent’s employees and designated agents are hereby granted permission and a license, exercisable at any time (provided Administrative Agent has a reasonable belief that an environmental condition exists at the Premises), to enter the Premises for the purpose of undertaking and conducting inspections, sampling and testing to determine whether there have been any violations of this Section 1.10.

ARTICLE II.

EVENTS OF DEFAULT AND REMEDIES

SECTION 2.01. Events of Default. If one or more Events of Default shall have occurred under the Loan Agreement after the expiration of any applicable notice and cure periods, such Event of Default shall be an “Event of Default” hereunder, and then, and in every such case:

(a) Mortgagor may declare the entire Debt to be due and payable immediately, and upon any such declaration, (i) the entire Debt, and (ii) any and all other charges required to be paid by Mortgagor pursuant to any provision of this Mortgage, the Loan Agreement, the Notes or any other Loan Document shall become and be immediately due and payable, anything in the Loan Agreement, the Notes, this Mortgage or any other Loan Document to the contrary notwithstanding; and

(b) Mortgagee personally, or by Mortgagee’s agents or attorneys, may enter into and upon all or any part of the Premises, and each and every part thereof, and is hereby given a right and license and appointed Mortgagor’s attorney-in-fact to do so, and may exclude Mortgagor, Mortgagor’s agents and servants, wholly therefrom; and having and holding the same, may use, operate, manage and control the Premises and conduct the business thereof either personally or by Mortgagee’s superintendents, managers, agents, servants, attorneys or receivers, and upon every such entry, Mortgagee, at the expense of the Property, from time to time, either by purchase, repairs or construction, may maintain and restore the Property, whereof Mortgagee shall become possessed as aforesaid; and likewise, from time to time, at the expense of the Property, Mortgagee may make all necessary or proper repairs, renewals and replacements and such alterations, additions, betterments and improvements thereto and thereon as Mortgagee may deem advisable; and in every such case Mortgagee shall have the right to manage and operate the Property and to carry on the business thereof and exercise all rights and powers of Mortgagor with respect thereto either in the name of Mortgagor or otherwise as Mortgagee shall deem best; and Mortgagee shall be entitled to collect and receive all Rents of the Property and every part thereof; and in furtherance of such right, Mortgagee may collect the rents payable under all Leases directly from the lessees thereunder upon notice to each such lessee that an Event of Default exists under this Mortgage accompanied by a demand on such lessee for the payment to Mortgagee of all rents due and to become due under such lessee’s Lease, and Mortgagor, for the benefit of Mortgagee and each such lessee, hereby covenants and agrees that the lessee shall be under no duty to question the accuracy of Mortgagee’s statement of default and shall unequivocally be authorized to pay said rents to Mortgagee without regard to the truth of Mortgagee’s statement of default and notwithstanding notices from Mortgagor disputing the existence of an Event of Default such that the payment of rent by the lessee to Mortgagee pursuant to such a demand shall constitute performance in full of the lessee’s obligation under the Lease for the payment of rents by the lessee to Mortgagor; and after deducting the expenses of conducting the business thereof and of all maintenance, repairs, renewals, replacements, alterations, additions, betterments, and improvements and amounts necessary to pay for taxes, assessments, insurance

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and prior or other proper charges upon the Property or any part thereof, as well as just and reasonable compensation for the services of Mortgagee and for all attorneys, counsel, agents, clerks, servants and other employees by Mortgagee engaged and employed, Mortgagee shall apply the moneys arising as aforesaid, to the payment of (i) first, any and all charges required to be paid by (a) Mortgagor pursuant to any provision of this Mortgage, the Loan Agreement, the Notes or any other document securing the Notes, and (b) any Co-Borrower under any other Loan Document, (ii) second, any prepayment premium due under the Loan Agreement, if any, (iii) third, all accrued and unpaid interest due under the Notes, and (iv) fourth, the outstanding principal of the Notes, when and as the same shall become payable; and

(c) Mortgagee may, either with or without entry or taking possession of the Property as provided in this Mortgage or otherwise, personally or by Mortgagee's agents or attorneys, and without prejudice to the right to bring an action for foreclosure of this Mortgage:

(1) sell the Property or any part thereof (in any such order as Mortgagee shall, in Mortgagee's sole and absolute discretion, elect) pursuant to any procedures provided by applicable law, and all estate, right, title, interest, claim and demand therein, and right of redemption thereof, at one or more sales as an entirety or in parcels or parts (in any such order as Mortgagee shall, in Mortgagee's sole and absolute discretion, elect), and at such time and place upon such terms and after such notice thereof as may be required or permitted by applicable law; or

(2) take such steps to protect and enforce Mortgagee's rights whether by action, suit or proceeding in equity or at law for the specific performance of any term, provision, covenant or condition in the Loan Agreement, the Notes or in this Mortgage, or in aid of the execution of any power granted in this Mortgage, or for any foreclosure under this Mortgage, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Mortgagee may elect, in Mortgagee's sole and absolute discretion.

(d) Mortgagee may, either with or without entering or taking possession of the Property as provided in this Mortgage or otherwise, personally or by Mortgagee's agents or attorneys, institute proceedings for the complete or partial foreclosure of this Mortgage.

SECTION 2.02. Power of Sale. Notwithstanding anything to the contrary contained herein, if one or more Events of Default shall have occurred under the Loan Agreement, then Mortgagee may institute a non-judicial foreclosure proceeding in compliance with applicable law in effect on the date foreclosure is commenced for Mortgagee to sell and dispose of the Property, either as a whole or in separate parcels as Mortgagee may determine, at public sale or sales at the usual place for conducting sales at the courthouse in the county where the Property or any part thereof may be located, to the highest bidder for cash, in order to pay the Debt, after first advertising the time, terms, and place of such sale by publishing a notice thereof once a week for four (4) consecutive weeks immediately preceding such sale (but without regard to the number of days) in a newspaper in which sheriffs' advertisements are published in said county, all other notice being hereby waived by Mortgagor. Mortgagee may postpone the sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time may further postpone the sale by public announcement in accordance with applicable law. If the Property is sold as separate parcels, Mortgagee may direct the order in which the parcels are sold, and if Mortgagee so elects, Mortgagee may sell the personal property covered by this Mortgage at one or more separate sales in any manner permitted by the applicable Uniform Commercial Code, and one or more exercises of the powers herein granted shall not extinguish nor exhaust such powers, until the entire Property is sold or the Debt is paid in full. Mortgagee may thereupon execute and deliver to the purchaser at said sale a sufficient conveyance of the Property in fee simple (or in leasehold with respect to the Leasehold Estate) (in each case without covenant or warranty, express or implied), which conveyance may contain recitals as to the happening of the Event of Default upon which the execution of the power of sale herein granted depends,

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and said recitals shall be presumptive evidence that all preliminary acts prerequisite to said sale and deed were in all things duly complied with. Mortgagee, on behalf of the Lenders as provided in Article XII of the Loan Agreement, and its agents, representatives, successors, or assigns may bid and purchase at such sale and be entitled to a credit against the purchase price in the amount owed to any Lender under the Loan Documents, and Mortgagor hereby constitutes and appoints Mortgagee or its assigns, agent, or attorney-in-fact to make such recitals, sale, and conveyance and all of the acts of such attorney-in-fact are hereby ratified. Mortgagor agrees that such recitals shall be binding and conclusive upon Mortgagor and that the conveyance to be made by Mortgagee or its assigns (and in the event of a deed in lieu of foreclosure, then as to such conveyance), shall be effectual to bar all right, title and interest, equity of redemption, including all statutory redemption, homestead, dower, courtesy and all other exemptions of Mortgagor or its successors in interest in and to said Property. In the event of such a foreclosure sale, the proceeds of such sale shall be applied in whatever order Mortgagee, in its sole discretion (but subject to Article XII of the Loan Agreement), may decide to the outstanding principal amount of the Debt and interest then due thereon, and all amounts advanced by Lenders for taxes, assessments, fire insurance premiums and other charges, with interest at the Involuntary Rate thereon from date of payment, together with all reasonable costs and charges for advertising, commissions for selling the Property, and reasonable attorneys' fees, and Mortgagee will pay over any surplus to Mortgagor (and in the event of any deficiency Mortgagor shall immediately on demand from Mortgagee pay over to Mortgagee, or its nominee, such deficiency). Mortgagor agrees that possession of the Property during the existence of the Debt by Mortgagor, or any person claiming under Mortgagor, shall be that of tenant under Mortgagee, or its assigns, and in case of a sale as herein provided, Mortgagor or any person in possession under Mortgagor shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed in accordance with the provisions of law applicable to tenants holding over. The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, and are in addition to any and all other remedies which Mortgagee may have at law or in equity. Without limiting any of the foregoing, to the fullest extent permitted under applicable law, (i) Mortgagor expressly agrees that Mortgagor shall be and remain liable for those portions of any deficiency remaining after foreclosure of this Mortgage, whether or not the liability of any other obligor for such portions of such deficiency is barred or discharged pursuant to any statute or judicial decision and (ii) Mortgagor hereby expressly waives any defenses to collection of such deficiency from Mortgagor arising under any applicable law.

SECTION 2.03. Mortgagor's Liability.

(a) Accelerated Payment. In case an Event of Default shall have occurred and be continuing, then, upon written demand of Mortgagee, Mortgagor shall pay to Mortgagee the whole amount which then shall have become due and payable upon the Notes, for principal or interest or both, as the case may be, and shall also pay to Mortgagee interest at the Involuntary Rate on the then unpaid Debt, and the sums required to be paid by Mortgagor pursuant to any term or provision of this Mortgage, and, in addition thereto, such further amount as shall be sufficient to cover the out-of-pocket costs and reasonable out-of-pocket expenses of collection, including commercially reasonable compensation to Mortgagee, Mortgagee's agents and counsel and any other reasonable out-of-pocket expenses incurred by Mortgagee hereunder. In the event Mortgagor shall fail forthwith to pay such amounts upon such demand, Mortgagee shall be entitled and empowered to institute such action or proceedings at law or in equity as may be advised by Mortgagee's counsel for the collection of the sums so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against Mortgagor and collect, out of the property of Mortgagor wherever situated, as well as out of the Property, in any manner provided by law, moneys adjudged or decreed to be payable.

(b) Accelerated Judgment. Mortgagee shall be entitled to recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of the

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provisions of this Mortgage; and the right of Mortgagee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the provisions of this Mortgage, or the foreclosure of the lien hereof; and in the event of a sale of the Property, and after the application of the proceeds of sale, as in this Mortgage provided, to the payment of the Debt, Mortgagee shall be entitled to enforce payment of the Debt, and to receive all Debt then remaining due and unpaid, and shall be entitled to recover judgment for any portion of the Debt remaining unpaid, with interest at the Involuntary Rate. In case of proceedings against Mortgagor in insolvency or bankruptcy or any proceedings for Mortgagor's reorganization or involving the liquidation of Mortgagor's assets, then Mortgagee shall be entitled to prove the whole amount of the Debt (including, without limitation, any prepayment premium or exit fee) without deducting therefrom any proceeds obtained from the sale of the whole or any part of the Premises; provided, however, that in no case shall Mortgagee receive a greater amount than the Debt from the aggregate amount of the proceeds of the sale of the Property and the distribution from the estate of Mortgagor.

(c) Non-Limitation of Mortgagee's Rights. No recovery of any judgment by Mortgagee and no levy of an execution under any judgment upon the Property or upon any other property of Mortgagor shall affect in any manner or to any extent, the lien of this Mortgage upon the Property or any part thereof, or any liens, rights, powers or remedies of Mortgagee hereunder, but such liens, rights, powers and remedies of Mortgagee shall continue unimpaired as before.

(d) Application of Judgment Proceeds. Any monies collected by Mortgagee under this Section 2.03 shall be applied by Mortgagee in accordance with the provisions of Subsection 2.02 hereof.

SECTION 2.04. Receiver. During the existence of any Event of Default and immediately upon the commencement of any action, suit or other legal proceedings by Mortgagee pursuant to any provision of this Mortgage, or of any other nature in aid of the enforcement of the Loan Agreement, the Notes or this Mortgage, Mortgagor shall, if required by Mortgagee, consent to the appointment of a receiver or receivers of the Property and of all the Rents thereof. During the existence of any Event of Default, or upon, or at any time after, the commencement of any proceedings to foreclose this Mortgage or to enforce the specific performance hereof or in aid thereof or upon, or at any time after, the commencement of any other judicial proceeding to enforce any right of Mortgagee, Mortgagee shall be entitled, as a matter of right, if Mortgagee shall so elect, without the giving of notice to any other party and without regard to the adequacy or inadequacy of any security for the indebtedness secured by this Mortgage, forthwith either before or after declaring the unpaid Debt to be due and payable, to the appointment of such a receiver or receivers. Such appointment may be made either before or after any foreclosure sale without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver and without regard to the then value of the Premises and Mortgagee may be appointed as such receiver. Such receiver shall have power: (a) to collect Rents, and, in case of a foreclosure sale and a deficiency, during the full statutory period of redemption, whether there be redemption or not, as well as during any further times when Mortgagor, except for the intervention of such receiver, would be entitled to collect such Rents, (b) to extend or modify any then existing Leases and to make new Leases, which extensions, modifications and new Leases may provide for terms to expire, or for options to lessees to extend or renew terms to expire, beyond the maturity date of the indebtedness secured by this Mortgage and beyond the date of the issuance of a deed or deeds to a purchaser or purchasers at a foreclosure sale, it being understood and agreed that any such Leases, and the options or other such provisions to be contained therein, shall be binding upon Mortgagor and all persons whose interests in the Property are subject to the lien hereof and upon the purchaser or purchasers at any foreclosure sale, notwithstanding any redemption from sale, discharge of the indebtedness secured hereby, satisfaction of any foreclosure decree, or issuance of any certificate of sale or deed to any purchaser, and (c) all other powers which may be necessary or are usual in such cases for the protection, possession, control, management and operation of the Property during the

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whole of said period. The court from time to time may authorize the receiver to apply the net income in his hands in payment in whole or in part of: (a) the Debt, or by any decree foreclosing this Mortgage, or any tax, special assessment or other lien which may be or become superior to the lien hereof or of such decree, provided such application is made prior to any foreclosure sale, and (b) if this is a leasehold deed of trust, all rents due or which may become due under the underlying Lease.

SECTION 2.05. Mortgagee Control. Notwithstanding the appointment of any receiver, liquidator or trustee of Mortgagor, of any of Mortgagor's property, or of the Property or any part thereof, Mortgagee shall be entitled to retain possession and control of all property now or hereafter held under this Mortgage.

SECTION 2.06. Non-Waiver. No remedy conferred upon or reserved to Mortgagee in this Mortgage is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Mortgagee to exercise any right or power accruing upon any Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Event of Default or any acquiescence therein; and every power and remedy given by this Mortgage to Mortgagee may be exercised from time to time as often as may be deemed expedient by Mortgagee and as permitted by this Mortgage. Nothing contained in this Mortgage, the Loan Agreement or the Notes shall affect the obligation of Mortgagor to pay the principal of, and interest on, the Notes in the manner and at the time and place therein respectively expressed.

SECTION 2.07. Waiver of Right of Redemption. Mortgagor shall not at any time insist upon, or plead, or in any manner whatsoever claim or take any benefit or advantage of any stay or extension or moratorium law, any exemption from execution or sale of the Property or any part thereof, wherever enacted, now or at any time hereafter in force, which may affect the covenants and terms of performance of this Mortgage, nor claim, take or insist upon any benefit or advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property or any part thereof, prior to any sale or sales thereof which may be made pursuant to any provision herein, or pursuant to the decree, judgment or order of any court of competent jurisdiction; nor, after any such sale or sales, claim or exercise any right under any statute heretofore or hereafter enacted to redeem the property so sold or any part thereof, and Mortgagor hereby expressly waives all benefit or advantage of any such law or laws, and covenants not to hinder, delay or impede the execution of any power herein granted or delegated to Mortgagee, but to suffer and permit the execution of every power as though no such law or laws had been made or enacted. Mortgagor, for itself and all who may claim under Mortgagor, waives, to the extent that Mortgagor lawfully may, all right to have the Property marshaled upon any foreclosure hereof.

SECTION 2.08. Use and Occupancy Fee; Surrender of Premises. During the existence of any Event of Default and pending the exercise by Mortgagee of Mortgagee's right to exclude Mortgagor from all or any part of the Premises, Mortgagor agrees to pay the fair and reasonable rental value for the actual use and occupancy of the Premises or any portion thereof which are in Mortgagor's possession for such period and, upon default of any such payment, shall vacate and surrender possession of the Premises to Mortgagee or to a receiver, if any, and in default thereof may be evicted by any summary action or proceeding for the recovery or possession of premises for non-payment of rent, however designated.

SECTION 2.09. Payment of Mortgagee's Expenses. In any suit to foreclose the lien hereof (including, without limitation, any partial foreclosure) or to enforce any other remedy of Mortgagee under this Mortgage, the Loan Agreement or the Notes, there shall be allowed and included as additional indebtedness in the decree for sale or other judgment or decree all reasonable expenditures and reasonable expenses which may be paid or incurred by or on behalf of Mortgagee for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographer's charges, publication costs, and costs

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(which may be estimated as to items to be expended after entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies, Torrens certificates, and similar data and assurances with respect to title and value as Mortgagee may deem necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Premises. Notwithstanding anything contained in the Notes, this Mortgage or any of the other Loan Documents to the contrary, whenever Mortgagor is required to pay Lenders' attorney's fees under any of the Loan Documents, such requirement shall be limited to reasonable fees of Lenders' counsel which are actually incurred at the standard hourly rates of such counsel and expenses related thereto.

SECTION 2.10. Mortgagee Right to Cure. In the event of any default by Mortgagor in the performance of or compliance with any of the terms, provisions, covenants, conditions or obligations to be performed or complied with by Mortgagor under this Article II which is not cured within any applicable grace and cure period, Mortgagee or a lawfully appointed receiver, at their respective options, upon thirty (30) days' prior written notice to Mortgagor stating the nature of the default (or upon shorter notice, or with no notice at all, if necessary to meet an emergency situation or a governmental or municipal time limitation) may perform the same, and may enter upon the Premises for any of the foregoing purposes, and the cost thereof shall be paid by Mortgagor to Mortgagee upon demand and shall be added to the Debt and be secured by the lien of this Mortgage.

SECTION 2.11. Confirmation of Mortgagee's Right to Enforce Remedies as to Selected Portions of the Property. Without limitation to the generality of the other provisions of this Mortgage, Mortgagor agrees that, after the occurrence and during the continuance of an Event of Default, Mortgagee may, at any time and from time to time, exercise and enforce Mortgagee's rights and remedies as to such portion or portions of the Property as Mortgagee may select in Mortgagee's sole and absolute discretion, including, without limitation, by foreclosing on or exercising powers of sale or rights of setoff against a portion of the Property as selected by Mortgagee and subsequently foreclosing on or exercising such remedies with respect to another portion of the Property as selected by Mortgagee, in which event this Mortgage shall remain a valid and perfected first lien on all other portions of the Property not so foreclosed on or subjected to such remedies.

ARTICLE III.

MISCELLANEOUS

SECTION 3.01. Severability. In the event any one or more of the provisions contained in this Mortgage, the Loan Agreement or the Notes shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall, at the option of Mortgagee, not affect any other provision of this Mortgage, but this Mortgage shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.

SECTION 3.02. Notices. All notices hereunder and under any applicable law pertaining hereto shall be in writing and shall be deemed sufficiently given or served for all purposes when delivered as provided for in the Loan Agreement.

SECTION 3.03. Heirs, Successors and Assigns. All of the grants, covenants, terms, provisions and conditions of this Mortgage shall run with the land and shall apply to, bind and inure to the benefit of, the heirs, executors, administrators, successors and assigns of Mortgagor and the heirs, executors, administrators, successors and assigns of Mortgagee.

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SECTION 3.04. Counterparts. This Mortgage may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 3.05. Future Taxes. In the event of the passage after the date of this Mortgage of any law of the State of Illinois deducting from the value of real property for the purpose of taxation any lien or encumbrance thereon or changing in any way the laws for the taxation of mortgages, deeds of trust, or debts secured by mortgages or deeds of trust for state or local purposes or the manner of the collection of any such taxes, and imposing a tax, either directly or indirectly, on this Mortgage, the Loan Agreement, the Notes or the Debt, Mortgagor shall, if permitted by law, pay any tax imposed as a result of any such law within the statutory period or within thirty (30) days after demand by Mortgagee, whichever is less; provided, however, that if, in the opinion of the attorneys for Mortgagee, Mortgagor is not permitted by law to pay such taxes, Mortgagee shall have the right, at Mortgagee's option, to declare the Debt due and payable, without prepayment premium or exit fee, on a date specified in a prior notice to Mortgagor of not less than one hundred twenty (120) days.

SECTION 3.06. Intentionally Deleted.

SECTION 3.07. Stamp Tax. If at any time the United States of America, any state thereof or any governmental subdivision of any such state, shall require revenue or other stamps to be affixed to the Loan Agreement, the Notes or this Mortgage, Mortgagor shall pay for the same, with interest and penalties thereon, if any.

SECTION 3.08. Cover Sheet. The information set forth on the cover of this Mortgage is hereby incorporated herein.

SECTION 3.09. Governing Law. THIS MORTGAGE WAS NEGOTIATED IN THE STATE OF NEW YORK, AND MADE BY MORTGAGOR AND ACCEPTED BY MORTGAGEE IN THE STATE OF NEW YORK, AND THE PROCEEDS OF THE NOTES SECURED HEREBY WERE DISBURSED FROM THE STATE OF NEW YORK, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS MORTGAGE AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIENS AND SECURITY INTERESTS CREATED PURSUANT HERETO AND PURSUANT TO THE LOAN DOCUMENTS WITH RESPECT TO THE PROPERTY AND THE DETERMINATION OF DEFICIENCY JUDGMENTS SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, MORTGAGOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS MORTGAGE AND THE NOTES, AND THIS MORTGAGE AND THE NOTES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE

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LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW.

SECTION 3.10. Non-Residential Dwelling. This Mortgage does not cover real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each having their own separate cooking facilities.

SECTION 3.11. Joint and Several Liability. If Mortgagor consists of more than one person or party, the obligations and liabilities of each such person or party hereunder shall be joint and several.

SECTION 3.12. Variable Rate. The Notes contain provisions for a variable rate of interest, and reference to such provisions is made hereby.

SECTION 3.13. Intentionally Omitted.

SECTION 3.14. Interest Rate Protection Product. Mortgagor acknowledges and agrees that any amounts now or hereafter due and owing from Mortgagor or any Co-Borrower to Mortgagee arising from or in connection with any Interest Rate Protection Product, now existing or hereafter entered into between Mortgagor or any Co-Borrower and Mortgagee, and any costs incurred by Mortgagee in connection therewith, including, without limitation, any interest, expenses, fees, penalties or other charges associated with any obligations undertaken by Mortgagee to hedge or offset Mortgagee's obligations pursuant to such Interest Rate Protection Product, or the termination of any such obligations, shall be (i) deemed additional interest and/or a related expense (to be determined in the sole discretion of Mortgagee) due in connection with the principal amount of the Debt secured by this Mortgage, (ii) included (in the manner described above) as part of the Debt secured by this Mortgage, and secured by this Mortgage to the full extent thereof, and (iii) included in any judgment in any proceeding instituted by Mortgagee or its agents against Mortgagor for foreclosure of this Mortgage or otherwise.

SECTION 3.15. Administrative Agent. To the extent that any action is to be taken, any information is to be delivered to or by Lenders, any determination is to be made, or any consent is to be given or withheld by Lenders, any such action, delivery, determination or consent shall be taken, made or given or withheld, as the case may be, by Administrative Agent or any successor agent thereto.

SECTION 3.16. TRIAL BY JURY. EACH OF MORTGAGOR, AND BY ITS ACCEPTANCE HEREOF, MORTGAGEE, 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 THE OTHER LOAN DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY MORTGAGOR, AND BY ITS ACCEPTANCE HEREOF, MORTGAGEE, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. EACH OF MORTGAGOR AND MORTGAGEE IS HEREBY AUTHORIZED TO FILE A COPY OF THIS PARAGRAPH IN ANY PROCEEDING AS CONCLUSIVE EVIDENCE OF THIS WAIVER BY THE OTHER.

SECTION 3.17. FORUM SELECTION. ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST MORTGAGOR OR MORTGAGEE ARISING OUT OF OR RELATING TO THIS MORTGAGE MAY 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 EACH OF MORTGAGOR AND MORTGAGEE WAIVES

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ANY OBJECTIONS WHICH IT MAY NOW OR HEREAFTER HAVE BASED ON VENUE AND/OR FORUM NON CONVENIENS OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING OR TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING, AND EACH OF MORTGAGOR AND MORTGAGEE HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF ANY SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING.

SECTION 3.18. WAIVER. BY EXECUTION OF THIS MORTGAGE, MORTGAGOR EXPRESSLY: (A) ACKNOWLEDGES THE RIGHT TO ACCELERATE THE DEBT AND THE POWER OF ATTORNEY GIVEN HEREIN TO MORTGAGEE TO SELL THE PROPERTY BY NONJUDICIAL FORECLOSURE UPON AN EVENT OF DEFAULT BY MORTGAGOR WITHOUT ANY JUDICIAL HEARING AND WITHOUT ANY NOTICE OTHER THAN SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE GIVEN UNDER THE PROVISIONS OF THIS MORTGAGE; (B) WAIVES ANY AND ALL RIGHTS WHICH MORTGAGOR MAY HAVE UNDER THE CONSTITUTION OF THE UNITED STATES (INCLUDING THE FIFTH AND FOURTEENTH AMENDMENTS THEREOF), THE VARIOUS PROVISIONS OF THE CONSTITUTIONS OF THE SEVERAL STATES, OR BY REASON OF ANY OTHER APPLICABLE LAW, (1) TO NOTICE AND TO JUDICIAL HEARING PRIOR TO THE EXERCISE BY MORTGAGEE OF ANY RIGHT OR REMEDY HEREIN PROVIDED TO MORTGAGEE, EXCEPT SUCH NOTICE (IF ANY) AS IS SPECIFICALLY REQUIRED TO BE PROVIDED IN THIS MORTGAGE, AND (2) CONCERNING THE APPLICATION, RIGHTS OR BENEFITS OF ANY STATUTE OF LIMITATION OR ANY MORATORIUM, REINSTATEMENT, MARSHALLING, FORBEARANCE, APPRAISEMENT, VALUATION, STAY, EXTENSION, HOMESTEAD, EXEMPTION OR REDEMPTION LAWS; (C) ACKNOWLEDGES THAT MORTGAGOR HAS READ THIS MORTGAGE AND ANY AND ALL QUESTIONS REGARDING THE LEGAL EFFECT OF THIS MORTGAGE AND ITS PROVISIONS HAVE BEEN EXPLAINED FULLY TO MORTGAGOR AND MORTGAGOR HAS CONSULTED WITH COUNSEL OF MORTGAGOR'S CHOICE PRIOR TO EXECUTING THIS MORTGAGE; AND (D) ACKNOWLEDGES THAT ALL WAIVERS OF THE AFORESAID RIGHTS OF MORTGAGOR HAVE BEEN MADE KNOWINGLY, INTENTIONALLY AND WILLINGLY BY MORTGAGOR AS PART OF A BARGAINED-FOR LOAN TRANSACTION AND THAT THIS MORTGAGE IS VALID AND ENFORCEABLE BY MORTGAGEE AGAINST MORTGAGOR IN ACCORDANCE WITH ALL THE TERMS AND CONDITIONS HEREOF.

SECTION 3.19. Cross-Collateralization. Mortgagor acknowledges that the obligations secured by this Mortgage are additionally secured by other mortgages, deeds of trust, and similar security instruments made by each Co-Borrower in favor of Administrative Agent, for the benefit of the Lenders (such other mortgages, deeds of trust, and similar security instruments, collectively, the "**Other Mortgages**"), which encumber the real and personal property more particularly described in the Other Mortgages (such real and personal property, collectively, the "**Other Properties**"), all as more specifically set forth in the Loan Agreement and the Other Mortgages. Upon the occurrence and during the continuance of an Event of Default, Administrative Agent shall have the right to institute a proceeding or proceedings for the total or partial foreclosure of this Mortgage and any or all of the Other Mortgages whether by court action, power of sale or otherwise, under any Legal Requirements, and the lien and the security interest created by the Other Mortgages shall continue in full force and effect without loss of priority as a lien and security interest securing the payment of that portion of the Debt then due and payable but still outstanding. Mortgagor acknowledges and agrees that the Property and the Other Properties are located in one or more states and/or counties, and therefore Administrative Agent shall be permitted to enforce payment of the Debt and the performance of any term, covenant or condition of the Loan Agreement, the Notes, this Mortgage, the Loan Documents or the Other Mortgages and exercise any and all rights and remedies under the Loan Agreement, the Notes, this Mortgage, the other Loan Documents or the Other Mortgages, or as provided by law or at equity, by one or more proceedings, whether contemporaneous, consecutive or

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both, to be determined by Administrative Agent, in its sole discretion, in any one or more of the states or counties in which the Property or any of the Other Properties are located. Neither the acceptance of this Mortgage, the other Loan Documents or the Other Mortgages nor the enforcement thereof in any one state or county, whether by court action, foreclosure, power of sale or otherwise, shall prejudice or in any way limit or preclude enforcement by court action, foreclosure, power of sale or otherwise, of the Loan Agreement, the Notes, this Mortgage, the other Loan Documents, or any Other Mortgages through one or more additional proceedings in that state or county or in any other state or county. Any and all sums received by Administrative Agent or any Lender under the Loan Agreement, the Notes, this Mortgage and the other Loan Documents shall be applied to the Debt in such order and priority as Administrative Agent shall determine, in its sole discretion, without regard to any portion of the Loan allocated to any Property or any of the Other Properties or the appraised value of the Property or any of the Other Properties.

SECTION 3.20. State-Specific Provisions. In the event of any inconsistencies between the terms and conditions of this Section 3.20 and the other terms and conditions of this Mortgage, the terms and conditions of this Section 3.20 shall control and be binding.

(a) Collateral Protection Act. Without limiting any of Mortgagee's rights under this Mortgage or any of the Loan Documents, unless Mortgagor provides Mortgagee with evidence of the insurance required by this Mortgage or any other Loan Document, Mortgagee may purchase insurance at Mortgagor's expense to protect Mortgagee's interest in the Property (on behalf of itself and any other Lenders) or any other collateral for the Debt. This insurance may, but need not, protect Mortgagor's interests. The coverage Mortgagee purchases may not pay any claim that Mortgagor makes or any claim that is made against Mortgagor in connection with the Property or any other collateral for the Obligations. Mortgagor may later cancel any insurance purchased by Mortgagee, but only after providing Mortgagee with evidence that Mortgagor has obtained insurance as required under this Mortgage or any other Loan Document. If Mortgagee purchases insurance for the Property or any other collateral for the Obligations, Mortgagor shall be responsible for the costs of that insurance, including interest in any other charges that Mortgagee may lawfully impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance that Mortgagor may be able to obtain on its own. For purposes of the Illinois Collateral Protection Act, 815 ILCS 180/1 et seq., Mortgagor hereby acknowledges Mortgagee's right (on behalf of itself and any other Lenders) pursuant to this Section to obtain collateral protection insurance.

(b) Use of Proceeds. Mortgagor represents and warrants to Mortgagee (i) that the proceeds of the Notes secured by this Mortgage will be used for the purposes specified in 815 ILCS 205/4(1)(c) (or any substitute, amended or replacement statute), and that the Loan secured hereby constitutes a business loan which comes within the purview of said 815 ILCS 205/4(1)(c), and (ii) that the Loan evidenced by the Notes is an exempted transaction under the Truth In Lending Act, 15 U.S.C. §1601 et seq.

(c) Other Amounts Secured; Maximum Indebtedness. This Mortgage is governed by 765 ILCS 5/39 and 735 ILCS 5/15-1302. Mortgagor acknowledges and agrees that this Mortgage secures the entire principal amount of the Notes and interest accrued thereon, regardless of whether any or all of the Loan proceeds are disbursed on or after the date hereof, and regardless of whether the outstanding principal is repaid in whole or part or are future

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advances made at a later date, any and all litigation and other expenses and any other amounts as provided herein or in any of the other Loan Documents, including, without limitation, the payment of any and all Loan commissions, service charges, liquidated damages, expenses and advances due to or paid or incurred by Mortgagee in connection with the Loan, all in accordance with the Loan commitment issued in connection with this transaction and the Loan Documents. Under no circumstances, however, shall the total indebtedness secured hereby exceed Five Hundred Thirty-One Million Nine Hundred Thousand Dollars (\$531,900,000.00). It is agreed that any future advances made by Mortgagee for the benefit of Mortgagor from time to time under this Mortgage or the other Loan Documents and whether or not such advances are obligatory or are made at the option of Mortgagee, made at any time from and after the date of this Mortgage, and all interest accruing thereon, shall be equally secured by this Mortgage and shall have the same priority as all amounts, if any, advanced as of the date hereof and shall be subject to all of the terms and provisions of this Mortgage. This Mortgage shall be valid and have priority to the extent of the full amount of the Debt over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Property given priority by law.

(d) Adjustable Mortgage Loan Provision. The Notes which this Mortgage secures are adjustable notes on which the interest rate may be adjusted from time to time in accordance with the terms and provisions set forth in the Loan Documents.

(e) Deed in Trust. If title to the Property or any part thereof is now or hereafter becomes vested in a trustee, any prohibition or restriction contained herein against the creation of any lien on the Property shall be construed as a similar prohibition or restriction against the creation of any lien on or security interest in the beneficial interest of such trust.

(f) Forbidden Entity. Mortgagor hereby certifies that it is not a "forbidden entity" as that term is defined in Section 22.6 of the Illinois Deposit of State Moneys Act, 15 ILCS 520/22.6; Public Act 094-0079.

(g) Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the rights of any tenant or tenants of the Premises having an interest in the Premises prior to that of Mortgagee. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the Debt, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Premises, any statute or rule of law at any time existing to the contrary notwithstanding.

(h) Waiver of Right of Redemption and Other Rights. To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under

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any statute now or hereafter in force to redeem the Property so sold, or any part thereof, or relating to the marshalling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Property be sold as separate tracts or units in the event of foreclosure. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights of redemption and reinstatement under the Illinois Mortgage Foreclosure Law, Chapter 735 ILCS 5/15-1101-, et seq. (the “IMFL”), on its own behalf, on behalf of all persons claiming or having an interest (direct or indirect) by, through or under Mortgagor and on behalf of each and every person acquiring any interest in or title to the Property subsequent to the date hereof, it being the intent hereof that any and all such rights of redemption of Mortgagor and such other persons are and shall be deemed to be hereby waived to the full extent permitted by applicable law. To the full extent permitted by law, Mortgagor agrees that it will not, by invoking or utilizing any applicable law or laws or otherwise, hinder, delay or impede the exercise of any right, power or remedy herein or otherwise granted or delegated to Mortgagee, but will permit the exercise of every such right, power and remedy as though no such law or laws have been or will have been made or enacted. To the full extent permitted by law, Mortgagor hereby agrees that no action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and valid in an action at law upon the Note. Mortgagor acknowledges that the Property does not constitute agricultural real estate as defined in Section 5/15-1201 of the IMFL or residential real estate as defined in Section 5/15-1219 of the IMFL.

(i) Fixture Financing Statement. From the date of its recording, this Mortgage shall be effective as a fixture financing statement within the purview of Section 9-502(b) of the Illinois Uniform Commercial Code (as amended from time to time) with respect to the collateral securing the Loan and the goods described herein, which goods are or are to become fixtures related to the Property. The addresses of Mortgagor (Debtor) and Mortgagee (Secured Party) are set forth below. This Mortgage is to be filed for recording with the Recorder of Deeds of the county or the counties where the Property is located. For this purpose, the following information is set forth:

(i) Name and Address of Debtor:

AVR WHEELING HOTEL I LLC
 AVR WHEELING HOTEL II LLC
 AVR WHEELING HOTEL III LLC
 AVR WHEELING HOTEL TENANT LLC
 c/o AVR Realty Company, LLC
 1 Executive Boulevard
 Yonkers, NY 10701

(ii) Name and Address of Secured Party:

MANUFACTURERS AND TRADERS TRUST COMPANY
 c/o M&T Bank, 350 Park Avenue
 New York, New York 10022

(iii) This document covers goods which are or are to become fixtures.

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- (iv) Debtor is the record owner of the Premises.
- (v) Debtor's chief executive office is located in the State of New York.
- (vi) Debtor's state of formation is Delaware.
- (vii) Debtor's exact legal name is as set forth in the first paragraph of this Mortgage.
- (viii) Intentionally omitted.
- (ix) Debtor agrees that:

(A) Where collateral securing the Loan is in possession of a third party, Mortgagor will join with Mortgagee in notifying the third party of Mortgagee's interest and obtaining an acknowledgment from the third party that it is holding the collateral securing the Loan for the benefit of Mortgagee;

(B) Mortgagor will cooperate with Mortgagee in obtaining control with respect to collateral securing the Loan consisting of: deposit accounts, investment property, letter of credit rights and electronic chattel paper; and

(C) Until the Debt is paid in full, Mortgagor will not change the state where it is located or change its company name without giving Mortgagee at least thirty (30) days prior written notice in each instance.

(j) Interest Laws. It being the intention of Mortgagee and Mortgagor to comply with the laws of the State of Illinois, it is agreed that notwithstanding any provision to the contrary in the Notes, this Mortgage or any of the other Loan Documents, no such provision shall require the payment or permit the collection of any amount ("Excess Interest") in excess of the maximum amount of interest permitted by law to be charged for the use or detention, or the forbearance in the collection, of all or any portion of the indebtedness evidenced by the Notes. If any Excess Interest is provided for, or is adjudicated to be provided for, in the Notes, this Mortgage or any of the other Loan Documents, then in such event: (a) the provisions of this Section 3.20(j) shall govern and control; (b) neither Mortgagor nor any other party obligated under the terms of the Notes or any of the other Loan Documents shall be obligated to pay any Excess Interest; (c) any Excess Interest that Mortgagee may have received hereunder shall, at the option of Mortgagee, be (i) applied as a credit against the then unpaid principal balance under the Notes, accrued and unpaid interest thereon not to exceed the maximum amount permitted by law, or both, (ii) refunded to the payor thereof, or (iii) any combination of the foregoing; (d) the Interest Rate shall be subject to automatic reduction to the maximum lawful contract rate allowed under the applicable usury laws of the aforesaid State, and the Notes, this Mortgage and the other Loan Documents shall be deemed to be automatically reformed and modified to reflect such reduction in the Interest Rate; and (e) neither Mortgagor nor any other party obligated under the terms of the Note or any of the other Loan Documents shall have any action against Mortgagee for any damages whatsoever arising out of the payment or collection of any Excess Interest.

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(k) Construction Loan. The Notes evidence a debt created by one or more disbursements made by Mortgagee to Mortgagor to finance the cost of the construction of certain improvements upon the Property in accordance with the provisions of the Loan Agreement, and this Mortgage is a construction mortgage as such term is defined in Section 9-334(h) of the Uniform Commercial Code. The terms and conditions recited and set forth in the Loan Agreement are fully incorporated in this Mortgage and made a part hereof, and a Default (or an Event of Default) under any of the conditions or provisions of the Loan Agreement shall constitute a Default (or an Event of Default) hereunder. Upon the occurrence and during the continuation of any such Default (or Event of Default), the holder of the Note may at its option declare the Debt immediately due and payable, or complete the construction of said improvements and enter into the necessary contracts therefore, in which case all money expended shall be so much additional Indebtedness and any money expended in excess of the amount of the original principal shall be immediately due and payable with interest until paid at the Involuntary Rate. In the event of a conflict between the terms of the Loan Agreement and this Mortgage, the provisions of the Loan Agreement shall apply and take precedence over this Mortgage. All future advances shall be made within twenty (20) years of the date hereof.

(l) Compliance with the Illinois Mortgage Foreclosure Law.

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

2. 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.

3. If any provision of this Mortgage shall grant to Mortgagee any rights or remedies upon default of Mortgagor which are more limited than the rights that would otherwise be vested in Mortgagee under the IMFL in the absence of said provision, Mortgagee shall be vested with the rights granted in the IMFL to the full extent permitted by law.

4. 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, for the following purposes, in addition to those otherwise authorized by this Mortgage, the other Loan Documents or by the IMFL (collectively "Protective Advances"), shall have the benefit of all applicable provisions of the IMFL, including, without limitation, those provisions of the IMFL herein below referred to:

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A. all advances by Mortgagee in accordance with the terms of this Mortgage or the other Loan Documents to: (1) preserve, maintain, repair, restore or rebuild the improvements upon the Property; (2) preserve the lien of this Mortgage or the priority thereof; or (3) enforce this Mortgage, as referred to in Subsection (b)(5) of Section 15-1302 of the IMFL;

B. payments by Mortgagee of (1) principal, interest or other obligations in accordance with the terms of any senior mortgage or other prior lien or encumbrance (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien or encumbrance); (2) real estate taxes and assessments, general and special and all other taxes and assessments of any kind or nature whatsoever which are assessed or imposed upon the Property or any part thereof; (3) other obligations authorized by this Mortgage; or (4) with court approval, any other amounts in connection with other liens, encumbrances or interests reasonably necessary to preserve the status of title, as referred to in Section 15-1505 of the IMFL;

C. advances by Mortgagee in settlement or compromise of any claims asserted by claimants under senior mortgages or any other prior liens (provided that nothing in this section shall be construed as authorizing the existence of any senior mortgage or other prior lien);

D. reasonable attorneys' fees and other costs incurred: (1) in connection with the foreclosure of this Mortgage as referred to in Sections 1504(d) and 15-1510 of the IMFL; (2) in connection with any action, suit or proceeding brought by or against Mortgagee for the enforcement of this Mortgage or arising from the interest of Mortgagee hereunder; or (3) in preparation for or in connection with the commencement, prosecution or defense of any other action related to this Mortgage or the Property;

E. Mortgagee's fees and costs, including reasonable attorneys' fees, arising between the entry of judgment of foreclosure and the confirmation hearing as referred to in Subsection 15-1508(b)(1) of the IMFL;

F. expenses deductible from proceeds of sales referred to in Subsections 15-1512(a) and (b) of the IMFL;

G. expenses incurred and expenditures made by Mortgagee for any one or more of the following: (1) premiums for casualty and liability insurance paid by Mortgagee whether or not Mortgagee or a receiver is in possession, if reasonably required, in reasonable amounts, and all renewals thereof, without regard to the limitation to maintaining of existing insurance in effect at the time any receiver or mortgagee takes possession of the Property imposed by Subsection 15-1704(c)(1) of the IMFL; (2) repair or restoration of damage or destruction in excess of available insurance proceeds or condemnation awards; (3) payments deemed by Mortgagee to be required for the benefit of the Property or required to be made by the owner of the Property under any grant or

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declaration of easement, easement agreement, agreement with any adjoining land owners or instruments creating covenants or restrictions for the benefit of or affecting the Property; and (4) shared or common expense assessments payable to any association or corporation in which the owner of the Property is a member in any way affecting the Property.

All Protective Advances shall be so much additional indebtedness secured by this Mortgage, 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 Notes.

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

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

- (1) any determination of the amount of indebtedness secured by this Mortgage at any time;
- (2) the indebtedness found due and owing to Mortgagee in the judgment of foreclosure and any subsequent supplemental judgments, orders, adjudications or findings by the court of any additional indebtedness becoming due after such entry of judgment, it being agreed that in any foreclosure judgment, the court may reserve jurisdiction for such purpose;
- (3) if the right of redemption has not been waived by this Mortgage, computation of the amount required to redeem, pursuant to Subsections 5-1603(d)(2) and (e) of the IMFL;
- (4) determination of amounts deductible from sale proceeds pursuant to Section 15-1512 of the IMFL;
- (5) application of income in the hands of any receiver or mortgagee in possession; and
- (6) computation of any deficiency judgment pursuant to Subsections 15-1508(b)(2), 15-1508(e) and Section 15-1511 of the IMFL.

5. In addition to any provision of this Mortgage authorizing Mortgagee to take or be placed in possession of the Property, or for the appointment of a receiver, Mortgagee shall have the right, in accordance with Sections 15-1701 and 15-1702 of the IMFL, to be placed in possession of the 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 Mortgage, all rights, powers,

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immunities and duties as provided for in Sections 15-1701, 15-1703 and 15-1704 of the IMFL.

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**COOK COUNTY
RECORDER OF DEEDS**

**COOK COUNTY
RECORDER OF DEEDS**


Property of Cook County Clerk's Office

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IN WITNESS WHEREOF, this Mortgage has been duly executed by Mortgagor as of the day first above written.

MORTGAGOR:


AVR WHEELING HOTEL I LLC,
a Delaware limited liability company

By: 
Name: Lily Ann Marden
Title: Authorized Representative


AVR WHEELING HOTEL II LLC,
a Delaware limited liability company

By: 
Name: Lily Ann Marden
Title: Authorized Representative

AVR WHEELING HOTEL III LLC,
a Delaware limited liability company

By: 
Name: Lily Ann Marden
Title: Authorized Representative

AVR WHEELING HOTEL TENANT LLC,
a Delaware limited liability company

By: 
Name: Lily Ann Marden
Title: Authorized Representative

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STATE OF New York)
) SS.
 COUNTY OF Westchester)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Lily Ann Marden, the Authorized Representative of AVR WHEELING HOTEL I LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14th day of December, 2018.

Alicia N. Simmons
 Notary Public

My Commission Expires:

ALICIA N SIMMONS
 Notary Public State of New York
 No. 01S16192713
 Qualified in Westchester County
 Commission Expires September 02, 2020

Property of Cook County Clerk's Office

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STATE OF New York)
) SS.
COUNTY OF Westchester)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Lily Ann Marden, the Authorized Representative of AVR WHEELING HOTEL II LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14th day of December, 2018.



Notary Public

My Commission Expires:

ALICIA N SIMMONS
Notary Public State of New York
No. 01S16192713
Qualified in Westchester County
Commission Expires September 02, 2020

Property of Cook County Clerk's Office

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STATE OF New York)
) SS.
COUNTY OF Westchester)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Lily Ann Marden, the Authorized Representative of AVR WHEELING HOTEL III LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 14th day of December, 2018.

Alicia M. Simmons
Notary Public

My Commission Expires:

ALICIA N SIMMONS
Notary Public State of New York
No. 01S16192713
Qualified in Westchester County
Commission Expires September 02, 2020

Property of Cook County Clerk's Office

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STATE OF New York)
) SS.
 COUNTY OF Westchester)

The undersigned, a Notary Public in and for the said County, in the State aforesaid, DO HEREBY CERTIFY that Lily Ann Marden, the Authorized Representative of AVR WHEELING HOTEL TENANT LLC, a Delaware limited liability company, who is personally known to me to be the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that she signed and delivered the said instrument as her own free and voluntary act and as the free and voluntary act of said company, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 19th day of December, 2018.


 Notary Public

My Commission Expires:

ALICIA N SIMMONS
 Notary Public State of New York
 No. 01S16192713
 Qualified in Westchester County
 Commission Expires September 02, 2020

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EXHIBIT A

PROPERTY DESCRIPTION

PARCEL 1:

LOT 7 AND OUTLOT A IN PRAIRIE CROSSING SUBDIVISION, BEING A RESUBDIVISION OF PART OF LOT 3 IN G. HECHINGER'S FARM, BEING A SUBDIVISION IN SECTIONS 1, 2 AND 3, TOWNSHIP 42 NORTH, RANGE 11, EAST, AND PART OF LOT 2 IN THE SUBDIVISION OF SECTION 2 TOWNSHIP 42 NORTH RANGE 11 EAST, AND PARTS OF SECTIONS 11 AND 13, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON AUGUST 17, 2005 AS DOCUMENT NO. 0522939034, IN COOK COUNTY, ILLINOIS.

EXCEPT THE FOLLOWING:

THAT PART OF THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF SAID SECTION 2, SAID POINT BEING 1,296.60 FEET WEST OF THE NORTHEAST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 2; THENCE SOUTHERLY 116.25 FEET TO A POINT ON THE SOUTH LINE OF LAKE COOK ROAD PER TAKING NUMBER 0006 PER DOCUMENT NUMBER 1419452 AND SHOWN ON THE PLAT OF HIGHWAYS DOCUMENT NUMBER 3556168; THENCE SOUTH 89 DEGREES 18 MINUTES 17 SECONDS WEST, A DISTANCE OF 36.24 FEET ALONG SAID TAKING NUMBER 0006 TO A POINT ON A CURVE; THENCE WESTERLY ALONG A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 1,549.87 FEET, AN ARC DISTANCE OF 581.36 FEET AND CHORD BEARING SOUTH 78 DEGREES 33 MINUTES 32 SECONDS WEST, ALONG SAID TAKING NUMBER 0006; THENCE SOUTH 04 DEGREES 25 MINUTES 28 SECONDS WEST, A DISTANCE OF 79.64 FEET ALONG SAID TAKING NUMBER 0006; THENCE SOUTH 21 DEGREES 38 MINUTES 51 SECONDS EAST, A DISTANCE OF 214.10 FEET ALONG SAID TAKING NUMBER 0006 TO THE POINT OF BEGINNING; THENCE SOUTH 20 DEGREES 05 MINUTES 26 SECONDS EAST, A DISTANCE OF 523.07 FEET; THENCE SOUTH 65 DEGREES 50 MINUTES 21 SECONDS EAST, A DISTANCE OF 20.91 FEET; THENCE SOUTH 20 DEGREES 57 MINUTES 53 SECONDS EAST, A DISTANCE OF 129.01 FEET; THENCE SOUTH 68 DEGREES 21 MINUTES 09 SECONDS WEST, A DISTANCE OF 15.00 FEET; THENCE SOUTH 20 DEGREES 57 MINUTES 53 SECONDS EAST, A DISTANCE OF 105.16 FEET; THENCE SOUTH 17 DEGREES 16 MINUTES 10 SECONDS EAST, A DISTANCE OF 182.59 FEET; THENCE SOUTH 21 DEGREES 37 MINUTES 26 SECONDS EAST, A DISTANCE OF 220.79 FEET TO THE SOUTH LINE OF LOT 3 IN G. HECHINGER'S FARM SUBDIVISION; THENCE SOUTH 87 DEGREES 53 MINUTES 20 SECONDS WEST, A DISTANCE OF 13.79 FEET TO THE EAST LINE OF MILWAUKEE AVENUE PER DOCUMENT NUMBER 2009840; THENCE NORTH 21 DEGREES 37 MINUTES 26 SECONDS WEST, A DISTANCE OF 256.03 FEET ALONG SAID EAST LINE

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OF DOCUMENT NUMBER 2009840; THENCE NORTH 11 DEGREES 53 MINUTES 15 SECONDS WEST, A DISTANCE OF 90.53 FEET ALONG THE EAST LINE OF MILWAUKEE AVENUE PER TAKING NUMBER 0026 SHOWN ON DOCUMENT NUMBER 3556168; THENCE NORTH 21 DEGREES 38 MINUTES 51 SECONDS WEST, A DISTANCE OF 342.96 FEET ALONG SAID EAST LINE OF TAKING NUMBER 0026; THENCE NORTH 17 DEGREES 53 MINUTES 44 SECONDS WEST, A DISTANCE OF 122.26 FEET ALONG SAID EAST LINE OF TAKING NUMBER 0026 AND SAID TAKING NUMBER 0006; THENCE NORTH 20 DEGREES 20 MINUTES 17 SECONDS WEST, A DISTANCE OF 175.05 FEET ALONG SAID TAKING NUMBER 0006; THENCE NORTH 16 DEGREES 23 MINUTES 54 SECONDS WEST, A DISTANCE OF 185.82 FEET ALONG SAID TAKING NUMBER 0006, TO THE POINT OF BEGINNING, IN COOK COUNTY, ILLINOIS.

PARCEL 2:

A NON-EXCLUSIVE EASEMENT FOR THE BENEFIT OF PARCELS 1 AND 4 AS CREATED BY DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS DATED AS OF AUGUST 26, 2005 AND RECORDED AUGUST 30, 2005 AS DOCUMENT 0524239046 FOR THE PURPOSE OF ROAD IMPROVEMENTS, PARKING, ACCESS, STORM WATER DISCHARGE AND DETENTION POND, UTILITIES, GENERAL CONSTRUCTION AND DEVELOPMENT AS SET FORTH IN SAID DOCUMENT.

PARCEL 3:

EASEMENTS FOR THE BENEFIT OF PARCELS 1 AND 4 AS CREATED BY PRAIRIE CROSSING SUBDIVISION PLAT RECORDED ON AUGUST 11, 2005 AS DOCUMENT NO. 0522939034, AS MODIFIED BY ABROGATION RECORDED DECEMBER 10, 2010 AS DOCUMENT NO. 1034434040, IN COOK COUNTY, ILLINOIS

PARCEL 4:

LOTS 5 AND 8 IN PRAIRIE CROSSING SUBDIVISION, BEING A RESUBDIVISION OF PART OF LOT 3 IN G. HECHINGER'S FARM, BEING A SUBDIVISION IN SECTIONS 1, 2 AND 3, TOWNSHIP 42 NORTH, RANGE 11, AND PART OF LOT 2 IN THE SUBDIVISION OF SECTION 2, TOWNSHIP 42 NORTH, RANGE 11, AND PARTS OF SECTIONS 11 AND 13, TOWNSHIP 42 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED ON AUGUST 17, 2005 AS DOCUMENT NO. 0522939034, IN COOK COUNTY, ILLINOIS.

The property identification numbers for the Premises are: 03-02-200-108-0000, 03-02-200-110-0000, 03-02-200-106-0000, and 03-02-200-109-0000

The common street address of the Premises is: 601 N. Milwaukee Ave., Wheeling, IL 60090